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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 1078/2024 & C.M.Nos.63508-63509/2024

ZYNC GLOBAL PVT LTD .....Appellant

Through: Ms.Astha Gumber, Advocate.

versus

PUNJAB NATIONAL BANK .....Respondent

Through: Dr.S.S.Hooda with Mr.Aayushman Aeron, Advocates.

% Date of Decision: 28th October, 2024

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed challenging the order dated 27th September, 2024 passed in W.P.(C) 13135/2024 whereby the learned Single Judge refused to grant interim directions to the Respondent-Bank to refrain it from taking further and consequent actions pursuant to declaring the account of the Appellant as fraud.

2. Learned counsel for the Appellant states that the Appellant company's account was declared as Non-Performing Assets (NPA) by the Respondent/Bank pursuant to which two detailed forensic audits were conducted in the years 2017 and 2018 at the behest of the Respondent-Bank, wherein the auditors appointed by the Respondent-Bank categorically

opined to the effect that they had not found any activity or transaction that would amount to fraud.

3. She states that the Respondent-Bank without conducting any fresh investigation and in the absence of fresh evidence, arbitrarily issued the show cause notice dated 18th November, 2023 perceiving the account of the Appellant's company as fraud based on alleged findings of the Income Tax letter dated 13th December, 2018, without conducting any independent investigation to verify the sanctity of the baseless allegations contained therein and in the absence of fresh material or relied upon documents, thereby re-opening the issues already decided.

4. She states that the Appellant in its reply dated 01st December, 2023 to the show cause notice categorically sought the relied upon documents, including Income Tax letter dated 13th December, 2018 along with an opportunity of hearing. However, the Respondent-Bank without providing any relied upon documents or the opportunity of hearing to the Appellant and without communicating any order whatsoever in direct breach of the Master Directions dated 01st July, 2016 and 15th July, 2024 issued by the Reserve Bank of India ('RBI') for fraud classification, proceeded to declare the account of the Appellant's company as fraud despite the categorical observations of the Forensic Auditors in 2018 vide analysis of Forensic Audit Report dated 11th April, 2018 wherein the auditors categorically stated to have not found any activities or transactions tantamounting to fraud in the account of the Appellant's company.

5. She submits that the impugned action is contrary to the law laid down by the Supreme Court in ***State Bank of India vs. Rajesh Agarwal, (2023) 6 SCC 1***.

6. Per contra, learned counsel for the Respondent/Bank submits that the present appeal is not maintainable as it challenges an interlocutory order. In support of his submission, he relies upon the Division Bench judgment of this Court in ***Niko Resources Limited vs. Gujrat State Petroleum Corp. 2000 (55) DRJ (DB)***.

7. He has also handed over a letter dated 13th December, 2018 written by the office of Director General of Income Tax (Investigation), Delhi to the Secretary, Department of Financial Services, wherein it is stated as under:-

> "*..........In the case of M/s Zync Global Pvt Ltd it was found that there was no real business activity of claimed trading of fabrics or evidence of actual sales such as purchase order, goods receipt note, delivery, communication between parties etc. It was detected that the group employees prepared fake invoices and transport bills for purchases and sales on the instructions of Ashish Garg. It appears that the company has inflated its turnover and huge loans were availed from State Bank of India and Punjab National Bank. The assets of the company were shown to be trade receivables, loans and advances.*"

8. He has also drawn this Court's attention to para 3.2.3 of the Reserve Bank of India (Frauds classification and reporting by commercial banks and select Fls) Directions 2016, which reads as under:-

> "*3.2.3 Fraud reports should also be submitted in cases where central investigating agencies have initiated criminal proceedings suo moto and/or where the Reserve Bank has directed that such cases be reported as frauds."*

9. A perusal of the impugned order shows that the learned Single Judge has denied the relief on the ground that the Director General of Income Tax (Investigation), Delhi in its letter dated 13th December, 2018 had pointed out that the Appellant-Petitioner's company was not engaged in any real business activity and that its employees have prepared fake invoices and transport bills. This Court is of the view that the approach adopted by the learned Single Judge calls for no interference in appeal.

10. This Court also finds that the learned Single Judge has not dismissed the interim application but has only denied the ad-interim relief and asked the Respondent to file a reply affidavit. Accordingly, the present appeal along with the applications is dismissed. However, it is clarified that the present order shall not bind the learned Single Judge while finally deciding the underlying writ petition and/or application(s) filed therein.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

OCTOBER 28, 2024
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