

**IN THE HIGH COURT AT CALCUTTA**  
**(Constitutional Writ Jurisdiction)**  
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**WPA No. 22374 of 2024**

**Amit Kumar Kejriwal**

**Versus**

**Bank of India & Ors.**

Ms. Noelle Banerjee

Mr. Dipanjan Dey

Ms. Bidisha Ghoshal

Md. Apzal Ansari

.....For the petitioner.

Mr. Anuj Singh

Ms. Ankita Baid

Ms. Trinisha De

Ms. Rupal Singh

Mr. Siddharth Singh

Mr. Ashok Kumar Singh

.....For the respondent nos. 1&2.

Mr. Aman Agarwal

Mr. Debabrata Das

Mr. A. Sarkar

Mr. Pratik Acharjee

.....For the respondent no. 3.

Hearing Concluded On : 12.11.2025

Judgment on : 18.11.2025

**Krishna Rao, J.:**

1. The petitioner has filed the present writ application challenging the show cause notice dated 28<sup>th</sup> February, 2024 and the impugned order dated 7<sup>th</sup> August, 2024 wherein the Deputy Zonal Manager, Bank of India, Ranchi Zone, has decided to classify the account of M/s. Swati Mining Pvt. Ltd. as “Fraud”.
2. This is the 2<sup>nd</sup> round of litigation before this Court. In the earlier round of litigation or by an order dated 18<sup>th</sup> July, 2023, this Court set aside the order passed by the bank wherein the bank has classified the account of the petitioner company as “Fraud”. Being aggrieved with the order passed by this Court, the bank had preferred an appeal being M.A.T No. 1769 of 2023 and the Appellate Court by a judgment dated 16<sup>th</sup> November, 2023, allowed the appeal in part holding that while sustaining the order passed by the Writ Court setting aside the classification of the writ petitioner and the company as fraud, liberty is given to the appellant/bank to proceed afresh in accordance with law.
3. Ms. Noelle Banerjee, Learned Advocate representing the petitioner submits that the Appellate Court has given liberty to the bank to proceed against the petitioner afresh in accordance with law but in the show cause notice dated 28<sup>th</sup> February, 2024 itself, the bank has classified the account of company of the petitioner as “Fraud” without giving any opportunity of hearing. She submits that while issuing the

show cause notice upon the petitioner, the respondent bank has already pre-judged the account of the petitioner company as “Fraud”.

4. Ms. Banerjee submits that the respondent bank had issued the show cause notice on the basis of the forensic audit report but no forensic audit report is supplied to the petitioner. She submits that on receipt of show cause notice, the petitioner has submitted a detailed reply and has categorically mentioned that the copy of the forensic report dated 18<sup>th</sup> March, 2020, on the basis of which the account of the petitioner was examined, has not been served upon the petitioner.
5. It is the further contention of the petitioner that in the show cause reply, the petitioner has categorically mentioned that no copy of the forensic report was served upon the petitioner and without serving the copy of forensic report upon the petitioner, the respondent bank has passed the impugned order dated 7<sup>th</sup> August, 2024. The petitioner has relied upon the judgment in the case of ***State Bank of India & Ors. vs. Rajesh Agarwal & Ors.*** reported in **(2023) 6 SCC 1** and submits that the Hon’ble Supreme Court had held that the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrowers a reasonable opportunity to submit a representation before classifying the account as fraud but in the present case, no such procedure has been followed.
6. Ms. Banerjee submits that the respondent bank has issued the show cause notice and the impugned order in violation of Master Directions.

7. The petitioner says that several correspondences exchanged between the respondent bank and the petitioner and the petitioner had offered to pay Rs. 6.62 crores against the outstanding dues of the bank of Rs. 6.61 crores but during the pendency of the settlement, the respondent bank has issued the show cause notice and passed the impugned order.
8. Ms. Banerjee submits that no such investigation was undertaken by the bank during the loan circle in terms of the Master Directions and the bank has not followed the procedure provided under the Master Directions. She further submits that the impugned order has not passed by the appropriate authority. The petitioner has relied upon in the case of ***Hemant Kanoria vs. Bank of India*** reported in **2024 SCC OnLine Cal 1012** and submits that in the said judgment, the Coordinate Bench of this Court had formulated the guidelines for declaring the account of the company as “Fraud” but in the present case, the respondent bank has not followed the said procedure.
9. The petitioner submits that though the respondent bank has issued a show cause notice and the petitioner has replied to the show cause notice but no opportunity of personal hearing was given to the petitioner before passing the impugned order by declaring the account of the petitioner as “Fraud”. The petitioner has further relied upon in the case of ***IDBI Bank Ltd. vs. Gaurav Goyal & Ors.*** reported in **2025 SCC OnLine Del 935** and submits that in the said case, the Delhi High Court has held that in the proceedings under the RBI directions,

opportunity of hearing would not include an opportunity of personal hearing is, untenable.

10. Mr. Anuj Singh, Learned Advocate representing the respondent banks/ respondent nos. 1 & 2 submits that after the order passed by the Hon'ble Division Bench, the bank has issued detailed show cause notice to the petitioner and the petitioner has submitted reply to the show cause notice but after going through the notice, the bank has not satisfied with the reply and declared the account of the petitioner as "Fraud".
11. Mr. Singh submits that in the reply, the petitioner has alleged that the forensic audit report was not served upon the petitioner and accordingly, the bank has supplied forensic report to the petitioner but after receipt of the forensic report, the petitioner has not submitted any exception to the said report.
12. Mr. Singh submits that the petitioner has taken the plea that no personal hearing was given to the petitioner and has relied upon the judgment in the case of **Rajesh Agarwal (supra)** but Mr. Singh has relied upon the judgment in the case of **Anil D. Ambani vs. The State Bank of India and Others** passed by the Hon'ble Division Bench of the Bombay High Court dated 3<sup>rd</sup> October, 2025 wherein the Bombay High Court held that the Hon'ble Supreme Court in its judgment in the case of **Rajesh Agarwal (supra)** has not held/observed that an

opportunity of being heard necessarily includes and means an opportunity of personal hearing.

13. Mr. Singh has relied upon the judgment in the case of ***Suresh Kumar Patni and Others Vs. State Bank of India, Industrial Finance Branch and Another*** reported in **2021 SCC OnLine Cal 2146** and submits that a Writ Court cannot go into weigh the sufficiency of reasons given by an administrative or quasi-judicial authority.
  
14. Mr. Singh submits that on receipt of the reply to the show cause notice submitted by the petitioner, the bank by a communication dated 16<sup>th</sup> April, 2024, forwarded forensic report to the petitioner through email but the petitioner has not submitted any reply to the forensic report. He submits that the bank already informed to the petitioner that the proposal of one time scheme has not been approved by the appropriate authority and as per Clause 8.12.3, no compromise settlement involving a fraudulent borrower is allowed unless the conditions stipulate that the criminal complaint will be continued.
  
15. Mr. Singh relied upon the judgment in the case of ***State Bank of India vs. Jah Developers Private Limited and Others*** reported in **(2019) 6 SCC 787** and submits that in the said case the Hon'ble Supreme Court held that in number of cases, the Hon'ble Supreme Court held that natural justice is a flexible tool that is used in order that a person or authority arrive at a just result. Such result can be arrived at in many

cases without oral hearing but on written representations given by parties, after considering which, a decision is then arrived at.

16. The respondent bank issued show cause notice dated 28<sup>th</sup> February, 2025 to the petitioner. In the caption of the show cause notice, it is mentioned that *“Show Cause Notice seeking your submission on Re-examination of your account consequent to classification of account as “Fraud”*. In paragraph 3 of the said Show Cause Notice also it is mentioned that *“Now in order to re-examine the matter, you are advised to provide your written submission, if any, on the above observations and show cause within 15 days of receipt of this communication for re-examining the account which has been classified as “Fraud”*. From the face of the notice, it is clear that the respondent bank has already pre-determined that the account of the petitioner as “Fraud”, thus the respondents have only to complete the formalities issued show cause notice to the petitioner. A show cause notice must be answerable as to show cause and not to a verdict. The language and tone of a show cause notice must be inquisitive, not conclusive. It must clearly state the allegation and ask the petitioner to show cause why a proposed action should not be taken. Any notice that indicates the authority has already made up its mind is invalid. The right to a fair hearing is not formality. The authorities must follow the procedural requirements before passing an adverse order.

17. The show cause notice was issued to the petitioner based upon the observation/ findings/ conclusion of the Forensic Audit. In reply to the

show cause notice, the petitioner has categorically mentioned that the respondent bank has not supplied the forensic audit report to the petitioner. The respondents have relied upon a communication dated 16<sup>th</sup> April, 2024 and an email dated 18<sup>th</sup> April, 2024 and submits that the respondent bank forwarded forensic report to the petitioner. The petitioner denied the contention of the respondent bank. On receipt of reply to the show cause notice, the respondent bank has passed the impugned order dated 7<sup>th</sup> August, 2024. In the said order, the respondent bank has not stated anywhere that subsequent to receipt of show cause reply, the respondent bank served copies of the forensic audit report to the petitioner. The impugned order is the replica of the show cause notice. In the show cause reply, the petitioner has categorically stated that the petitioner is not the Director of the Company since 14<sup>th</sup> November, 2018 and is not connected with the company under liquidation, which is under the Liquidator but the stand taken by the petitioner in the reply has not been dealt by the respondents.

- 18.** In the impugned order, it is also mentioned that no written reply is received from other noticees. The impugned order dated 7<sup>th</sup> August, 2024, is addressed to five (5) persons including the Company and Liquidator. The show cause notice was addressed to the petitioner, namely, Amit Kumar Kejriwal, Sudhir Chandra Mondal and Hari Mohan Mondal. In the show cause notice it is mentioned that the notice is not being issued to M/s. Swati Mining Pvt. Ltd. as it has been

liquidated and dissolved by the NCLT, Kolkata Bench. The impugned order dated 7<sup>th</sup> August, 2024, was served upon M/s. Swati Mining Pvt. Ltd. as Noticee no.1, Mr. Samrat Chakraborty, Director as Noticee no.2, Ms. Girija Thakur, Director as Noticee no.3, Amit Kumar Kejriwal, Director as Noticee no.4 and Mr. Shantanu Brahma, Liquidator as Noticee No.5.

**19.** Though show cause notices were served upon the other noticees except the petitioner herein but in the impugned order it is mentioned that no written submissions were received from the other noticees which is contrary to the record. In the show cause notice, other two person's names are appearing other than the name of the petitioner but the respondents have not clarified whether the said persons are connected with the company or whether they have submitted any reply to the show cause notice.

**20.** In the case of ***Hemant Kanoria Vs. Bank of India*** reported in **2024 SCC OnLine Cal 1012**, the Coordinate Bench of this Court while dealing with the similar matter has fixed the following guidelines which reads as follows:

**“63.** *Keeping such backdrop in view, in the light of the judgments rendered in Rajesh Agarwal (supra) and Neptune Overseas Limited (supra), the following procedure is, in the opinion of this Court, apt to serve the purposes of the Master Directions as well as to take care of the principles of natural justice, in particular the tenet of Audi Alteram Partem and ensure that an effective opportunity of rebutting the allegations is given to the borrower and its Directors.*

**64.** *First, a show-cause notice is to be issued, enumerating the exact offences alleged against the borrower/Director. If any FAR or other document forms the basis of the show-cause, the same is to be served along with the show-cause notice. (Both the said criteria have, in fact, have been satisfied in the present case in respect of BOI, BOB and UBI.)*

**65.** *A fortnight thereafter would be ample time to give reply to the show-cause notice. In its reply, the noticee shall, apart from addressing the allegations and controverting those specifically, specify the documents which are required to be provided to the noticee by the Banks/financial institutions. If necessary, in the reply, the borrower/Director or promoter can reserve its rights to give a further additional reply upon receiving such documents.*

**66.** *Within a week from receiving such replies, the Banks can give an inspection of the documents, if extremely voluminous, and/or furnish copies of the particular documents which are sought by the borrower.*

**67.** *Within a further fortnight, if necessary, the noticee/borrower can be given an opportunity to file additional reply, in the light of the documents which have by now been inspected/served on them. Thereafter, a hearing shall be fixed by the bank on the basis of the reply.*

**68.** *Upon such hearing being concluded, a decision shall be taken whether or not to declare the borrower-company or its Director/promoter as "Fraud" or "perpetrator of fraud". The aforesaid procedure would take, at the most, 8 weeks in total to be concluded, which would be sufficient compliance of the Master Directions of the RBI. Thereafter, if declared as fraud/perpetrator of fraud, the same can be intimated by the Bank to the RBI."*

In the present case, none of the procedure is followed. Though the show cause notice is issued to the petitioner but from the face of notice, it is clear that the bank has pre-judged the account of the petitioner as “Fraud”. No forensic report is served upon the petitioner. If assuming that subsequent on receipt of show cause reply, forensic report is served upon the petitioner but in the said communication there is nothing to say that any explanation is called from the petitioner with respect to forensic report.

- 21.** The petitioner has also taken the plea that the respondents have not given opportunity of personal hearing before issuance of the impugned order and relied upon the judgment in the case of **IDBI Bank Ltd. Vs. Gaurav Goel and Others** reported in **2025 SCC OnLine Del 935** wherein the Hon’ble Division Bench of Delhi High Court held that:

*“19. Since, in paragraph 99, the Hon’ble Supreme Court has upheld the said decision of the Hon’ble High Court of Telangana (2020 SCC OnLine TS 2021), in our considered opinion, reading the conclusion in Rajesh Agarwal, (supra), as can be found in paragraph 98.4, to mean that in proceedings under the RBI Directions, opportunity of hearing would not include opportunity of personal hearing, is untenable. Once, the Hon’ble Supreme Court upheld the judgment of the Hon’ble High Court of Telangana which clearly had directed for providing an opportunity of personal hearing as well, to conclude that opportunity of hearing would not include opportunity of personal hearing, in our opinion, will be erroneous.”*

- 22.** Mr. Singh submits that personal hearing is not mandatory and relied upon the judgment in the case of **Anil D. Ambani vs. The State Bank of India and Others** and submits that the Hon’ble Division Bench of

the Bombay High Court taking into consideration of the order passed by the Hon'ble supreme Court in a Miscellaneous Application in the case of **Rajesh Agarwal (supra)** held that:

*“37. Infact, subsequent to the judgment in Rajesh Agarwal (supra), the State Bank of India preferred a Miscellaneous Application before the Apex Court, expressing apprehension that the said judgment may be construed as mandating a personal hearing in every case. The Apex Court, by order dated 12<sup>th</sup> May 2023 in Misc. Application No. 810 of 2023 in Civil Appeal No. 7300 of 2022, clarified that its earlier decision dated 27<sup>th</sup> March 2023 only upheld the judgment of the High Court of Telangana dated 10<sup>th</sup> December 2020, and that the operative directions are confined to those summarised in Para 81 under section ‘E’ of the judgment. (Para 81 Section E is Para 98 in the equivalent citation (2023) 6 SCC 1 and the same is reproduced in Para 8 herein-above).*

*38. The Apex Court further observed that, insofar as the question of prospective effect is concerned, the applicant bank was at liberty to seek review separately. The Miscellaneous Application was accordingly disposed of.*

*39. A perusal of the Master Directions 2024 nowhere contemplates a personal hearing. The same provides an opportunity of being heard as per the directions of the Apex Court in **Rajesh Agarwal**.*

*40. The Master Directions 2024 read with the decision in Rajesh Agarwal (supra), requires an opportunity to submit a representation before classifying a person/entity, followed by the passing of a reasoned order. Thus, the right available is that of making a representation, and not of a mandatory personal hearing, as contended. Even otherwise, in the present facts, considering that the Petitioner had submitted his response to the impugned SCN as well as subsequent representations, and further, since there was no response to the last communication*

*addressed by the Petitioner to the Respondent-SBI, the Respondent-SBI was well within its powers in passing the impugned order.*

**41.** *It is pertinent to note that the Apex Court in its judgment in **Rajesh Agarwal (supra)** has not held/observed that an opportunity of being heard necessarily includes and means an opportunity of personal hearing. It talks about audi alteram partem i.e. adherence to the principles of natural justice. Significantly, no request for a personal hearing was made by the Petitioner at any stage. In any event, the grant of a personal hearing is not a matter of right in every case, unless specifically mandated by statute or rules. The principles of natural justice cannot be applied in a straitjacket formula; their application depends on the facts and circumstances of each case. In the present case, as long as the Petitioner was afforded an adequate opportunity to submit his objections in writing, the requirement of fairness and compliance with the principle of natural justice, stood satisfied.”*

- 23.** It is clarified that grant of personal hearing is not a matter of right in every case, unless specifically mandated by the statute. In the Master Directions, there is no provision for personal hearing. In the case of **Rajesh Agarwal (supra)**, the Hon’ble Supreme Court held that:

**“94.** *Before concluding, we also want to address the argument by the borrowers that the requirement of passing a reasoned order must be read into the Master Directions on Frauds. The borrowers also relied on Jah Developers wherein it was held that a final decision of the Review Committee declaring the borrower as a “wilful defaulter” must be made by a reasoned order. We agree with this contention of the borrowers because : (i) a reasoned order allows an aggrieved party to demonstrate that the reasons which persuaded the authority to pass an adverse order against the interests of the aggrieved party are extraneous or perverse; and (ii) the obligation to record reasons acts as a check on the arbitrary exercise of the powers. The reasons to be recorded need not be*

*placed on the same pedestal as a judgment of a court. The reasons may be brief but they must comport with fairness by indicating a due application of mind.*

**95.** *In light of the legal position noted above, we hold that the rule of audi alteram partem ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of audi alteram partem. In the present batch of appeals, this Court passed an ad interim order restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision.”*

- 24.** In the present case, though the respondent bank has issued show cause notice to the petitioner and the petitioner has submitted reply. In the reply, the petitioner has stated that no forensic report was served upon the petitioner before issuance of show cause notice or along with show cause notice but in the impugned order nowhere it is mentioned that the forensic report was served upon the petitioner. The respondent has relied upon the communication but there is no evidence that the said communication was served upon the petitioner. The respondents

have relied upon the email but the same does not reflect that whether the forensic report was served through the email. This Court also finds that the impugned order is replica of the show cause notice and there is no finding as to why the reply submitted by the petitioner was not accepted. This Court has also finds that in the show cause notice dated 28<sup>th</sup> February, 2024, the respondent bank has already pre-determined that the account of the petitioner as "Fraud".

- 25.** The Hon'ble Division Bench of this Court by an order dated 16<sup>th</sup> November, 2023 by allowing the appeal in part and while sustaining the order passed by the Coordinate Bench of this Court setting aside the classification of the writ petitioner and company as "Fraud", liberty was given to the bank to proceed in accordance with law but the bank has not proceeded the case against the petitioner in accordance with law. Accordingly, the show cause notice dated 28<sup>th</sup> February, 2024 and the impugned order dated 7<sup>th</sup> August, 2024, are set aside and quashed. The bank is given liberty to proceed against the petitioner in accordance with law from the stage of issuance of show cause notice and documents, if any, relied by the bank.

- 26. WPA No. 22374 of 2024 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Krishna Rao, J.)**