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ORDER SHEET
WPO No.1364 of 2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SRI SUSHIL KUMAR BHANSALI
VERSUS
RESERVE BANK OF INDIA & ORS.

BEFORE
THE HON'BLE JUSTICE AMRITA SINHA
Date: 24th February, 2025.

Appearance:
Mr. Jatinder Singh Dhatt, Adv.
...for the Petitioner.

Mr. Shubrojyoti Mookherjee Adv.
Mr. Debabrata Das, Adv.
Mr. A. Sarkar, Adv.
...for the Respondent No.1.

Ms. Aasia Hasan, Adv.
Mr. Mayank Shah, Adv.
...for the Respondent Nos. 2 & 3.

1. The petitioner claims to be one of the erstwhile Directors of the MSME Company, M/S. Eastern Gases Ltd. A liquidation proceeding was initiated against the said Company in the year 2017 and the Company went into liquidation by the order of NCLT, Kolkata on 21st August, 2018.

2. The petitioner in the instant writ petition challenges the declaration of fraud relying on the order of NCLT which was passed in the year 2018 in respect of a consortium of banks. The respondent Axis Bank was a party in the said consortium of banks.

3. It has been submitted that the bank ought to have given the petitioner a further opportunity of hearing prior to relying upon the same report upon which the liquidation proceeding got disposed of.

4. Learned counsel for the petitioner relies upon the Master Directions on frauds - Classification and Reporting by Commercial Banks and selected FIs dated 1st July, 2016 published by the Reserve Bank of India. It has been pointed out that the bank ought to have reported the fraud to the Reserve Bank of India within the time as specified in the Master Directions. Axis bank reported the fraud long after the time period specified by the Reserve Bank of India. Violation of natural justice has been highlighted.

5. Learned counsel for the petitioner also refers to various decisions passed by the Hon'ble Supreme Court and this Court in support of the submission that fresh opportunity of hearing ought to have been granted to the petitioner prior to relying upon the old report relating to declaration of fraud.

6. Learned counsel representing the Reserve Bank of India relies upon the Master Directions on fraud and submits that it is only on the reporting made by the Axis Bank that steps could be taken. According to the Reserve Bank of India, the timelines have been duly followed by the Axis Bank.

7. Learned counsel representing the Axis Bank submits that the company has already gone into liquidation and the petitioner does not have the locus standi to move the instant writ petition. The same issue of locus standi of the petitioner has also been taken by the learned Counsel representing the Reserve Bank of India.

8. It has, however, been submitted by learned Counsel representing both the Reserve Bank and Axis Bank that as there has been enough delay in the matter, an opportunity of hearing may be granted to the petitioner.

9. As the Supreme Court has laid down that prior to declaration of fraud, an opportunity of hearing is required to be given, accordingly, the instant writ petition is disposed of by directing the Axis Bank to grant fresh opportunity of hearing to the petitioner to defend his case. The bank shall take steps in the matter strictly in accordance with law at the earliest, but positively within a period of four weeks from the date of communication of this order. A reasoned order shall be passed and communicated to the petitioner immediately thereafter.

10. It is made clear that this Court has not entered into the issue at all and has remanded the matter back to the Axis Bank to take fresh steps in accordance with law for detection and declaration of fraud.

11. As the bank is required to grant a fresh opportunity of hearing to the petitioner, accordingly, the earlier declaration of fraud stands set aside.

12. The writ petition stands disposed of.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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