WPO/937/2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SARBJIT SINGH JOHAL & ANR.
VERSUS
STATE BANK OF INDIA AND ORS.

BEFORE
The Hon'ble Justice AMRITA SINHA
Date: 28th January, 2025

APPEARANCE
Mr. Tanoy Ckakraborty, Advocate
Ms. Ormila Chakraborty, Advocate
Mr. Keshav Kumar Daruka, Advocate
....for the petitioners

Mr. Soumya Roy, Advocate
Mr. Santosh Mahato, Advocate
Ms. Benazir Kazi, Advocate
Respondent/SBI

1. The petitioner is aggrieved by the declaration of fraud by the Deputy General Manager (ARC) relying on the guidelines of Reserve Bank of India.

2. Despite opportunity granted to the learned Advocate representing the respondent to produce document to show that notice was served upon the petitioner prior to declaring the accounts as 'fraud', none has been placed before this Court. On the contrary, it has been submitted that fraud has been declared relying on the order dated 18th July, 2022 passed by the National Company Law Tribunal, Kolkata Bench in IA (IBC) No. 69/KB/2021 in CP (IB) No. 932/KB/2018 in the matter of State Bank of India vs. M/s. Madhusala Drinks Private Limited and in the matter of Mr. Jitendra Lohia vs. Sarbjit Singh Johal & Anr.

3. On perusal of the said order, it appears that the Tribunal was pleased to direct the respondents to jointly and/or severally pay a sum of Rs.72.45 crore on account of payment made to the related parties from the account of the corporate debtor. In the event of failure, the Resolution Professional was granted liberty to initiate appropriate action against the respondents. The authorities appears to have acted in compliance with the direction passed by the Tribunal but did not issue any fresh notice upon the petitioner.

4. In the decision delivered by the Hon'ble Supreme Court in the matter of State Bank of India & Ors. vs. Rajesh Agarwal & Ors. reported in (2023) 6 SCC 1, it has been held that the principles of natural justice requires that the borrowers must be served a notice giving an opportunity to explain the conclusions of the forensic audit report and be allowed to be represented by the banks/JLF before their account is classified as fraud under the Master Directions on Fraud. The decision classifying the borrower's account as fraudulent must be made by a reasoned order.

5. In the instant case, it does not appear that any opportunity of hearing was granted to the petitioners prior to declaration of their accounts as "fraud".

6. In view of the above, the impugned notice dated 17th November, 2023 by the Deputy General Manager (ARC) is liable to be set aside and is, accordingly, set aside.

7. The Bank will be at liberty to proceed against the petitioners in terms of the Master Directions on Fraud issued by the RBI strictly following the law laid down by the Hon'ble Supreme Court in the matter of Rajesh Agarwal (Supra).

8. As regards the prayer made by the petitioners for delisting their names from the list of willful defaulters on the ground that they have already suffered the five years term on and from the declaration of the willful default, it is observed that it will be open for the petitioners to make appropriate representation before the concerned authority. In the event such representation is made, the same shall be considered by the authority in accordance with law at the earliest.

9. The writ petition is disposed of.

10. Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)

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