IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1933 OF 2024

IN

WRIT PETITION NO. 2990 OF 2024

Bank of India
Specialized Asset Recovery Management
Branch, Bank of India Building, Mezzanine
Floor, 70-80 MG Road, Fort, Mumbai 001 ... Applicant

Versus

IN THE MATTER OF:

Kishore Biyani,
an individual, Indian Inhabitant,
Adult, Occupation: Business,
406, Jeevan Vihar, Manav Mandir,
Mumbai 400 006 ...Petitioner

Versus

1. Bank of India
   Specialized Asset Recovery Management
   Branch, Bank of India Building,
   Mezzanine Floor, 70-80 MG Road,
   Fort, Mumbai 400 001.

2. BDO India LLP
   Level 9, North West Wing,
   The Ruby, 29, Senapati Bapat Marg,

Dadar West, Mumbai- 400 028.

3. Future Retail Limited
Through its Resolution Professional
Mr. Vijay Kumar Iyer, having its
address at 2nd Floor, Future Group
Office, SOBO Brand Factory, Pandit
Madan Mohan Malviya Marg, Cross
Road, Haji Ali, Tardeo, Mumbai-34 ...Respondents.

Mr. Cyruz Ardeshir, with Mr. Shriraj Khambete and Mr. Naman Jain, for the Applicant-Bank of India.
Mr. Umang Thakar, i/b Desai and Diwanji, for Respondent No.2.
Mr. Ashishi Kamath, Senior Advocate, with Mr. Ameet Naik, Mr. Tushar Hathiramani i/b Madhu Gadhodia, Ms. Anisha Nair and Mr. Udit Mehta, for Petitioner/Respondent in Application.

CORAM : REVATI MOHITE DERE &
DR.NEELA GOKHALE, JJ.

RESERVED ON : 13th FEBRUARY 2025
PRONOUNCED ON : 18th FEBRUARY 2025

JUDGMENT : (*Per Dr. Neela Gokhale, J.*)

1) The Petitioner essentially assails the forensic report dated 9th August 2023 prepared by the Respondent No.2- BDO India LLP, a Chartered Accountant's Firm. According to the Petitioner, the Respondent No.2-Firm is appointed by the Respondent No.1-Bank of

India to conduct a forensic audit of the Respondent No.3-Company, which is currently under the Corporate Insolvency Resolution Process ('CIRP'). The Petitioner is an erstwhile director of the Respondent No.3-Company (now under suspension)

2) By order dated 25th September 2023, the Petitioner was granted leave to amend the prayer clause, to challenge the show-cause notice dated 17th August 2023, issued by the concerned Committee of the Respondent No.1-Bank of India. Notice was issued to the Respondents. Meeting the challenge of the Petitioner to the Forensic Audit Report ('FAR'), it was submitted on behalf of the Respondent No.2 that the impugned FAR was an interim report and the final report was submitted to the Respondent No.1-Bank of India . However, since it was the contention of the Petitioner that he was not aware of any such final FAR nor was a copy provided to him so far, this Court directed that the said report shall not be acted upon till the next date.

3) Pursuant to the order dated 25th September 2023, the Petition was amended and the prayer (d-1) and was added seeking to quash and set aside the letter/show-cause notice dated 17th August 2023, addressed by the Respondent No.1-Bank of India to the Petitioner.

4) Today when the matter was taken up for hearing, at the very outset, Mr. Cyruz Ardeshir, learned counsel appearing for the Respondent No.1-Bank of India submitted that the Bank is willing to withdraw the show-cause notice dated 17th August 2023 calling upon the Petitioner to provide written submissions on the FAR dated 9th August 2023, since the show-cause notice was alleged to be based on the interim FAR dated 9th August 2023. Mr. Ardeshir submits that now the auditors have completed the forensic audit and the final FAR dated 15th September 2023 is submitted to the Bank. He seeks liberty to initiate proceeding against the Petitioner afresh by following the due process of law.

5) Mr. Aashish Kamath, learned Senior Counsel appearing for the Petitioner insists that the FAR itself be set aside on the ground that the forensic report on the basis of which the show-cause notice was issued was inconsistent and based on incomplete information. He says that the Respondent No.3-Company of which the Petitioner was a promoter is under the CIRP and hence, the Resolution Professional ('RP') is seized with the documents of the company. The Respondent No.3-Auditor's firm thus, has no access to all the relevant documents and accounts and the FAR is obviously based on incomplete statements and documents. Mr. Kamath further submits that the FAR is merely tentative considering the absence of books of accounts and underlying the supporting documents, observations and corresponding classification can be further evaluated only once the required data is available. It is also his allegation that the Respondent No.2-Firm is not unbiased and is partisan. He thus, prays that the FAR itself be quashed and set aside.

6) We have heard the counsels of both the parties. After due reflection, and having considered the statement of Mr. Ardeshir made on instructions, we deem it only fair and proper to permit the Respondent No.1-Bank of India to withdraw the show-cause notice based on the FAR dated 9th August 2023 with liberty to initiate fresh proceedings against the Petitioner. The Respondent No.1-Bank of India is at liberty to issue fresh show-cause notice to the Petitioner and the Petitioner is at liberty to raise all objections and contentions including an objection to the partiality of the FAR dated 15th September 2023 in his reply to the show-cause notice.

7) In view of the above, the show-cause notice dated 17th August 2023 is quashed and set aside and stands withdrawn by the Respondent No.1-Bank of India. All consequential proceedings/action pursuant to the show-cause notice taken by the Bank also stand withdrawn and cancelled. The same shall be communicated by the Bank to the Petitioner within 72 hours from the date of uploading of this order. The Respondent No.1-Bank of India is thus at liberty to

initiate proceedings afresh against the Petitioner, if so required, in accordance with law and more particularly in strict compliance with the Master Circular for the time being in force, issued by the Reserve Bank of India and the decisions of the Apex Court in the matters of ***State Bank of India v. Rajesh Agarwal***[1] and ***State Bank of India v. Jah Developers***[2] followed by this Court in the matter of ***Milind Patel v. Union Bank of India***[3].

8) The Petition stands disposed off in above terms with Interim Application therein.

9) It is made clear that we have not gone into the merits of the challenges in the Petition and as such, all contentions of all the parties are kept open for them to agitate in appropriate proceedings before the appropriate forum.

1 (2023) 6 SCC 1
2 (2019) 6 SCC 787
3 2024 SCC OnLine Bom 745.

10) All parties to act on an authenticated copy of this order.

[DR. NEELA GOKHALE, J.] **[REVATI MOHITE DERE, J.]**

SHAMBHAVI NILESH SHIVGAN
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Date: 2025.02.18 14:51:14 +0530