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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2025

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THE HONOURABLE **Mr. JUSTICE N. ANAND VENKATESH**

W.P.No.8720 of 2025
and WMP Nos.9766 & 9767 of 2025

Ajay Kumar Bishnoi

.. Petitioner

.Vs.

1.The Reserve Bank of India
Fort Glacis, 16, Rajaji Salai
Chennai 600 001.

2.State Bank of India
Rep. by its Assistant General Manager
Stressed Assets Resolution Group
Corporate Centre, 2nd Floor
The Arcade, World Trade Centre Cuffe Parade
Mumbai 400 005.

(Also having Corporate Centre
21st Floor, Maker Tower 'E' Cuffe Parade
Mumbai-400 005).

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 18.10.2023 passed by the 2nd respondent bearing SARG/ FMD/ 2023-24/ 27 and quash the same.



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For Petitioner : Mr.P.V.Balasubramaniam, Senior Counsel
for Mr.AR.Karthik Lakshmanan

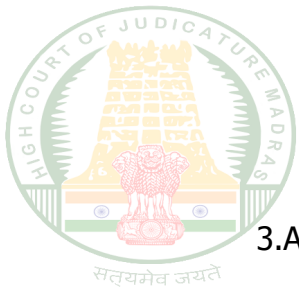
For Respondents : Mr.T.Poornam for R1

Mr.Rajinish Pathiyil for R2

ORDER

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 18.10.2023, wherein the 2nd respondent has classified the loan account of the petitioner as 'fraud'.

2.The case of the petitioner is that he is one of the Director of the Company named Tecpro Infra Projects Limited. This Company had availed credit facilities from the State Bank of India and other banks. The bank account that was maintained by the Company with the State Bank of India was classified as Non-Performing Asset (NPA) in 2015. Thereafter, the Company was admitted into Corporate Insolvency Resolution Process (CIRP) by an order passed by the NCLT Delhi, dated 27.09.2019. The CIRP ended in failure and Company was sent into liquidation by order dated 25.11.2021. A Forensic Science Audit was conducted by the Resolution Professional (RP) for the preceding eight years from 2013-2020.

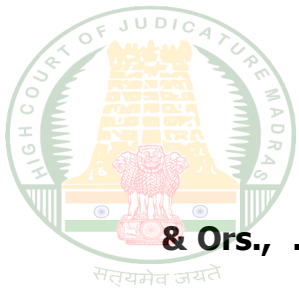


3.A show cause notice came to be issued by the 2nd respondent dated 25.07.2023, informing the petitioner that after due examination of the conduct of the account and utilization of credit facilities, the bank is *prima facie* satisfied that there are signals of fraud in the account. Therefore, the petitioner was called upon to submit explanation within a period of 15 days.

4.The petitioner on receipt of the notice submitted detailed explanation dated 12.08.2023 and explained specifically regarding the related party transactions to the tune of Rs.60.21 Crores during the period from 2011-2014.

5.The grievance of the petitioner is that even after the petitioner had given a detailed explanation by way of a reply, the 2nd respondent through proceedings dated 18.10.2023 classified the loan account as fraud. Aggrieved by the same, the present writ petition has been filed before this Court.

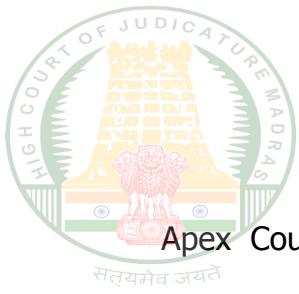
6.The 1st respondent has filed a counter affidavit along with all the relevant master circulars. The 1st respondent has explained the circulars that have been issued by the Reserve Bank of India (RBI) insofar as classification of accounts as fraud. The counter affidavit places reliance upon the first circular that was issued on 01.07.2016 and the subsequent updated circular dated 03.07.2017. In the counter affidavit, reliance has been placed upon the judgment of the Apex Court in **State Bank of India**



& Ors., .Vs. Rajesh Agarwal & Ors., reported in **2023 6 SCC 1**, wherein, the Apex

Court made it clear that before classifying the account of any borrower as fraud, *audi alteram partem* has to be read into the directions issued under the master circular. Pursuant to the same, revised master directions have been issued by the RBI dated 15.07.2024, where it has been made clear that the principles of natural justice must be followed. Reliance has been placed upon the circular dated 10.03.2025 reiterating the earlier circular to strictly comply with the principles of natural justice even insofar as willful defaulters are concerned. Finally, the first respondent has placed reliance upon the judgment of the Apex Court in **CBI .vs. Surendra Patwa and others** dated 25.04.2025, wherein, it has been held that no opportunity of hearing is required before an FIR is lodged and registered and while interfering with the order passed by various High Courts, it has been held that classification of accounts as fraud under the master directions of the RBI is an administrative action, which is distinct from criminal action and that a First Information Report merely sets the criminal law into motion and it is independent of the administrative action under the directions issued by the RBI.

7.The second respondent has also filed a counter affidavit. The second respondent has taken a specific stand that there was a valid ground for issuing show cause notice to declare the account as fraud and sufficient opportunity was given to the petitioner and only after getting the explanation of the petitioner, the account was declared as fraud. The second respondent has also relied upon the judgment of the



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Apex Court in **State Bank of India .Vs. M/s. Jah Developers Pvt., Ltd., & Ors.**, reported in **AIR 2019 SC 2854** and taken a stand that for the purpose of compliance of principles of natural justice, it is not necessary to give a personal hearing. Accordingly, the second respondent has sought for the dismissal of the writ petition.

8.Heard Mr.P.V.Balasubramaniam, learned Senior Counsel counsel for the petitioner, Mr.T.Poornam, learned counsel for R1 and Mr.Rajinish Pathiyil, learned counsel for R2.

9.The petitioner has challenged the impugned proceedings of the 2nd respondent dated 18.10.2023, mainly on the ground that no opportunity of personal hearing was given to the petitioner and that no reasons have been assigned in the impugned proceedings of the 2nd respondent.

10.In order to substantiate the above two grounds that have been raised on the side of the petitioner, specific reliance is placed upon the judgment of the Apex Court in **State Bank of India and Others .vs. Rajesh Agarwal and Others** reported in **2023 6 SCC 1**. It will be relevant to take note of the conclusion that was arrived at by the Apex Court and which is extracted hereunder:



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98. The conclusions are summarised below:

98.1. No opportunity of being heard is required before an FIR is lodged and registered.

98.2. Classification of an account as fraud not only results in reporting the crime to the investigating agencies, but also has other penal and civil consequences against the borrowers.

98.3. Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds results in serious civil consequences for the borrower.

98.4. Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.

98.5. The application of *audi alteram partem* cannot be impliedly excluded under the Master Directions on Frauds. In view of the time-frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.

98.6. The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.



98.7. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, *audi alteram partem* has to be read into the provisions of the directions to save them from the vice of arbitrariness.

11. On carefully reading the above conclusions, it is quite evident that insofar as fulfilling the *audi alteram partem* principle, the lender bank is obligated to provide an opportunity of hearing to the borrower before classifying the account as fraud. That apart, the lender bank is also obligated to give sufficient reasons in the order as to why the borrowers account is classified as fraudulent.

12. In the case in hand, admittedly, no opportunity of personal hearing was given to the petitioner. That apart, the explanation that was given by the petitioner for the specific ground raised by the second respondent bank to classify the account of the petitioner as fraud, has not been considered and reasoned out.

13. For proper appreciation, the reason for classifying the loan account as fraud is mentioned in the show cause notice as follows:

Fraud angle	Factors of fraud angle
Misappropriation and criminal breach of trust	Related party transactions to the tune of Rs.60.21 Cr. during the period 2011-2014 has been observed.



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14. For the above reason that was assigned by the 2nd respondent bank, the petitioner gave the following explanation:

3. Your contention as per point no.7 that terms and conditions on which credit facilities were sanctioned have not been adhered and certain breach has been noticed is also totally incorrect. We also do not agree with your statement that there are any signals of fraud in the account and the account has been marked as suspected fraud account. The reason mentioned by you for the fraud angle is only one reason which is related party transaction to the tune of Rs.60.21 Crs during the period 2011 to 2014, but as per the forensic audit report the related party transaction was Rs.54.47 Crs. In this regard, please note that amount due to M/s. Tecpro Infra Projects Ltd from group companies is not Rs. 60.21 Crs as mentioned by you but its only Rs. 13.24 Crs as you have not considered loans given by M/s. Tecpro Systems Ltd and M/s. Tecpro Infotech Ltd and M/s Eversun Energy Pvt Ltd to M/s. Tecpro Infra Projects Ltd the total of which comes to Rs.41.23 Crs. Hence group company transactions are both ways and not one way as mentioned by you. Another important point it may also be mentioned that every year after audit, the audited financials were submitted to all the bankers of the Company (including State Bank of India) and these amounts of related party transactions are shown in books of M/s. Tecpro Infra-Projects Ltd. and were also disclosed under related party transactions head and copies of the audited balance sheets have been shared with all the banks. It is submitted that if the intention was to divert the funds as mentioned, then group companies like



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M/s. Tecpro Systems Ltd, M/s. Tecpro Infotech Pvt Ltd & M/s Eversun Energy Pvt Ltd would not have granted loans to M/s. Tecpro Infra Projects Ltd. Also, it is very important to note that such related party transactions were discussed in the Joint Lenders Meeting held on 25.07.2014 and recorded vide point no. 5 (s) copy of minutes of meeting attached. It is also important to note from the said JLM the banks have in fact expressed their satisfaction that related party transactions have reduced. There is no mention of any violation of any sanctioned terms. The very fact that this is recorded and in the JLM proves that all bankers were aware of such transactions and were in acceptance of such transactions as normal business transactions.

4. Another important point which we would like to highlight is the fact that the forensic audit in the company has been performed during 2021 much after the company was referred to CIRP and none of the staffs were available in the company when the forensic audit was conducted. Also, the company was originally being operated from Kochi and also records were maintained in Kochi however when the forensic audit was conducted the Resolution Professional had shifted all the records to Chennai and there was no staff or officer available in the company to answer to the forensic auditor's queries. The undersigned was sent some queries by mail which were responded however we would like to emphasize that no personal discussions were held as the audit was conducted in a period when all the staffs were left the company. To the best of my knowledge conducting forensic audit in such a fashion is not as per laid out policies for such audits.



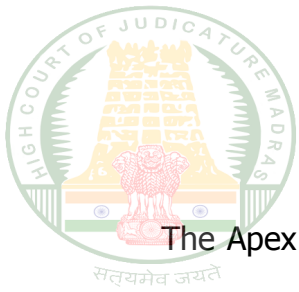
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To conclude from the above it is clearly proved that all related party transactions were in the knowledge of the banks as these were shown in the books of accounts and balance sheets and were also discussed by the banks in JLM without any negative comment on the company's conduct as regards terms and conditions of the loan. Secondly the entire forensic audit was conducted when no employees were available in the company to defend the transactions and to answer queries of the auditor.

15.The petitioner apart from giving a detailed explanation has also placed reliance upon the minutes of the consortium meeting held on 25.07.2014 where the very same issue was discussed and the member banks of the consortium decided to restructure and give a corrective action. Under such circumstances, the second respondent bank ought to have dealt with this explanation given by the petitioner and it must have been reasoned out in the order. The impugned order of the second respondent is merely a repetition of what has been stated in the show cause notice and nothing more.

16.Insofar as the judgment of the Apex Court in **CBI .vs. Surendra Patwa and others** referred supra, that was a case where the High Courts quashed not only the administrative actions initiated by the banks but also the First Information Reports registered and the subsequent criminal proceedings initiated against the borrowers.

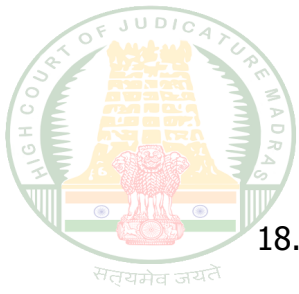
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The Apex Court made it clear that even in a case where an FIR is registered based on an administrative action, setting aside the administrative action on a technical or a legal premise will not ipso facto nullify the FIR. While rendering this finding, the Apex Court took into consideration the earlier judgment in **Rajesh Aparwal** case referred supra. It was also reiterated that the administrative action initiated in pursuance of the RBI's master direction can be set aside only on the ground of non-ordinance to the principle of *audi alteram partem and not on merits*.

17. The above judgment in **Surendra Patwa** case has to be read in consonance with the earlier judgment of the Apex Court in **Rajesh Agarwal** case. In **Rajesh Agarwal** case, it was made abundantly clear that for the purpose of fulfilling the principles of *audi alteram partem*, an opportunity of hearing must be given to the borrower before classifying their account as fraud. That apart, a reasoned order must be passed by the lender before classifying the borrowers account as fraud. In the case in hand, both the mandatory requirements have not been followed by the second respondent and the second respondent through the impugned order dated 18.10.2023, has more or less reiterated what was found in the show cause notice dated 25.07.2023. There is absolutely no indication of any application of mind with respect to the stand that was taken by the petitioner in the reply given to the show cause notice.



18. Insofar as the reliance upon by the learned counsel for the second respondent on the judgment of the Apex Court in **Jah Developers** referred supra, that is a case pertaining to declaring a person as a defaulter. Insofar as declaring an account as fraudulent, it has larger ramifications since it projects moral turpitude. That is not the case when a person is declared as a defaulter. The person who is declared as a defaulter at the best will not get loans from any other banks. However, where a loan is declared as a fraud, it also invariably ends in lodging criminal prosecution. Even in the case in hand, the CBI has registered an FIR against the petitioner based on the complaint given by the second respondent. Therefore, the observance of the principles of natural justice insofar as declaring a person as a defaulter and declaring an account as a fraud, will certainly vary and in the later, it involves giving personal opportunity to the person concerned as was held by the Apex Court in the case of **Rajesh Agarwal**.

19. The upshot of the above discussion leads to the only conclusion that the impugned order passed by the second respondent dated 18.10.2023, is hereby quashed. There shall be a direction to the second respondent to issue fresh notice to the petitioner and seek for his explanation and thereafter the same shall be considered strictly in line with the master circulars and in line with the judgment of the Apex Court in **Rajesh Agarwal** case.



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20. In the result, this writ petition is allowed with the above directions. No costs.

Consequently, connected WMPs are closed.

23.07.2025

Index : Yes

Neutral Citation : Yes

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To

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Chennai 600 001.

2. State Bank of India
Rep. by its Assistant General Manager
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N. ANAND VENKATESH, J.

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