$~70

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10829/2025

DHANANJAY TIWARI .....Petitioner

Through: Mr. Jagdeep Sharma, Sr. Adv. with Mr. Kartikay Sharma and Ms. Shreya, Advs.

versus

PUNJAB NATIONAL BANK .....Respondent

Through: Mr. Santosh Kumar Rout, Standing Counsel with Ms. Dharna Veragi, Mr. Aditya Shivangi, Ms. Shivani Malhotra and Ms. Shivangi Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

O R D E R

% 28.07.2025

CM APPL. 44781/2025 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 10829/2025 & CM APPL. 44780/2025 (stay)

3. The present petition has been filed assailing the impugned order dated 01.03.2025 whereby the account of the petitioner has been declared 'Fraud'.

4. Mr. Jagdeep Sharma, learned senior counsel appearing on behalf of the petitioner at the outset submits that in the impugned order the petitioner has been wrongly described as Ex-Whole Time Director, whereas the petitioner had worked only as a Professional Director of M/s Reliance Commercial Finance Limited [hereinafter **'RCFL'** or **'the company'**] and that too for three years.

5. He submits that the show cause notice never came to served upon the

petitioner and the petitioner learned about the same from a co-Director. In that view of the matter, the petitioner could not file a reply to the show cause notice. He further contends that even personal hearing has not been afforded to the present petitioner.

6. He submits that insofar as company is concerned, the issue has been resolved and the matter has been settled with the company. Elaborating on his submission, he submits that resolution plan under the Reserve Bank of India's Prudential Framework for Resolution of Stressed Assets, 2019 with regard to the company was approved finally by the Hon'ble Supreme Court and a Resolution Implementation Memorandum dated 30.09.2022 was entered into between the said company, as well as, the person set out in Schedule I-Part A of the said memorandum, which includes the respondent bank as well. He submits that resolution implementation memorandum has already been given effect to.

7. He invites attention of the Court to Clause 4.1.4. of the said memorandum, the relevant para of which reads thus:

> "***4. CLOSING ACTIONS***
>
> *In order to fully implement the Resolution Plan, the Parties unconditionally undertake that the following actions shall be completed after receipt of the RBI Approval within applicable timelines mentioned under each of the actions below (if any) "**Closing Actions**":*
>
> *xxx xxx xxx*
>
> *4.1.4 The Lenders and NABARD shall, within thirty days from the receipt of RBI Approval, have withdrawn all notices, proceedings, complaints, claims, litigation, legal proceedings, and suits that one or more of them may have or have filed or served in connection with the Loans, the Finance Documents, and the Lenders Security (as the case may be), along with withdrawal of all*

restraints, prohibitions, restrictions, stay or injunctions against RCFL, its new promoters, new directors, officers (not being erstwhile key managerial personnel), and employees from dealing with its assets pursuant to any legal cases or proceedings before any court, tribunal or any other legal forum, absolutely and forever on 'with prejudice' basis, in accordance with the terms of the Resolution Plan. ***Further within three months from the receipt of RBI Approval, the Lenders and NABARD shall ensure that the red-flag classification, fraud classification, and willful defaulter classification of RCFL, its directors and officers shall be removed at the sole cost and expense of the Lenders, including removal from the database of CIBIL, CRILIC or all other credit information companies and hand over to the Resolution Applicant, documentary evidence in this regard."***

(emphasis supplied)"

8. He submits that since the resolution plan has already been implemented, therefore, the respondent bank ought not to have proceeded against the present petitioner.

9. He contends that apart from the above, the impugned order is bad also for the reason that no personal hearing has been afforded to the petitioner.

10. He places reliance on the decision of the Hon'ble Supreme Court in ***State Bank of India vs. Rajesh Agarwal & Ors., (2023) 6 SCC 1,*** to contend that affording personal hearing before classifying the account as 'fraud' has been held to be mandatory. Relevant para of which reads thus:

"55. Classification of the borrower's account as fraud under the Master Directions on Frauds virtually leads to a credit freeze for the borrower, who is debarred from raising finance from financial markets and capital markets. The bar from raising finances could be fatal for the borrower leading to its "civil death" in addition to the infraction of their rights under Article 19(1)(g) of the Constitution. ***Since debarring disentitles a***

person or entity from exercising their rights and/or privileges, it is elementary that the principles of natural justice should be made applicable and the person against whom an action of debarment is sought should be given an opportunity of being heard.

xxx xxx xxx

67. The Master Directions on Frauds do not expressly exclude a right of hearing to the borrowers before action to class their account as frauds is initiated. ***The principles of natural justice can be read into a statute or a notification where it is silent on granting an opportunity of a hearing to a party whose rights and interests are likely to be affected by the orders that may be passed.***

xxx xxx xxx

E. Conclusion

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.

***99. In the result, the judgment of the Division Bench of the High Court of Telangana dated 10-12-2020 [Rajesh Agarwal v. RBI, 2020 SCC OnLine TS 2021] is upheld.** The judgments of the High Court of Telangana dated 22-12-2021 [Shree Saraiwwalaa Agrr Refineries Ltd. v. Union of India, 2021 SCC OnLine TS 1816] and 31-12-2021 [Yashdeep Sharma v. RBI, 2021 SCC OnLine TS 1852] , and of the High Court of Gujarat dated 23-12-2021 [Mona Jignesh Acharya v. Bank of India, 2021 SCC OnLine Guj 2811] are accordingly set aside. The civil appeals are disposed of. Writ Petition (C) No. 138 of 2022 is also disposed of in the above terms. There shall be no order as to costs.*

100. Pending application(s), if any, shall stand disposed of."

(emphasis supplied)

11. He further contends that Division Bench of this Court in ***IDBI Bank Ltd. v. Gaurav Goel & Ors.**, **2025 SCC OnLine Del 935*** has also clarified that in ***Rajesh Aggarwal*** (supra) the Hon'ble Supreme Court has held that granting of hearing means personal hearing. The relevant paragraphs from the said decision reads thus:

*"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.

20. The submission made by learned counsel representing the appellant that the proceedings consequent upon the show cause notice under the RBI Directions are administrative proceedings as such the process of fair hearing will not be at the standard of a judicial proceeding, in our considered opinion, does not have any bearing to the instant case for the reason that the Hon'ble Supreme Court in **Rajesh Agarwal, (supra)** *has clearly reiterated the well-known principle of law that even in administrative action, the principles of audi alteram partem are to be observed.* ***The extent of application of the principle of audi alteram partem in the proceedings drawn under the RBI Directions has already been explained by the Hon'ble Supreme Court in Rajesh Agarwal, (supra) which has upheld the directions issued by the Hon'ble High Court of Telangana where one of the directions issued was for providing opportunity of personal hearing as well.***

21. It is trite in law that there is no straight jacketed formula to ensure observance of principles of justice for the reason that the extent and width of application of this principle depends on the nature of proceedings and the provisions under which such proceedings are drawn as also on the consequences which such proceedings entail.

22. ***However, once the Hon'ble Supreme Court in Rajesh Agarwal, (supra) has clearly upheld the directions issued by the Hon'ble High Court of Telangana (2020 SCC OnLine TS 2021) regarding providing opportunity of personal hearing in the proceedings drawn under the RBI Directions, it is not open to this Court to read the application of principle of audi***

alteram partem in any other manner."

(emphasis supplied)

12. In view of the above, issue notice. Mr. S. K. Rout, learned standing counsel appearing on behalf of respondent/Punjab National Bank accepts notice.

13. On a pointed query posed by the Court as to whether personal hearing has been afforded to the petitioner, Mr. Rout, on instructions, fairly states that the personal hearing has not been afforded to the present petitioner and the bank is ready to grant such personal hearing to the petitioner as per the law settled by the Hon'ble Supreme Court in ***Rajesh Aggarwal*** (supra) and ***Gaurav Goel*** (supra).

14. Having regard to the rival submissions of the learned counsel for the parties, and the law laid down in in ***Rajesh Aggarwal*** (supra) and ***Gaurav Goel*** (supra), the present petition is disposed of at this stage itself without calling for counter affidavit from the respondent/bank, with the following directions:

i. the impugned order dated 01.03.2025 is set aside.

ii. the petitioner shall file its reply to the show cause notice within 15 days from today.

iii. the respondent/bank or its Fraud Examination Committee shall give a notice to the petitioner fixing a date of personal hearing, giving two weeks' clear time to the petitioner for such hearing.

15. The petition stands disposed of in the above terms.

VIKAS MAHAJAN, J

JULY 28, 2025/N.S. ASWAL