IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 16473 of 2024

With

CAN No. 1 of 2026

Harish Kumar Agarwal & Ors.

Vs.

Bank of Baroda & Ors.

Mr. Suddhasatva Banerjee
Mr. Arkodeb Sinha
Mr. Rajdeep Mantha
Mr. Mainak Biswas
Mr. Siddhant Sharma

....For the petitioners.

Mr. Anirban Pramanick
Mr. Punarbasu Nath
Ms. Bhagyasree Dey

.... For the Bank of Baroda.

Mr. Pourush Bandyopadhyay
Mr. S. Ganguly

.... For the respondent no.5.

Hearing Concluded On : 20.03.2026

Judgment on : 08.04.2026.

<u>**Krishna Rao, J.**</u>**:**

1. The petitioners have filed the present writ petition challenging the impugned order dated 2nd March, 2024 wherein the accounts of the petitioners were declared as fraud. The respondent no.1 has filed an application being CAN No. 1 of 2026 praying for vacating the interim order.

2. Mr. Suddhasatva Banerjee, Learned Advocate representing the petitioners submits that before pandemic Covid-19, there was no default on the part of the petitioner company in serving the loans and credit facilities which were availed from the respondent no.1 as well as another bank, namely, Axis Bank. Due to pandemic Covid-19 and adverse market situation, the business of the petitioner company was severely affected. There was a default in servicing the loan and credit facilities which had caused the account of the petitioner company to be classified as NPA initially in the month of October, 2022 and subsequently it was changed to July, 2022.

3. The respondent no. 1 bank has initiated proceedings before the Learned Debts Recovery Tribunal as well as in the National Company Law Tribunal. In one of the proceedings initiated by an Operational Creditor against the petitioners before the Learned NCLT has resulted in commencement of the CIRP and an interim resolution professional has been appointed over the petitioner company.

4. Mr. Banerjee submits that the respondent no.1 had appointed M/s Raj Gupta and Company as a Forensic Auditor for audit of the manufacturing division of the petitioner company. As per requirements of the Forensic Auditor, the petitioners have furnished all details and rendered all cooperation. After the period of nine months, the respondents have replaced Forensic Auditor M/s. Raj Gupta and Company and appointed another Forensic Auditor, namely, M/s. SKVM and Company on 27th July, 2023. M/s. SKVM and Company submitted its forensic report to the respondent no.1 bank on 5th December, 2023 and on 7th December, 2023, the respondent no.2 served show cause notice to the petitioners. On receipt of show cause notice, the petitioners have submitted reply to the said show cause notice on 22nd December, 2023.

5. Mr. Banerjee submits that the respondents have not served the copy of forensic report to the petitioners but the petitioners managed to get the same through other bank. He submits that the petitioners further came to know that there was an Addendum dated 4th January, 2024 to the forensic report submitted by M/s. SKVM and Company to the respondent no.1 bank with certain observations and made the same part to the forensic report dated 5th December, 2023. He submits that the addendum to the forensic report was not served to the petitioners and the petitioners could not get any opportunity to give reply to the observations made in the Addendum.

6. The petitioners in support of their submissions, have relied upon the judgment in the case of ***Hemant Kanoria Vs. Bank of India*** reported in ***2024 SCC OnLine Cal 1012*** and submits that an effective opportunity of hearing of rebutting the allegations is to be given to the borrowers and its Directors.

7. Mr. Banerjee relied upon an unreported judgment in the case of ***Sweta Agarwal Vs. State Bank of India*** passed in ***WPA No. 10601 of 2024*** dated 7th August, 2024 and submits that if the Authority places reliance on any report while arriving at a decision against any person, such report must be supply to the person before any final decision is taken.

8. Mr. Banerjee submits that without providing Addendum to the forensic report to the petitioners' bank conducted a personal hearing on 28th February, 2024 and issued the impugned order on 2nd March, 2024.

9. Mr. Anirban Pramanick, Learned Advocate representing the respondent no. 1 bank submits that the accounts of the petitioners' were declared NPA in the month of July, 2022. The show cause notice was served upon the petitioners on 7th December, 2023 and the petitioners have submitted their reply to the show cause notice on 22nd December, 2023. He submits that there is an Addendum to the forensic audit report but the bank has not relied upon the Addendum and has passed an order declaring the accounts of the petitioners' fraud on 2nd March, 2024, on the basis of the show cause notice and reply submitted by the petitioners.

10. Mr. Pramanik submits that the petitioners have admitted that the petitioners were having forensic report through other bank and thus the petitioners had the knowledge with regard to the contents of the forensic report and they cannot say that forensic report is not served upon the petitioners.

11. Mr. Pramanik has relied upon the judgment in the case of ***Heera Lal Saini and Another Vs. State of Rajasthan*** reported in ***2025 SCC OnLine Raj 6188*** and submits that the petitioners have acted upon the forensic report which the petitioners were having and given reply to the show cause notice by referring the forensic audit report and it is the specific case that the respondents have not relied upon the addendum to the forensic report, thus the petitioners have not approached this Court with clean hands.

12. The petitioners have raised issues in the present proceeding that the Forensic Audit Report and the Addendum to the Forensic Audit Report were not served to the petitioners before issuance of the show cause notice and the impugned order.

13. The Forensic Audit Report was submitted by the Forensic Auditor to the bank on 5th December, 2023 and immediately on 7th December, 2023, the bank has issued show cause notice to the petitioners. The petitioners have submitted reply to the show cause notice on 22nd December, 2023. In paragraph 13 of the writ petition, the petitioners have stated that "*no copy of the forensic audit report was served upon the petitioners by the respondent nos. 1 to 4 till date but the petitioners were provided a copy of the forensic audit report from another consortium lender being Axis Bank sometime in May 2024 while carrying out its own forensic audit”.*

14. In the reply to the show cause notice, the petitioners have not requested the respondents for providing Forensic Audit Report. It is also not the case of the petitioners in the reply to the show cause notice that due to non-supply of Forensic Audit Report, the petitioners could not give reply properly. On the other hand, the petitioners have stated that “*In the meantime, on 9th December, 2023, we have also received a separate show cause notice from Axis Bank vide their letter No. AXISB/SAG/EAST/2023-24/153 dated 8th December 2023 and they have enclosed the forensic audit report received from M/s SVKM and Company. We have gone through copy of the forensic audit report and were surprised to notice some misleading facts/false allegations highlighted by the M/s SVKM & Company in relation to Non-Co-operation and diversion of funds, which we deny and dispute as the allegations were being made without any proper evidence”.* From the said statement of the petitioners, it reveals that the petitioners have admitted that they possess forensic audit repot not from the respondent bank but from the Axis Bank and were aware of the contents of the Forensic Audit Report.

15. Supply of the forensic audit report or any document is required to be served if the authorities have relied upon the same. In the present case, the bank has issued show cause notice to the petitioners on the basis of the forensic audit report. Though the forensic audit report is not served by the respondent bank but the petitioners have admitted that they received the said forensic report from the Axis Bank. In the show cause reply, the petitioners have not requested for supply of forensic audit report on the other hand, have submitted detailed reply to the show cause notice. This Court is of the view that while furnishing reply to the show cause notice, the petitioners had the forensic report and have not prejudiced for non-supply of forensic report by the respondents herein.

16. As regard to the addendum to the forensic audit report is concern, it is the contention of the petitioners that after receipt of reply to the show cause notice dated 22nd December, 2023 wherein the petitioners have clarified the contentions of paragraph 3 (iii) of the show cause notice and given the details of the figures which was not correct in the show cause notice and after receipt of the said reply, the respondents' Chartered Accountant has issued Addendum on 4th January, 2024 to the forensic audit report dated 5th December, 2023.

17. Paragraph 3(iii) of the show cause notice reads as follows:

*“**3. On basis of the information submitted the outcome from the investigation states the below issues due to which the account is getting classified as fraud.***

(iii) *Based on available information, data available at the MCA portal and logical analysis of the same, key highlights of our audit findings are as under:*

✓ *On comparison of the information submitted by you for getting the drawing power and the figures in the audited financials are different and the same has been mis-representation from your end to get the higher drawing power.*

In Lakhs)

Particulars	*31.03.2020*	*31.03.2021*		*31.03.2022*
	Manuf. Division	*Manuf. Division*	*Project Division*	*Project Division*
As per the SS of BOB	*3,800.98*	*4,053.67*	*-*	*-*
As per the SS of Indian Bank	*-*	*-*	*380.59*	*2,476.74*
Total as per SS	*3,800.98*	*4,053.67*	*380.59*	*2,476.74*
Total as per the AFS	*4,261.57*	*3,357.18*	*(950.00)*	*730.66*
Excess/(Short) in SS	*(460.59)*	*696.49*	*1,330.59*	*1,746.08*

SS = Stock statement; BOB = Bank of Baroda; AFS = Audited financial Statement

Further it is also observed that you have used the manufacturing departments funds towards the other division:

Table showing disclosure of inter division advances as per AFS is as follows: (In Lakhs)

Particulars	*2019-20*	*2021-22*	*2022-23*
	Manuf.	*Manuf.*	*Manuf.*
Contribution in EPC	*1,324.64*	*1,326.41*	*-*

Contribution in Auto	*895.48*	*881.47*	-
Advance to EPC			*1,334.49*
Advance to Auto			*559.82*

✓ *Your company had taken Packing Credit facility based on Export orders of Rs. 26.83 crores during the period August 2021 to July 2022. However, after multiple reminders also, you have not submitted any information with regards to export sales to us. The documents which we have been seeking are documents related to exports, e.g. Copy of Invoices, Bill of Landing, Transport bill copies etc. since, the documents related to exports are not submitted we are not able to understand whether Export has been made or not. As from the order copy submitted to us to avail the facility mentioned the terms of payments as LC or 120 days from receipt. The same not been updated to us raises the concern if the export has happened or not. However, from your previous records it is observed that you had executed some export sales which can be identified form the GST refunds which is received by you in the year FY 2019-20 & FY 2020-21. Towards which you have given reason as*

"We are unable to provide the same due to accounting software limitations and labour unrest."

To give a better/honest information to bank, an effort to seek the information from E-mail/shipper/other resource if tried then would have been of help, but your reply towards the same is raising question on the transaction.

✓ *Inventories of the company worth Rs. 235 Crs (from audited financials as on 31.03.2022) seems to nonexistent for all the divisions:*

- *As per the AFS of FY 2021-22, you have reported the inventory with you of Rs. 235 crores. As per latest stock statement submitted of 31.10.2022 for manufacturing division you have shown the inventory of Rs.15,668.29 Lakhs out of which from your stock statement you have shown paid stock with you of Rs.12383.76 Lakhs. The same is not verified either to us, nor to external agency i.e. stock auditor, statutory auditor of bank forensic auditor etc. The stock being hypothecated to bank and the asset of bank the same not being available to verification or liquidation raises doubt on its actual existence.*

18. In reply to paragraph 3(iii) of the show cause notice, the petitioners have stated as follows:

*"**3(iii)** We have found that the Audited Stock figure given in the your letter are not matching with the audited balance sheet. Total Stock figure as per audited Balance sheet as on 31.03.20, 31.03.21 and 31.03.22 was as follows, break up which was as follows.*

	Rs. (in Lakhs) 31.03.20	Rs. (in Lakhs) 31.03.21	Rs. (in Lakhs) 31.03.22
MFG -	*13355.29*	*14491.64*	*15543.67*
EPC -	*2475.45*	*2953.50*	*6152.07*
Auto -	*1054.88*	*1275.06*	*1730.22*
	....	....	....
Total	*16885.62*	*18720.20*	*23425.96*
	....	....	....

Further it seems that there is a typographical error in mentioning the FYs. The figure for F.Y. 2021-22 and 2022-23 actually relates to the F.Y. 2020-21 and 2021-22 respectively. We have not yet got audited the Balance sheet for the F.Y. 2022-23.

Beside this the advance figures shown for the F.Y. 2021-22 are also not matching with the audited financial statements. Correct figures are as follows :-

Particulars	*(In Lakhs) 2019-20 Manuf.*	*(In Lakhs) 2020-21 Manuf.*	*(In Lakhs) 2021-22 Manuf.*
Contribution in EPC	*1324.64*	*1326.41*	

***3(iii)(A)** Forensic Auditor has highlighted differences in Trade Payables reported in the Stock Statements vis-à-vis Audited Financial Statements."*

19. On 4th January, 2024, the Chartered Accountant has made the following Addendum in the forensic audit report dated 5th December, 2023:

*"**4.** As per the AFS of Supreme for FY 2021-22, there is an inventory of Rs.15,543.67 lakhs as on 31.03.2022. However, there is a typographical error at point 2.1.7 on page 41 (Observation on movement of Inventories) in our original report submitted to the consortium vide dated 05.12.2023, wherein the same is considered as Rs. 15,563.47 lakhs, due to which there is a difference of Rs. 20 lakhs in the value of Inventories as on 31.03.2022. Therefore, the same is now to be considered as follows:*

Table showing Inventories as per the AFS for FY 2019-20 till FY 2021-22 is as follows: (In Lakhs)

Division	*2019-20*			*2020-21*			*2021-22*		
	RM	*FG, SFG, SIT*	*Total*	*RM*	*FG, SFG, SIT*	*Total*	*RM*	*FG, SFG, SIT*	*Total*
Manuf	*940.09*	*12,415.21*	*13,355.30*	*1,847.68*	*12,643.96*	*14,491.64*	*1,875.31*	*13,688.36*	*15,543.67*
EPC	*-*	*2,475.45*	*2,475.45*	*-*	*2,953.50*	*2,953.50*	*-*	*6,152.07*	*6,152.07*
Auto	*-*	*1,054.89*	*1,054.88*	*-*	*1.275.07*	*1.275.07*	*-*	*1,730.22*	*1,730.22*
Total			*16,885.63*	*Total*		*18,720.21*	*Total*		*23,425.96*

From the above table, it is observed that there is an inventory amounting to Rs. 16,885.63 lakhs as on 31.03.2020, which has been increased to Rs. 23,425.96 lakhs as on 31.03.2022. In continuation to the above, our observation at point 2.1.7 in our original report stands as it is.

***5.** Considering the additional information submitted, the conclusion of our Report submitted on 05.12.2023 is restated as follows:*

Our conclusion is on the basis of information made available/explanation/documents and logical analysis of the same, by giving reference to "Master Circular on Fraud" issued by the Reserve Bank of India dated 3rd July 2017, there are few transactions which are suspicious in nature and the reasons for the same has remained unexplained, even after giving multiple *opportunities to the borrower. Further, the same would have to be re-visited if the required information/explanation/documents are shared by the borrower in the near future."*

20. On receipt of reply to the show cause notice, the respondents have given personal hearing to the petitioners and have issued the impugned order dated 2nd March, 2024 by declaring the Company, its Directors and ex-Directors as Fraud. Learned Counsel for the respondent bank submits that the addendum is the internal documents between the bank and the Chartered Accountant and the same has not been served upon the petitioners but strangely, the petitioners have disclosed the same in the writ petition. It is the specific contention of the respondents that the addendum is after the issuance of show cause notice and the respondents have not relied upon the said addendum in the impugned order dated 2nd March, 2024 wherein the petitioners have been declared as fraud.

21. The petitioners have admitted that they had the forensic audit report and have submitted reply to the show cause notice after perusing the forensic audit report and it is the specific case of the respondents that they have not relied upon the addendum to the forensic audit report submitted by the Chartered Accountant on 4th January, 2024, thus this Court did not find any violation of natural justice or Master Directions on Fraud issued by the Reserve Bank of India while issuing the show cause notice and the impugned order.

22. In view of the above, **WPA No. 16473 of 2024** is **dismissed.** Interim order is vacated. **CAN No. 1 of 2026** is **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)