

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.O. No. 825 of 2024

Vishambhar Saran

Vs.

Punjab National Bank & Anr.

-AND-

W.P.O. No. 840 of 2024

Vikas Agarwal

Vs.

Punjab National Bank & Anr.

Mr. Sabyasachi Chowdhury, Sr. Adv.

Mr. Rahul Poddar

Mr. Tridib Bose

....For the petitioners.

Ms. Parna Roy Choudhury

Mr. Abhishek Banerjee

Ms. Payel Ghosh

Ms. Trisa Chanda

....For the Punjab National Bank

Hearing Concluded On : 17.04.2026

Judgment On : 07.05.2026

Krishna Rao, J.:

1. In both writ applications, the writ petitioners have challenged the show cause notice dated 25th October, 2023 wherein the petitioners have called upon to show cause as to why their accounts/names should not be categorized and reported as fraud to the Reserve Bank of India and the order dated 9th August, 2024 wherein the bank has reported the account of the petitioners as fraud to the Reserve Bank of India on 16th July, 2024 vide FMR No. PNB2403-0361.
2. The petitioner Company (presently in liquidation) had availed loan from the consortium of banks led by the Punjab National Bank for setting up a Thermal Power Project in Raigarh District in the State of Chhattisgarh. The respondent no.1 had sanctioned a loan in the name of the Company in the month of March, 2010 for the said project. Before the Company could complete the erection and installation, the coal block allotted to the company was cancelled by the Central Government pursuant to the orders passed by the Hon'ble Supreme Court in the month of September, 2014. Due to the de-allocation of Coal Block in terms of the order passed by the Hon'ble Supreme Court, the banks withheld further disbursements as there was no clarity with regard to the supply of coal. The de-allocation of coal block jeopardizes the project, and as a result the erection and installation work for the project was put in hold and the project could not achieve its

commercial operations. In view of the said facts, the stoppage of fund disbursement by several members of the consortium of bankers including the respondent no.1 had cascading effect on the accounts of the company and the account of the company was declared as Non-Performing Assets on 31st March, 2016.

- 3.** In the year 2017, one of the consortium lenders being Bank of Maharashtra filed proceedings against the company for initiating the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code. The Learned National Company Law Tribunal, Kolkata Bench admitted the application and initiated Corporate Insolvency Resolution Process and subsequently, upon no resolution plan being received, the Learned Tribunal by an order dated 11th October, 2018, ordered for the commencement of liquidation proceedings of the company and appointed a Liquidator. Based on a mandate given by the Liquidator to conduct a Forensic Audit in the Company, a Transaction Audit Report was prepared by M/s Deloitte Touche Tohmastu India LLP and the Liquidator after receiving instructions from the Committee of Creditors including the respondent no.1 filed an application before the NCLT with the allegation of fraudulent, preferential and undervalued transactions on the basis of the Transaction Audit Report.
- 4.** The Liquidator approached the Learned National Company Law Tribunal for cancellation of certain transactions on the basis of the allegations. The application filed by the Liquidator was rejected by the

Learned Tribunal. The Learned Tribunal by the said order not only rejected the plea of the Liquidator that the various transactions covered under the Audit Report alleged to be fraudulent, but also rejected the plea of the Liquidator that the said transactions could possibly be preferential or undervalued. The Order of the Learned NCLT was affirmed by the Appellate Tribunal.

5. In the meantime, the respondents initiated criminal proceedings with the Central Bureau of Investigation. From the complaint, the petitioners came to know that the respondent nos.1 and 2 had purportedly declared the account of the company as fraud and reported to RBI on 11th June, 2019. The respondent nos. 1 and 2 have declared the account of the petitioners on the basis of the Transaction Audit Report prepared by Deloitte. The petitioners filed a writ petition being WP(C) No. 4458 of 2021 before the Delhi High Court challenging the vires of the RBI Master Directions on Frauds - Classification and Reporting by Commercial Banks and select FI's dated 1st July, 2016. The Delhi High Court heard the writ petition filed by the petitioners along with several other writ petitions and by an order dated 12th May, 2023, the entire Bench of writ petitions were disposed of by setting aside the actions taken against the petitioners under the Master Directions but it was kept open for the bank to proceed in accordance with law in the light of the Judgment in the case of ***State Bank of India & Ors Vs. Rajesh Agarwal & Ors.*** reported in ***(2023) 6 SCC 1.***

- 6.** The respondent no.1 also initiated Wilful Defaulter proceedings against the petitioners on the basis of the Transaction Audit Report but subsequently the respondent no.1 on its own accord decided to withdraw the Wilful Defaulter proceeding against the petitioners by virtue of an order dated 9th November, 2022. On 18th June, 2021, the respondent nos.1 and 2 filed a complaint before the Central Bureau of Investigation (CBI) and on 18th August, 2023, the CBI registered a case against the petitioners. The petitioners have challenged the said proceeding in a writ proceeding being WPO No. 1626 of 2023 and the High Court by a judgment dated 17th November, 2023, quashed the complaint dated 18th June, 2021.
- 7.** Mr. Sabyasachi Chowdhury, Learned Senior Advocate representing the petitioners submits that on 25th October, 2023, the respondent no.2 issued show cause notice to the petitioners which was received by the petitioners on 17th November, 2023, again on the basis of the purported observations made in the Transaction Audit Report prepared by M/s Deloitte on the allegation of fraudulent transactions which has been undertaken by the Company M/s Visa Power Limited (In Liquidation). The petitioners have submitted reply to the said show cause notice informing the respondent bank that the respondent nos.1 and 2 have already dropped the Wilful Defaulter proceedings against the petitioners on the self-same allegation on account of the order passed by the Learned NCLT and requested to withdraw the show cause notice as the

Learned Tribunal already quashed the Transaction Audit Report and requested the respondents to withdraw the show cause notice.

- 8.** Mr. Chowdhury submits that in the meantime one of the members of the Consortium, namely, Central Bank of India had initiated Wilful Defaulter proceeding against the petitioners on the basis of Transaction Audit Report prepared by M/s Deloitte. The petitioners have challenged the said proceeding before this Court in a writ proceeding being WPO No. 212 of 2024. The said writ petition was disposed of on 14th May, 2024, by discrediting the reliability and credibility of the Transaction Audit Report prepared by M/s Deloitte and quashed the proceeding.
- 9.** The Reserve Bank of India issued a New Master Directions on Fraud Risk Management in Commercial Banks (Including Regional Rural Banks) and All India Financial Institutions dated 15th July, 2024, for classifying and reporting of loan accounts as Fraud. The said circular also superseded the RBI Master Directions on Frauds - Classification and Reporting by Commercial Banks and select FI's dated 1st July, 2016.
- 10.** On 9th August, 2024, the respondent nos.1 and 2 received a letter wherein the respondents had reported the account of M/s Visa Power Limited (In Liquidation) as fraud to the Reserve Bank of India on 16th July, 2024, wherein it appears that the Consortium of Lenders organized a Joint Lenders Meeting and in the said meeting 60% of the

Lenders of the Consortium reported the account of M/s Visa Power Limited is fraud.

11. Mr. Chowdhury submits that the petitioners have never received any communication pertaining to the convening of the JLM. He submits that in the letter dated 9th August, 2024, it is mentioned that more than 60% of the Lenders of the Consortium have declared the account of the petitioners as fraud but the same was never informed to the petitioners and thus the said action of the respondents is de hors both the Master Circular and the judgment passed by Hon'ble Apex Court passed in the case of ***State Bank of India and Others Vs. Rajesh Agarwal and Others*** reported in ***(2023) 6 SCC 1***.
12. Mr. Chowdhury submits that the respondents have proceeded to declare the account as fraud upon mere a perception and on the basis that the petitioners did not provide a pointwise response to the allegations contained in the Transaction Audit Report and also on the basis that more than 60% of the lenders have already reported the account of the petitioners as fraud. He submits that such unilateral action on the part of the other lenders was neither informed to the petitioners by virtue of the show cause notice dated 25th October, 2023, nor any other communication. He submits that the petitioners were never provided with the opportunity to deal with the action undertaken by the other lenders.

- 13.** Mr. Chowdhury submits that the respondent bank already reported the account of the petitioners as fraud to the Reserve Bank of India on 16th July, 2024 and thereafter informed to the petitioners by a communication dated 9th August, 2024. He submits that in terms of the RBI Master Directions on Fraud Risk Management in Commercial Banks (Including Regional Rural Banks) and All India Financial Institutions dated 15th July, 2024, the respondents could not have reported the account to the Reserve Bank of India as fraud prior to classifying such account as fraud.
- 14.** Mr. Chowdhury submits that the Transaction Audit Report prepared by M/s Deloitte has already been quashed by the Learned NCLT by an order dated 25th July, 2019 and the Learned NCLAT by an order dated 30th September, 2019. He submits that this Court by an order dated 17th November, 2023, has quashed the criminal complaint initiated by the respondent dated 18th June, 2021, solely on the basis of Transaction Audit Report prepared by M/s Deloitte. He submits that the Coordinate Bench of this Court by a judgment dated 14th May, 2024, quashed the Wilful Defaulter proceeding solely on the basis of the Transaction Audit Report initiated by another member of the Consortium.
- 15.** Mr. Chowdhury further submits that the respondent no.1 had already withdrawn the Wilful Defaulter proceedings pursuant to the orders passed by the Learned NCLT and NCLAT and thus the respondent nos. 1 and 2 are estopped from initiating any further action against the

petitioners on the basis of the Transaction Audit Report prepared by M/s Deloitte.

- 16.** Ms. Parna Roy Choudhury, Learned Advocate representing the respondents submits that by a show cause notice, the bank has given details of the credit facilities extended to M/s Visa Power Limited and informed the petitioners that the conduct of accounts maintained with the bank were not satisfactory and the same was classified as Non-Performing Assets on 31st March, 2016.
- 17.** Ms. Choudhury submits that during periodic monitoring and review of the loan accounts of the petitioners, it was observed that the accounts of the petitioners were not in compliance with the terms and conditions of sanction. In the Transaction Audit Report prepared by M/s. Deloitte Touche Tohmatsu India LLP also detected some fraudulent activities. She submits that, accordingly, show cause notice was served upon the petitioners to explain with regard to the transactions and as to why the accounts of the petitioners shall not be reported as fraud to the Reserve Bank of India. She further submits that relevant extracts of the Transaction Audit Report were also provided to the petitioners along with show cause notice. She submits that the petitioners have not replied with regard to the Transaction Audit Report and only requested for withdrawal of the proceedings and accordingly on 9th August, 2024, the account of the petitioners was declared as fraud.

18. Ms. Choudhury submits that prior to show cause notice on the basis of complaint of Punjab National Bank dated 18th June, 2021, the Central Bureau of Investigation has registered FIR against the petitioners and M/s Visa Power Limited. She submits that as per the allegations against the petitioners was for siphoning off and diversion of funds, criminal misappropriation, criminal breach of trust and cheating by causing loss of the public money to the tune of Rs. 1964 crores. The FIR was challenged before the Coordinate Bench of this Court and being aggrieved with the order passed by the Coordinate Bench of this Court, the respondent bank has preferred an appeal. The appellate Court held that the case initiated against the petitioners is not limited to the transaction for a period from 23rd December, 2015 to 22nd December, 2017. In the complaint, all transactions since inception of the credit facilities were taken into consideration.
19. Ms. Choudhury submits that the bank has issued show cause notice to the petitioners and after receipt of reply to the show cause notice only, the bank has issued the impugned order of declaring fraud. She has relied upon the Judgments in the case of **State Bank of India & Ors. Vs. Rajesh Agarwal & Ors.** reported in **(2023) 6 SCC 1** and **State Bank of India Vs. Amit Iron Private Limited and Others** reported in **2026 SCC OnLine SC 538**.
20. On 25th October, 2023, the respondent no.1 issued show cause notice to the petitioners on the allegation that during periodic monitoring and review of the loan accounts of the petitioners, the bank noticed that

accounts have not been in compliance with the agreed terms and sanctioned conditions. The bank found certain irregularities, leading to suspicion of fraudulent activity in the account. The bank has relied upon the Transaction Audit Report conducted by M/s. Deloitte Touche Tohmatsu India LLP, wherein it was alleged that element of fraud was found. The Auditor was appointed by the Resolution Professional/Liquidator during the CIRP to carry out Forensic Audit of the Corporate Debtor for two years prior to date of admission of the Corporate Debtor in CIRP.

- 21.** In reply to show cause notice, the petitioners have informed the respondent bank that by an order dated 9th November, 2022, the Committee for Identification of Wilful Defaulters dropped the allegations made by the bank in its show cause notice dated 2nd July, 2020 and wilful default proceedings against borrower and its directors were withdrawn. The petitioners have also informed that the Committee of the Bank already noted that the Audit Report of M/s. Deloitte Touche Tohmastu India (LLP) does not prove any fraudulent transaction and there is no new independent documentary evidence had been adduced. The petitioners have also informed that the show cause notice issued against the petitioners are contrary to the order of the bank dated 9th November, 2022, wherein willful default proceedings against the borrower and its directors were withdrawn.
- 22.** The Learned National Company Law Tribunal in its order dated 11th October, 2018, while dealing with the Transaction Audit Report issued

by M/s Deloitte Touche Tohmatsu India (LLP) held that the report does not support the contention of the Liquidator that the Auditor observed that the transactions in question are either undervalued or preferential or fraudulent. The order of the Learned Tribunal has been upheld by the Appellate Tribunal by its order dated 30th September, 2019.

- 23.** After the order passed by the Learned National Company Law Tribunal and Appellate Tribunal, the bank has passed the following order:

“Deliberation of the Committee:

The committee noted that the wilful default proceedings in the account was initiated on the ground of Diversion of funds, siphoning of funds and unauthorized disposal of charged assets, the basis of which is the Transaction Audit Report of M/s Deloitte Touche Tohmastu India LLP. The committee further observed that NCLT Kolkata vide order dated 25.07.2019 has held that audit report dated 24.08.2018 of DTTILLP, by itself without any independent material on record does not prove any preferential undervalued and fraudulent transaction. The committee also took note of the fact that the appeal filed by the RP against order of NCLT was not entertained by the Hon'ble NCLAT and hence the order of NCLT has attained finality.

The committee observed that the present proceedings of wilful default have been initiated solely on the basis of the said Transaction Audit report dated 24.08.2018 and no other report/document has been relied upon. In view of the order of NCLT Kolkata dated 24.08.2018 which has attained finality, bank cannot solely rely upon the Audit Report of DTTILLP for identification and declaration of borrowers as wilful defaulters.

ORDER OF THE COMMITTEE FOR IDENTIFICATION OF WILFUL DEFAULTERS:

The Identification Committee, headed by the Executive Director and consisting of other members i.e. Chief General Managers and Dy. General

Manager of the Bank, on the basis of deliberations and records available decided to drop the present wilful default proceedings against the borrower and its directors i.e. M/s Visa Power Ltd (Borrower), Sh. Vishambhar Saran (Promoter Director), Sh. Vikas Agarwal (Promoter Director) with liberty to Zonal SASTRA to re-examine the wilful default aspect in account on the basis of independent documentary evidence, (if any) which proves wilful default as per RBI Master Circular.”

- 24.** In spite of the order passed by the Learned Tribunal and Appellate Tribunal which was duly accepted by the respondent bank and earlier show cause notice was withdrawn even then the bank has issued show cause notice to the petitioners on 25th October, 2023, relying upon Transaction Audit Report of M/s Deloitte Touche Tohmatsu India (LLP). While passing the impugned order dated 9th August, 2024, wherein a decision has been taken to declare fraud, the bank has relied upon Joints Lenders Meeting. The operative portion of the impugned order dated 25th October, 2024, reads as follows:

“After considering the facts of the case and the reply submitted by the parties, the competent committee directed that the matter be taken up with other members of the JLM. At the JLM, all the member Banks informed that there was no change in fraud classification of the account at their end. Further, the response submitted by the borrower did not have any point wise replies to the observations of the Transaction Audit

Based on the above facts, the competent committee directed that since more than 60% lenders have already reported the account as Fraud, in view of the RBI Master Directions on Fraud in place, the account was perceived as fraud. The Competent Authority, further, accorded approval to report the account as fraud to RBI.

*The competent authority, after due consideration of the above said facts and examining the evidences on record, found that the borrower M/s Visa Power Ltd. and its directors Sh. Vishambhar Saran and Sh. Vikas Agarwal are responsible for above event(s) of fraud and hence the account is hereby declared as "**fraud**" on the grounds of "**Diversion of funds**" which constitute cogent ground(s) for the account(s) being classified as 'fraud' in terms of extant Bank guidelines issued in consonance with the RBI guidelines/ Master Directions on Fraud read with Judgement dated 27.03.2023 of Honourable Supreme Court of India in Civil Appeal No. 7300/2022.*

The Bank has reported the account as fraud to the Reserve Bank of India (RBI) on 16.07.2024 vide FMR No. PNB2403-0361 as per the directions contained in the RBI Master Directions/ Circulars issued time to time, in this regard."

- 25.** The bank has relied Joint Lenders Meeting comprising of other Consortium of Lenders stating that since 60% lenders have reported the account of the petitioners as fraud and the respondent bank also declared the account of the petitioners as fraud without any information about the JLM meetings to the petitioners nor the copies of the proceedings of the meetings was supplied to the petitioners. In the case of **Rajesh Agarwal & Ors. (supra)**, the Hon'ble Supreme Court held that:

"65. Audi alteram partem, therefore, entails that an entity against whom evidence is collected must: (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and

law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Direction on Frauds.”

- 26.** In the case of **Amit Iron Private Limited (supra)**, the Hon’ble Supreme Court held that:

“126. (f) We reiterate that the rule is to supply the audit reports, including the forensic audit reports since even under Clause 4 of Chapter IV of the 15.07.2024 Master Directions post the red-flagging of the account banks use the audit mechanism for further investigation. Even in the exceptional cases we hope and expect that the banks will not unreasonably use the power of redaction since that will only end up delaying the culmination of proceedings. Clause 4.1.4 also reiterates that banks shall ensure the principles of natural justice. That this was the legal position even under the 2016 Master Directions is clear from para 95 of Rajesh Agarwal (supra).”

- 27.** The respondent bank during hearing of the instant writ petition relied upon the FIR initiated by the CBI against the petitioners and Company M/s. Visa Power Limited for the offence alleged under Section 120(B)/409/420/477A of the Indian Penal Code, 1860 read with Section 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 and contended that from the said FIR, it is crystal clear that the petitioners have committed fraud. This Court considered the submissions of the bank and finds the bank has not relied upon the FIR in the show cause notice. In the

impugned order of fraud also the bank has not relied upon the FIR which now the bank is relying upon.

28. The Transaction Audit Report on the basis of which the respondent bank issued show cause notice, the National Company Law Tribunal has already held that the report does not support that the transactions in question are either under value or preferential or fraudulent in nature. The said order of the Learned Tribunal duly affirmed by the Learned Appellate Tribunal. The bank has also accepted the said orders and withdrawn the earlier proceeding initiated against the petitioners by an order dated 9th November, 2022. In the impugned order dated 9th August, 2024, the respondent bank relied upon the meeting of the Joint Lenders Meeting but the same was neither relied upon in the show cause notice nor the same was served upon the petitioners. The petitioners could not get an opportunity to deal with the meetings of the JLM. The impugned order also does not record any finding and reasons. Only on the basis of the Transaction Audit Report and JLM meeting by the impugned order dated 9th August, 2024 is passed.

29. Considering the above, the impugned show cause notice dated 25th October, 2023 and the impugned order dated 9th August, 2024, are set aside and quashed. However, this order will not prevent the respondent bank to take appropriate steps against the petitioners if the bank desires in accordance with law by taking into consideration of the Master Circulars issued by the Reserve Bank of India from time to time and also in compliance of the orders passed by the Hon'ble Supreme

Court in the Case of ***Rajesh Agarwal (supra)*** and ***Amit Iron Private Limited (supra)***.

30. WPO No. 825 of 2024 and WPO No. 840 of 2024 are accordingly
disposed of.

(Krishna Rao, J.)