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

\+ W.P.(C) 7135/2024 & CM APPL. 29745-29746/2024

M/S SMS PARYAVARAN LIMITED THROUGH DIRECTOR MR. SUDHIR NARAYANRAO MODAK & ORS. ..... Petitioners

Through: Mr. Aditya Dewan, Advocate with Mr. Parth Tiwari, Advocate
Email: officeofadityadewan@gmail.com
Mob: 8527611077

versus

CANARA BANK THROUGH THE ASSISTANT GENERAL MANAGER ASSET RECOVERY MANAGEMENT & ANR. ..... Respondents

Through: Mr. Ashish Kumar Sharma, Advocate

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 27.05.2024

CM APPL. 29746/2024

1. The present application has been filed under Section 151 of Code of Civil Procedure ("CPC") seeking permission to file long and lengthy list of dates and synopsis.

2. Considering the submissions made in the present application, the present application is allowed and the same is disposed of.

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3. The present petition has been filed challenging the proceedings initiated by the respondent no. 1-Canara Bank, under the Reserve Bank of

India ("RBI") Circular titled Master Directions on Frauds-Classification and Reporting by Commercial Banks and Select FIs' dated 01st July, 2016.

4. Learned counsel appearing for the petitioner submits that the petitioner is challenging the Show Cause Notice dated 20th September, 2023 issued to the petitioners as regards the account of the petitioner no. 1-company, as well as the 'Fraud' classification/declaration made by the respondent no. 1-Canara Bank.

5. Learned counsel appearing for the petitioner submits that the account of the petitioners have been declared as 'Fraud' without even supply of the final Forensic Audit Report ("FAR").

6. It is submitted that the petitioner no. 1-company was admitted into insolvency on 3rd January, 2020. Subsequently, a Resolution Plan was passed by the Committee of Creditors ("COC") and the same was also accepted by the respondent no. 1-Canara Bank. It is further submitted that the Resolution Plan was also approved by the National Company Law Tribunal ("NCLT") on 21st February, 2023.

7. Learned counsel appearing for the petitioner submits that, once the respondent no. 1-bank has already accepted the Resolution Plan, then, there is no occasion for the respondent no. 1-bank to proceed to declare the accounts of the petitioners as 'Fraud'.

8. It is further submitted that after the approval of the Resolution Plan by the respondent no. 1-Canara Bank, any fraud that may be, stands condoned.

9. It is submitted that once the Resolution Plan submitted by the resolution applicant consisting of the *inter-alia* the ex-management of the Corporate Debtor, has been approved by the lenders, then, the lenders are not entitled to initiate any proceedings under the RBI's Fraud Declaration

Circular against the petitioners, since the petitioner no. 1-company is Micro Small Medium Enterprises ("MSME").

10. Attention of this Court has been drawn to Section 29A and 240A of the Insolvency and Bankruptcy Code, 2016 ("IBC").

11. Thus, it is submitted that the implementation and execution of the Resolution Plan itself would get jeopardized due to the penal consequences that will follow for the petitioners, in case, the accounts of the petitioners is declared as 'Fraud'.

12. It is further submitted that the Show Cause Notice was based on the report of the Forensic Auditor, which took inordinately long time of almost five years, as the Forensic Auditor was appointed on 21st February, 2018, while the final report of the Forensic Auditor came only on 9th December, 2022. In fact, even the draft report came after two and half years on 2nd September, 2020.

13. Issue notice. Notice. Notice is accepted by learned counsel appearing for the respondent no. 1.

14. Let notice be issued to respondent no. 2.

15. Learned counsel appearing for respondent no. 1-Bank submits that the declaration has been done on the basis of the FAR of 9th December, 2022, as per which, there were incriminating materials against the petitioners.

16. Let reply be filed within a period of four weeks. Rejoinder thereto, if any, be filed within two weeks, thereafter.

17. Considering the submissions made before this Court, it is directed that the classification/declaration made by respondent no. 1-Canara Bank of the accounts of the petitioner as 'Fraud', shall remain stayed till the next date of hearing.

18. Re-notify on 4th November, 2024.

MINI PUSHKARNA, J

MAY 27, 2024
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