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

\+ W.P. (C) 10064/2020 & CM APPLs. 32038-39/2020

ACCURATE INSTITUTE OF MANAGEMENT AND TECHNOLOGY & ORS. ... Petitioners

Through Mr.Dayan Krishnan, Sr. Adv. with Ms.Priyadarshini Verma, Ms.Sanjeevi Sheshadri and Ms.Aarohi Mikkilineni, Advs.

versus

RESERVE BANK OF INDIA & ANR. ... Respondents

Through Mr.V.K. Gupta and Mr.Sunil Shukla, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% **09.12.2020**

This hearing is conducted through video conferencing.

CM APPL. 32039/2020

Allowed subject to all just exceptions.

W.P. (C) 10064/2020 & CM APPL. 32038/2020

1. This writ petition is filed by the petitioner seeking to impugn the circular dated 01.07.2016 issued by respondent No.1 and also the impugned action of respondent No.2/Bank in declaring the account of the petitioner No.1 Institute as a fraud.

2. The case of the petitioner is that the petitioner No.1 took a loan account which turned NPA. Notice was also issued under Section 13 (2) of

the SARFAESI Act on 11.05.2016. An OA was filed in 2018 before the Ld. Debts Recovery Tribunal – II, Delhi. Compromise Proposal Acceptance Letter was sent by respondent No.2 on 26.03.2019.

3. It is pleaded that thereafter parties have settled the matter as is evident from communication dated 28.07.2020 sent by respondent No.2/Bank where there is a revalidation of the OTS sanction of the account of the petitioner No.1.

4. It is stated that despite the above, recently, the petitioner have learnt that the account of the petitioner No.1 has been declared as a fraud by respondent No.2. It is pleaded that no show cause notice, no hearing, no order was ever received by the petitioner. Despite the existence of a valid OTS as is evident from the communication dated 28.07.2020 the account of the petitioner has been wrongly declared as a fraud account.

5. Issue notice. Learned counsel for the respondent No. 2 accepts notice. Learned counsel for respondent No.2 states that the account was declared a fraud on 26.10.2020. He is unable to make further submissions as the main counsel is said to be not available.

6. In this context, reference may be had to the judgment of the co-ordinate bench of this court W.P. (C) 306/2019 titled ***Apple Sponge and Power Limited v. RBI*** where this court has held as follows:

> "9. The contentions and counter-contentions notwithinstanding, in my *prima facie* view there clearly appears to be something amiss in asmuchas RBI's Master Directions dated 01.07.2016 relating to classification and reporting of 'fraud' does not contain any provision for issuance of show-cause notice or affording a hearing to the affected party, even though a decision by a bank, whether taken

individually or collectively with other banks, to classify an account as 'fraud' is a significant administrative decision taken in the commercial realm, having serious consequences for the account holder. That is to say, while a bank may most certainly *report* fraudulent transactions in an account to law enforcement agencies under the criminal law regime *without* issuing a show cause notice or hearing an affected party, but if an account is to be *declared* 'fraud' by an administrative decision in the framework of civil law, such action it appears on first principles, cannot be taken without giving to the affected party an opportunity of hearing to show cause against it.

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11. It is noteworthy that while the RBI circular dealing with 'wilful defaulters' provides a mechanism whereby a hearing is given to the affected party, no opportunity of hearing appears to be available in the circular that deals with declaring an account as 'fraud', which latter is a much more serious matter.

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17. To me it prima facie appears that declaring an account as 'fraud' would arise in a case of egregious default on the part of an account holder, something more than the account holder being a 'wilful defaulter'. For an account to be declared as 'fraud' must entail an element of *criminality* on the part of the account holder, which ought to be inferred *only* on the basis of some substantial material which must be put to the errant account holder; and after considering any explanation such account holder has to offer; and not unilaterally by a stroke of the pen.

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19. In the circumstances, without prejudice to the rights and contentions of the parties, all of which are

> kept open, it is directed that respondent No. 2/bank shall *not* take any further steps or actions prejudicial to the petitioners based upon the petitioners' account being declared 'fraud' until the next date of hearing."

....

7. It is manifest in this case that the respondent No.2 has passed the order declaring the account of the petitioner as a fraud without applying principles of natural justice inasmuch as no show cause notice, no hearing and no speaking order was passed. In this case, in fact, a valid OTS is existing when the said order of declaring the account as a fraud has been passed.

8. The petitioner has made out a prima facie case. There will be stay on the order declaring the account of the petitioner as a fraud account till further orders.

9. Needless to say that respondent No.2 is free to take steps as per law to complete the proceedings for declaration the account as a fraud account as per law i.e. after giving an appropriate show cause notice, personal hearing and passing an appropriate reasoned order.

10. List on 21.12.2020 at 03.00PM.

JAYANT NATH, J.

DECEMBER 9, 2020/st