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

\+ W.P.(C) 8483/2024 & CM APPL. 34934/2024

MOHINDER JAIIN ..... Petitioner

Through: Mr. Ajit Sharma, Mr. Aditya Vikram Singh, Mr. Kanchan Kumar and Ms. Parul Goyal, Advocates
Mob: 9873720007

versus

UNION BANK OF INDIA ..... Respondent

Through: Mr. O.P. Gaggar, Advocate with Mr. Sachindra Karn, Advocate
Mob: 7503425020

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **31.05.2024**

1. The present petition has been filed assailing the order dated 17th February, 2024 passed by the respondent no. 1 Bank classifying the bank account of the respondent no. 2 company, as *'Fraud'*.

2. Learned counsel appearing for the petitioner submits that no hearing was held by the respondent-bank, prior to passing of the impugned order. Further, the bank has till date not provided copy of any Forensic Audit Report.

3. Learned counsel appearing for the petitioner relies upon the judgment of Supreme Court in the case of ***State Bank of India Vs Rajesh Agarwal & Others***, *(2023) 6 SCC 1*, to contend that it was imperative and essential to

the comply with the Principles of Natural Justice prior to declaring the account as *'Fraud'*. He relies upon the following paragraph:-

> *"xxx xxx xxx*
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> *79. In light of the legal position noted above, we hold that the rule of audi alteram partem ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the **lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports** and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. **A reasoned order has to be issued on the objections addressed by the borrower.** On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of audi alteram partem.*
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> *xxx xxx xxx"*
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> *(Emphasis Supplied)*

4. It is further submitted that the petitioner submitted a detailed reply dated 04th October, 2023 to Show Cause Notice dated 03rd October, 2023. However, there is no discussion at all of the petitioner's reply in the impugned order dated 17th February, 2024, passed by the bank. It is submitted that the bank ought to have applied its mind to the reply furnished by the petitioner, prior to passing of the impugned order.

5. It is further submitted that the impugned order has been passed by an improperly constituted Fraud Monitoring Committee, as per 'Master Directions on Frauds-Classification and Reporting by Commercial Banks and Select FIs' dated 01st July, 2016 issued by the Reserve Bank of India ("RBI's Master Circular"). Clause 4.4.1 of the RBI's Master Circular requires a Five Member Special Committee of the Board on Fraud, to be constituted by each bank, including MD and CEO, two members of Audit Committee of the bank's Board, and two other Board Members. However, the impugned order appears to have been signed by only three persons,

whose names are also not mentioned. As such, the impugned order is vitiated on this ground alone, for having been passed by a group of persons that lacked jurisdiction to pass such order.

6. Issue notice. Notice is accepted by learned counsel appearing for the respondent.

7. Learned counsel appearing for the respondent submits that grant of hearing is not mandatory. The bank was required to give only an opportunity to represent, which was duly given to the petitioner. Thus, he submits that the impugned order has rightly been issued by the bank.

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

9. Considering the submissions made before this Court, it is directed that the order dated 17th February, 2024, issued by the respondent no. 1 shall remain stayed, till the next date of hearing.

10. Re-notify on 5th November, 2024.

MINI PUSHKARNA, J

MAY 31, 2024
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