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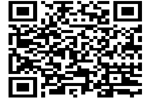


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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1730/2024, CM APPL. 7177/2024 & CM APPL. 11269/2024

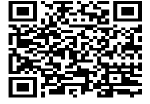
SHANTANU PRAKASH ..... Petitioner

Through: Mr. Amit Sibal, Sr. Adv. with Ms. Neeha Nagpal, Ms. Malak Bhatt, Mr. Vishvendra Tomar, Ms. Aditi Srivastava, Mr. Darpan Sachdeva and Mr. Ankur Vyas, Advs.

versus

STATE BANK OF INDIA & ORS. ..... Respondents

Through: Mr. Sanjay Kapur, Mr. Surya Prakash, Mr. Devesh Dubey and Ms. Isha Virmani, Advs. for SBI
M: 9871789655
Email: office@rpklaw.com
Ms. Manisha Singh, Mr. George Pothan Poothicote, Mr. Ashu Pathak, Mr. Sbhubham Kumar Deo and Ms. Jyoti Singh, Advs. for R-2.
M: 9167255410
Email: manisha@manishasingh.net
Mr. Brijesh Kumar Tambea and Mr. Yashu Rustogi, Advocates for R-5.
M : 9891125411
Email :officeofbrijeshktambea@gmail.com
Mr. Santosh Kumar Rout, SC with Ms. Dharna Veragi, Adv. for Central Bank of India.
M: 9990432878
Email id: skrlawfirms@gmail.com
Mr. V.P. Singh, Mr. Akshat Singh, Ms. Dacchita Shahi, Mr. Bhanu Gupta, Mr. Utkarsh Kandpal and Mr.




Rajat Shah, Advs. for R-6.
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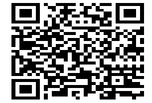
**CORAM:**
**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**JUDGMENT**
**22.05.2024**

**MINI PUSHKARNA, J:**

1. The present petition has been filed, *inter alia,* seeking quashing and setting aside of the Show Cause Notices ("SCNs") issued by the respondents for declaring account of M/s Educomp Solution Limited ("The Company") as '*Fraud*'. By way of the present petition, initially SCN dated 13th November, 2023 issued by respondent no. 1-State Bank of India ("SBI"); SCN dated 13th October, 2023 issued by respondent no. 2-Canara Bank; SCN dated 28th December, 2023 issued by respondent no. 3-Central Bank of India and SCN dated 2nd September, 2023 issued by respondent no. 4-ICICI Bank Limited, were challenged. Subsequently, *CM No. 11262/2024* was filed thereby challenging the SCN dated 12th January, 2024 issued by respondent no. 5-Union Bank of India and SCN dated 8th February, 2024 issued by respondent no. 6-IDBI Bank.

2. The petitioner is an ex-director and guarantor of the Company, which had availed various credit facilities from the consortium of banks, of which the respondent-banks are members, with respondent no. 1-SBI being the lead bank. The company was admitted into Corporate Insolvency Resolution Process ("CIRP") under the provisions of the Insolvency and Bankruptcy




Code, 2016 ("IBC") vide order dated 30th May, 2017 passed by the National Company Law Tribunal ("NCLT").

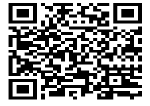
3. Upon the company being admitted to CIRP, the Board of Directors of the company were suspended and a Resolution Professional ("RP") took over the management of the company under the norms of IBC. Thus, it is the case of the petitioner that RP, under the control of the Committee of Creditors, took custody of all the documents in relation to the company under Section 17 of IBC. All the books of accounts and statutory records of the company were available with the RP, to which the petitioner had no access.

4. Learned Senior Counsel appearing for the petitioner submits that the aforesaid SCNs have been issued to the petitioner, without supply of the requisite documents, on account of which the said SCNs are bad in law and are thus, liable to be quashed.

4.1 It is submitted that the petitioner does not have information pertaining to the banking transactions, bank loans and other documents of the company, since the same are under the control of the RP. In the absence of the documents on the basis of which SCNs have been issued, it is not possible for the petitioner to give a proper reply to the said SCNs.

4.2 The petitioner wrote letters dated 21st September, 2023, 27th November, 2023, 7th December, 2023 and 13th January, 2024 to the respondent-banks seeking relevant documents, so that he could effectively make submissions and set forth his case with regard to the account of the company being declared as '*Fraud*'. However, the respondents did not reply to the aforesaid letters of the petitioner.

4.3 Vide the impugned SCNs, the respondent-banks are seeking response




of the petitioner on various alleged irregularities and anomalies with respect to specific transactions made by the company. The petitioner will not be able to effectively represent himself and the company in the capacity of an ex-director, unless the requisite documents are provided by the respondent-banks.

4.4 Pursuant to the orders passed by this Court for supply of requisite documents to the petitioner, only four banks out of the six banks, have responded and two banks have not responded at all. However, even the banks, which have responded, have not provided the relevant documents to the petitioner.

4.5 Learned Senior Counsel for the petitioner has relied upon various letters written by the petitioner to the respondent-banks, wherein he had prayed for supply of relevant documents, in order to enable the petitioner to submit a proper reply to the respective SCNs.

4.6 On behalf of the petitioner, the following judgments have been relied upon:

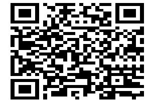
i) ***T. Takano versus Securities and Exchange Board of India and Another, (2022) 8 SCC 162***.

ii) ***State Bank of India and Others versus Rajesh Agarwal and Others, (2023) 6 SCC 1***.

iii) ***Reliance Industries Limited versus Securities and Exchange Board of India and Others, (2022) 10 SCC 181***.

iv) ***Milind Patel versus Union Bank of India and Others, 2024 SCC OnLine Bom 745***.

5. Responding to the submissions made on behalf of the petitioner, learned counsels appearing for the respondent-banks submit that requisite



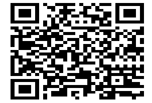

documents have already been provided to the petitioner. Further, learned counsel appearing for respondent no. 1-SBI, the lead bank, submits that the said bank is ready to give an inspection to the petitioner, of the records of the company available with it.

5.1 On the other hand, learned counsel appearing for respondent no. 6-IDBI Bank submits that no final decision has been taken by the respective banks as yet, and that only SCNs have been issued at this stage. He further submits that the process, as regards declaration of an account as '*Fraud*', must be completed within a period of six months. He further submits that the judgments relied upon by the petitioner, are not applicable to the facts of the present case and that the said judgments do not provide for grant of any personal hearing to the petitioner.

5.2 Learned counsels appearing for respondents have also relied upon order dated 12th May, 2023 passed by the Supreme Court in the case of ***Rajesh Agarwal (Supra)*** to contend that grant of a personal hearing by the banks, is not mandatory.

6. I have heard learned counsels for the parties and have perused the record.

7. By way of the various SCNs, the respondent-banks have directed the petitioner to show cause as to why the account of the petitioner be not categorized and reported as '*Fraud*'. In the SCNs issued to the petitioner, various allegations have been made as regards non-compliance with the agreed terms of the loan documents and various irregularities in the loan account, leading to suspicion of fraudulent activities in the account. However, no documents were provided to the petitioner along with the impugned SCNs.

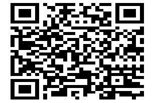



8. Thus, this Court passed various directions directing the petitioner to approach the respective banks with a list of documents that were required by the petitioner for the purpose of submitting a comprehensive reply to the said SCNs. Upon the petitioner approaching the said banks, certain documents were provided to the petitioner. However, it is the case of the petitioner that complete documents, on the basis of which SCNs have been issued to the petitioner, have not been provided.

9. It is settled law that fair procedure and the Principles of Natural Justice require that the requisite documents, which form the basis of a SCN, ought to be provided to the concerned party in order to enable such party to submit a proper reply to answer all the allegations raised against it. If the relevant documents are not provided to a party, then, the whole procedure of issuance of a SCN and filing a reply thereto, would be reduced to an empty formality. No party can be expected to respond to a SCN in an effective manner, in the absence of the underlying documents, which form the basis of the said SCN. Thus, Supreme Court in the case of ***Natwar Singh Versus Director of Enforcement and Another***[1], has held as follows:

> *"xxx xxx xxx*
>
> *31. The **concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain** as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. **Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by***

[1] ***(2010) 13 SCC 255***




***<u>the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him</u>*** *though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.*

*xxx xxx xxx"*

10. Similarly, in the case of ***T. Takano Versus Securities and Exchange Board of India and Another***[2]***,*** the Supreme Court has held in categorical terms that it would be fundamentally contrary to the Principles of Natural Justice, if the relevant materials were not disclosed to the noticee. Thus, it has been held as follows:

*"xxx xxx xxx*

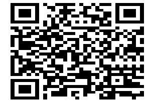
***C.2. Duty to disclose investigative material***

*27. While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest.*

*28. An identification of the purpose of disclosure would lead us closer to identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:*

*28.1.Reliability :* ***<u>The possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information</u>****.*

[2] ***(2022) 8 SCC 162***




*28.2.Fair trial : **<u>Since a verdict of the Court has far-reaching repercussions on the life and liberty of an individual, it is only fair that there is a legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings</u>**.*

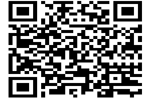
*28.3.Transparency and accountability : **<u>The investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings. Opaqueness furthers a culture of prejudice, bias, and impunity—principles that are antithetical to transparency.</u>** It is of utmost importance that in a country grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability. The principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgment or order it passes. However, the duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order. **<u>Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the party concerned and the public at large the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry.</u>***

*29. **<u>The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed.</u>***

*xxx xxx xxx"*

*(Emphasis Supplied)*

11. In view of the aforesaid, it is imperative that the relevant documents that form the basis of issuance of a SCN, ought to be provided to the concerned party in order to enable such a party to raise its defense effectively. Such fundamental right of a party cannot be taken away by denying a proper opportunity to submit an efficacious reply, which would



not be feasible in the absence of requisite documents that form the core foundation of a SCN. This assumes all the more importance, as on the basis of the defense raised by such a party, proceedings thereto, against the said party, may be dropped in appropriate cases.

12. Emphasising on the importance of applicability of Principles of Natural Justice, Supreme Court in the case of ***State Bank of India & Ors. Versus Rajesh Agarwal & Ors.***[3]***,*** has held that classification of an account as '*Fraud*' under the Master Directions on Frauds issued by the Reserve Bank of India ("RBI") leads to a credit freeze for the borrower. Hence, it is elementary that the Principles of Natural Justice should be followed. Thus, it has been held as follows:

> *"xxx xxx xxx*
>
> ***55. Classification of the borrower's account as fraud under the Master Directions on Frauds virtually leads to a credit freeze for the borrower, who is debarred from raising finance from financial markets and capital markets.*** *The bar from raising finances could be fatal for the borrower leading to its "civil death" in addition to the infraction of their rights under Article 19(1)(g) of the Constitution.* ***Since debarring disentitles a person or entity from exercising their rights and/or privileges, it is elementary that the principles of natural justice should be made applicable and the person against whom an action of debarment is sought should be given an opportunity of being heard****.*
>
> ***56.*** *Indeed, debarment is akin to blacklisting a borrower from availing credit. Black's Law Dictionary [Black's Law Dictionary, 5th Edn. (1979).] explains the term "blacklist", which has been defined in the following terms:*
>
> > *"A list of persons marked out for special avoidance, antagonism, or enmity on the part of those who prepare the list or those among whom it is intended to circulate; as where a trades union "blacklists" workmen who refuse to conform to its rules, or where a list of insolvent or untrustworthy persons is published by a commercial agency or mercantile*

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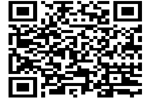
[3]***(2023) 6 SCC 1***




*association."*

*(emphasis supplied)*

*Similarly, P. Ramanatha Aiyar's Law Lexicon [P. Ramanatha Aiyar, The Law Lexicon: The Encyclopaedic Law Dictionary (1997 Edn.).] defines the term "blacklist" as follows:*

> *"Blacklist is a list of persons or firms against whom its compiler would warn the public, or some section of the public; a list of persons unworthy of credit, or with whom it is not advisable to make contracts. Thus the official list of defaulters on the Stock Exchange is a blacklist. To put a man's name on such a blacklist without lawful cause is actionable; and the further publication of such a list will be restrained by injunction."*

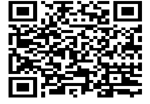
*(emphasis supplied)*

*57. A blacklist is : (i) a list of insolvent or untrustworthy persons published by a commercial agency or mercantile association; and (ii) a list of persons unworthy of credit, or with whom it is not advisable to make contracts. Before this Court, RBI and lender banks have submitted that debarring borrowers from accessing institutional finance is necessary to not only prevent the same persons from committing frauds in other banks, but also to proscribe banks from dealing with unscrupulous borrowers in public interest.* ***Debarring a borrower under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrower for being untrustworthy and unworthy of credit by the banks. This Court has consistently held that an opportunity of a hearing ought to be provided before a person is put on a blacklist****.*

*xxx xxx xxx*

***65.*** *The competence of RBI to issue the Master Directions on Frauds is not a bone of contention in these appeals. RBI, in its estimation, has the power to determine and frame economic measures in the public interest to ensure the proper management of banking companies. The point however is that the implementation of a decision to secure the health of banking companies must comport with the due process of law.* ***The civil consequences which follow upon a classification of a borrower's account as fraud are serious and prejudicial to the interests of a borrower. Principles of fair play require that the borrower ought to be given an opportunity of being heard before classifying the account as fraud in accordance with the procedure laid down under the Master Directions on Frauds****.*

*xxx xxx xxx*



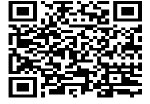

*81. **Audi alteram partem, therefore, entails that an entity against whom evidence is collected must : (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken**. Hence, the 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 Directions on Frauds**.*

*xxx xxx xxx*

*95. 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. In the present batch of appeals, this Court passed an ad interim order [Shree Saraiwwalaa Agrr Refineries Ltd. v. Union of India, 2022 SCC OnLine SC 1905] restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision.*

*xxx xxx xxx"*

*(Emphasis Supplied)*




13. During the course of hearing, learned counsel appearing for the lead bank, i.e., respondent no.1-SBI, submitted that the bank was ready to grant an inspection to the petitioner of the records of the company that were available with it. This Court also notes the submissions made by learned Senior Counsel for the petitioner that the records of the company are also in possession of the RP, in view of the company having been admitted into CIRP under the provisions of the IBC.

14. In view of the discussion hereinabove, thereof, following directions are passed:

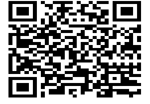
i. The petitioner and/or his authorized representative shall be allowed inspection of the records of the company, as available with the lead bank, i.e., SBI.

ii. Since, record of the company is also stated to be in the possession of the RP, it is directed that the petitioner and/or his authorized representative shall also be allowed to inspect of the record of the company, as available with the RP.

iii. Upon inspection of the record of the company, the petitioner shall state the specific documents that are required from the record of the company, that form the basis of the SCNs. The same shall be provided to the petitioner thereafter.

iv. The cost of providing copies of the relevant documents to the petitioner, shall be borne by the petitioner.

v. The aforesaid process of inspection of record of the company, and stating the specific documents, shall be completed by the petitioner within a period of ten days, from today. The process of providing the relevant documents to the petitioner shall be completed by the lead bank and the RP, within a




period of one week, thereafter.

vi. Upon receipt of the documents from the lead bank and the RP, the petitioner shall file a reply to the respective SCNs within a period of one week thereafter.

vii. The petitioner is at liberty to make request for a personal hearing to the respective banks, which shall be considered by the banks accordingly.

15. The present petition is disposed of in terms of the aforesaid directions.

**(MINI PUSHKARNA)**
**JUDGE**

**MAY 22, 2024**
Ak/kr