

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12707 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**ELECTROTHERM (INDIA) LIMITED**

Versus

**BANK OF INDIA**

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Appearance:

MR RAVI PAHWA FOR THAKKAR AND PAHWA ADVOCATES(1357) for the  
Petitioner(s) No. 1

MR KM PARIKH(575) for the Respondent(s) No. 1

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**CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 30/11/2023****ORAL JUDGMENT**

With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final disposal.

2. Issue Rule, returnable forthwith. Mr K. M. Parikh, learned advocate waives service of notice of Rule on behalf of the

respondent no.1.

3. By this petition, the petitioner has prayed for quashing and setting aside the action of the respondent bank in classifying the account of the petitioner as fraud account, *inter alia*, on the ground of it being illegal and arbitrary so also in breach of the principles of natural justice. Heavy reliance is placed on the recent judgment of the Apex Court in the case of *State Bank of India v. Rajesh Agarwal* reported in (2023) 6 SCC 1.

4. Mr Ravi Pahwa, learned advocate appearing for the petitioner submitted that in view of the recent judgment of the Apex Court, the issue stands crystallized and in the cases of fraud, the bank, is obliged to observe the principles of natural justice. It is submitted that the Apex Court, in the judgment in the case of *State Bank of India v. Rajesh Agarwal* (supra) in paragraph 98 has summarised the conclusions. It has been held and observed that classification of an account as fraud not only results in reporting the crime to investigating agencies, but also has other penal and civil consequences against the borrowers. Paragraph 98.5, enumerates that the application of audi alteram partem cannot be impliedly excluded under the Master Directions on Frauds. In paragraph 98.6, it has been held and observed that the principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/ JLF before their account is classified as fraud under the Master Directions on Frauds. It has also been held and observed that in addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.

4.1 It is therefore submitted that the issue, is no more res integra in principle and therefore, only on this ground, the captioned writ petition deserves to be allowed. It is therefore submitted that one of the contentions raised by the petitioner is that the respondent bank has assigned its debts to the Edelweiss Asset Reconstruction Company and therefore, all its debts and liabilities has stood transferred to the Edelweiss Asset Reconstruction Company. It is therefore urged that the petitioner be permitted to raise said contention before the respondent bank.

5. Mr K. M. Parikh, learned advocate appearing for the respondent bank has fairly conceded that the issue stands covered by the judgment of the Apex Court in the case of *State Bank of India v. Rajesh Agarwal* (supra). It is however urged that the matter may be remitted to the respondent bank and it would take steps in accordance with the principles laid down by the Apex Court in the said judgment. It has also fairly conceded that the petitioner neither was offered any opportunity of hearing nor provided with the Forensic Audit Report and therefore, the respondent bank shall adhere to the principle laid by the Apex Court in the judgment of *State Bank of India v. Rajesh Agarwal* (supra) and take steps accordingly.

6. Heard the learned advocates appearing for the respective parties.

7. Perceptibly, the petitioner is aggrieved by the action on the part of the respondent bank in classifying the account of the petitioner as fraud account. One of the contentions raised by the petitioner is that the action has been taken in breach of the principles of natural justice and therefore, is illegal and bad. Heavy

reliance is placed on the judgment in the case of *State Bank of India v. Rajesh Agarwal* (supra) wherein, it has been held and observed that the rule of audi alteram partem 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. Apex Court has also held and observed that a reasoned order has to be issued on the objections addressed by the borrower. Relevant paragraphs 95, 98, 98.1 to 98.7 are reproduced hereunder for ready reference:

“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 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.

98. The conclusions are summarized below:

98.1. No opportunity of being heard is required before an FIR is lodged and registered.

98.2. Classification of an account as fraud not only results in reporting the crime to investigating agencies, but also has other penal and civil consequences against the borrowers.

98.3. Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds results in serious civil consequences for the borrower.

98.4. Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.

98.5. The application of audi alteram partem cannot be impliedly excluded under the Master Directions on Frauds. In view of the time frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.

98.6. The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/ JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.

98.7. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, audi alteram partem has to be read into the provisions of the directions to save them from the vice of arbitrariness."

8. The above principles apply on all fours to the facts of the present case. Under the circumstances and in view of the admitted position that the petitioner was not heard, the action of the respondent bank classifying the account of the petitioner as a fraud account is hereby quashed and set aside. The matter is remitted to the bank leaving a liberty to it to take fresh steps in accordance with the principles laid down by the Apex Court in the judgment in the case of *State Bank of India v. Rajesh Agarwal* (supra), at the earliest.

9. In view of the above, captioned writ petition stands allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

Sd/-  
(SANGEETA K. VISHEN,J)

RAVI P. PATEL