



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION***

***WRIT PETITION NO.3037 OF 2025***

Anil D. Ambani, aged 66 years, having  
his address at 39, Sea Wind, Cuffe  
Parade, Mumbai – 400 005. ... Petitioner

***Versus***

1. State Bank of India, having its office  
at Stressed Assets Resolution Group,  
Corporate Centre, 2<sup>nd</sup> Floor, The Arcade,  
World Trade Centre, Cuffe Parade,  
Mumbai – 400 005.

2. Reserve Bank of India, Legal  
Department, having its Office at 5<sup>th</sup>  
Floor, Centre I, World Trade Centre,  
Mumbai – 400 005. ... Respondents

Mr. Darius Khambata, Senior Advocate a/w Mr. Prateek  
Seksaria, Senior Advocate Mr. D.J.Kakalia, Ms. Bhavna S.  
Jaipuria, Mr. Kartik Hede a/w Mr. Ayaan Zariwalla and  
Ms. Bhakti Chandan i/b Mulla & Mulla & CBC, for the  
Petitioner

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Sudeshna Roy,  
Mr. Abhiraj Arora, Mr. Treenok Guha, Mr. Ayush Chaturvedi i/b  
Saraf & Partners Law Offices, for the Respondent No. 1

Mr. Zal Andhyarujina, Senior Advocate a/w Mr. Pradeep Mane,  
Mr. Prasad Shenoy, Ms. Riddhi Badheka & Ms. Huzan  
Bhumgara i/b Desai & Diwanji, for the Respondent No. 2

**CORAM : REVATI MOHITE DERE &  
DR. NEELA GOKHALE, JJ.  
RESERVED ON : 22<sup>nd</sup> AUGUST 2025  
PRONOUNCED ON : 3<sup>rd</sup> OCTOBER 2025**

**JUDGMENT (Per Revati Mohite Dere, J.) :**

1 By this petition, the Petitioner challenges the show-cause notice dated 20<sup>th</sup> December 2023 issued by the Respondent No.1 – State Bank of India (“SBI”) and the resultant order dated 13<sup>th</sup> June 2025 passed by the Respondent No.1, classifying the account of Reliance Communications Ltd. (“RCOM”) as ‘fraud’ and reporting the name of the Petitioner to the Respondent No.2 – Reserve Bank of India (“RBI”) in terms of the Master Directions on Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions dated 15<sup>th</sup> July 2024 (“Master Directions 2024”) and as such seeks quashing and setting aside of the same.

2 Brief facts giving rise to this petition with which we are concerned, are as under:

a) On **22<sup>nd</sup> September 2012**, the Respondent No.1 – SBI sanctioned term loans of INR 1500 Crore to RCOM; INR 125 Crore to Reliance Telecom Limited (hereinafter referred to as ‘RTL’) and also a non-fund based facility to the tune of INR 859.59 Crores to RCOM.

b) On **29<sup>th</sup> August 2016**, the Respondent No.1 – SBI sanctioned term loans of INR 565 Crore to RCOM and INR 635 Crore to Reliance Infratel Limited (hereinafter referred to as ‘RITL’).

c) On **1<sup>st</sup> July 2016**, the RBI notified the Master Directions on Fraud – Classification & reporting by Commercial Banks & Select Financial Institutions (‘Master Directions 2016’).

d) In 2017, since RCOM failed to comply with its obligations under restructuring of above-mentioned loans, i.e. the RCOM defaulted in payments of SBI, the account of RCOM was declared as a non-performing Asset by the Respondent No.2 –

RBI with effect from 26<sup>th</sup> August 2016, in accordance with the RBI directions.

e) On 20<sup>th</sup> December 2023, the Respondent No.1 – SBI issued a show-cause notice to RCOM, with a copy of the same marked to the Petitioner and four other individuals, regarding the conduct of RCOM's bank account and suspected fraudulent activity. It is pertinent to note, that on 10<sup>th</sup> November 2020, the Fraud Identification Committee of Respondent No.1 declared RCOM account as 'fraud'. However, the said decision was recalled in view of the Apex Court's decision in *State Bank of India v. Rajesh Agarwal & Others*<sup>1</sup>; as no notice or opportunity to make a representation had been given to the parties prior to the said decision. Accordingly, a fresh show-cause notice dated 20<sup>th</sup> December 2023 was issued (hereinafter referred to as 'impugned SCN').

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f) On 3<sup>rd</sup> January 2024, the Petitioner addressed his response to the impugned SCN, raising therein certain preliminary objections. The gist of the objections was:

(i) that RCOM being under CIRP, the Resolution Professional was vested with the management of RCOM. Consequently, the Petitioner did not have possession of the relevant documents/information, thereby preventing him from giving an effective response to the contents of the impugned SCN.

(ii) that the impugned SCN was bereft of any information regarding the basis for arriving at the conclusions stated therein; that there were no timelines specified in relation to the allegations, and that no specific role was ascribed to the Petitioner, making it extremely difficult for the Petitioner to respond to the alleged irregularities and to the perceived suspicion of fraud.

Furthermore, the Petitioner was not involved in the day-to-day affairs of RCOM.

(iii) that no effective opportunity was given to the Petitioner to submit his response / reply, in the absence of all the relevant documents forming the basis of the impugned SCN.

(iv) that the allegations of fraud were without any specific details or relevant documents and as such the impugned SCN was in breach of the principles of natural justice.

(v) that access to documents / specific details would have enabled the Petitioner to understand the basis on which impugned SCN was issued and would allow the Petitioner to defend himself; and that non-furnishing of all relevant documents was in breach of the judgment dated 27<sup>th</sup> March 2023 of the Apex Court in *Rajesh Agarwal (supra)*.

(vi) that the Petitioner would provide a detailed response/reply upon receipt of the documents.

g) On **5<sup>th</sup> March 2024**, the Respondent No.1 – SBI responded to the Petitioner's aforesaid letter and also called upon the Petitioner to make his submission within 15 days from the receipt of the letter.

h) On **19<sup>th</sup> March 2024**, the Petitioner, through his Advocate's letter, acknowledged receipt of Respondent No.1's letter, and stated that 'the Bank instead of providing the documents requested has provided an incomplete copy of the investigation report prepared by BDO India LLP ('BDO') in which several pages were re-dacted'. Accordingly, the Petitioner requested the Respondent No.1 to provide all documents and materials relied upon by the Bank, including the complete BDO report and suitable time of 4 weeks to respond, thereafter.

i) On 15<sup>th</sup> July 2024, in view of Supreme Court decision in *Rajesh Agarwal (supra)*, the Respondent No.2 notified the Master Directions 2024.

j) On 21<sup>st</sup> October 2024, the Petitioner through his Advocates, issued a letter informing the Respondent No.1 – SBI that in view of the Master Directions 2024 dated 15<sup>th</sup> July 2024, the erstwhile Master Directions, under which the impugned SCN was issued, stood superseded, and as such the impugned SCN ceased to exist. Accordingly, the Petitioner called upon the Respondent No.1 to withdraw the impugned SCN. It is however, pertinent to note that the Respondent No.1 has denied receiving any such letter.

k) On 13<sup>th</sup> June 2025, the Respondent No.1 – SBI classified RCOM's account as 'fraud'. In the said order, the Respondent No.1 – SBI stated that the Petitioner's name (who was the Chairman, Promoter, Non-Executive & Non-



Independent Director during the period under review) would be reported to the Respondent No.2 – RBI, as per the Guidelines. The reasoned order passed by the SBI was communicated to the parties concerned. The Petitioner received the impugned order on 23<sup>rd</sup> June 2025.

l) On **2<sup>nd</sup> July 2025**, the Petitioner addressed a letter to the Respondent No.1 – SBI, in response to the order, stating therein;

(i) that the impugned order was passed ex-parte;

(ii) that the Master Directions 2016 was not in existence in view of the Master Directions 2024 being notified and hence the impugned SCN issued under the old Master Directions is liable to be withdrawn;

(iii) that the Petitioner was a non-executive director and was not responsible for the day-to-day functioning of

RCOM; and that the directors against whom similar allegations were made, SCN was dropped since they were non-executive Directors and were not responsible for the day-to-day functioning of RCOM;

(iv) that the Respondent No.1 failed to provide an opportunity of personal hearing;

(v) that the impugned order was in gross violation of the judgments of the Apex Court and this Court.

The Petitioner also requested the Respondent No.1 – SBI to restrain from acting on the impugned order.

m) On **7<sup>th</sup> July 2025**, the Petitioner filed the aforesaid petition.

3 Mr. Khambata, learned senior counsel for the Petitioner assailed the impugned order on four counts;

(i) that there has been non-compliance of the Master Directions 2024 i.e. the impugned order was contrary to the principles of natural justice i.e. failure to give an opportunity of personal hearing; and non adherence to judicial pronouncements (*Rajesh Agarwal (supra)* and other judgments);

(ii) that the impugned SCN did not contain any allegation against the Petitioner and that it was only in the impugned order that an addition to the effect, that the Petitioner was the Chairman, Promoter, Non-independent Director and the person having control on RCOM, was sought to be made, thereby violating the principles of natural justice;

(iii) that the impugned order passed against the Petitioner is contrary to clause 2.1 of the Master Directions 2024, as the Petitioner was not a whole time Director; and that Clause 4.4.1 of the Master Directions 2024 does not create vicarious liability on the Petitioner for any alleged fraud committed by RCOM; and

(iv) that the impugned SCN issued under the erstwhile Master Directions 2016 stands superseded in view of the Master Directions 2024.

In conclusion, Mr. Khambata contended that the findings and observations in the impugned order are untenable and as such, cannot be sustained, warranting quashing and setting aside of the same.

4 Mr. Chinoy, learned senior counsel for the Respondent No.1 opposed the petition on all counts. He submitted that in the facts of the present case, the Petitioner has no right to be given a personal hearing. He submitted that neither does the judgment of the Apex Court in *Rajesh Agarwal (supra)* nor the Master Directions 2024 contemplate a personal/oral hearing before action can be taken by a bank to declare an account as fraud. He submitted that what is contemplated by the judgment/Master Directions 2024 is that the

borrower should be given an opportunity to make a representation i.e. compliance of the principle of natural justice, before classifying an account as 'fraud' by a reasoned order. Mr. Chinoy thus, submitted that a personal/oral hearing is not a pre-condition before action could be taken to declare an account as fraud. He submitted that in the facts, the Petitioner was given ample opportunity to make a representation, which the Petitioner failed to make. He submitted that what is contemplated by the Master Directions 2024 and the judgment in ***Rajesh Agarwal (supra)*** is that the principles of natural justice must be followed i.e. the party must get an opportunity to give an explanation to the show cause notice and to represent before the Authority, before his account is classified as fraud. Reliance was placed by Mr. Chinoy on the decision of the Supreme Court in ***Rajesh Agarwal (supra)***; and the Master Directions on willful defaulters. As far as the contention raised by the Petitioner that, no specific allegations were made against the Petitioner in the impugned SCN, Mr. Chinoy submitted that when a company's account is

classified as fraud, the promoters/directors who were in control of the company, are liable to penal measures and to be reported as fraud and debarred from raising funds or seeking credit facilities. Mr. Chinoy submitted that the Petitioner, at the relevant time, was the person in control of the company and responsible for the acts/omissions of the company i.e. of RCOM. He submitted that the annual report of RCOM for the relevant years refers to the Petitioner as being the promoter and person having control of RCOM. Learned senior counsel distinguished the judgment of the Delhi High Court in *IDBI Bank v. Gaurav Goel & Ors.*<sup>2</sup> and held that the same has no application in the facts of the present case.

Mr. Chinoy, further countered the argument canvassed by Mr Khambata by submitting, that the mere fact that the Master Directions 2016 were superseded by the Master Directions 2024 does not render the SCN issued prior to such supersession, as non-est. He submitted that issuance of Master

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Directions 2024 does not invalidate the SCN issued prior to the said Directions, and that it only meant that post the Master Directions 2024, the proceedings would have to be continued in compliance with the provisions of the new Directions. Mr. Chinoy also brought to our attention Para 10 of the Master Directions 2024, which state the *“instructions/guidelines listed in the Appendix stand repealed”* and that the Master Directions 2016 does not appear in the list of Directions repealed. In view of the aforesaid submissions, Mr. Chinoy defended the impugned order passed by SBI, pursuant to the impugned SCN dated 20<sup>th</sup> December 2023 and urged us to dismiss the petition.

5           Mr. Andhyarujina, learned senior counsel appearing for the RBI concurred with the submissions advanced by Mr. Chinoy. He submitted that there is no vested right in a party to be given an oral/personal hearing. He submitted that what is contemplated is that the principle of natural justice must be

followed i.e. the party must have a right to make a representation before any adverse order is passed against the party.

6           We have given our anxious consideration to all the issues raised. We would first deal with Mr. Khambata's submission, on the issue of supersession of the earlier Master Directions 2016 by the Master Directions 2024. Mr. Khambata has challenged the impugned SCN on the ground that it was issued under the erstwhile Master Directions 2016. The Master Directions 2016 were subjected to scrutiny by the Supreme Court in *Rajesh Agarwal (supra)* and pursuant to the said decision in *Rajesh Agarwal (supra)*, the RBI, in order to bring the Master Directions in conformity with the Supreme Court Directives, issued the revised Master Directions 2024. Mr. Khambata invited our attention to Master Directions 2024, which uses the expression '*shall supersede*' in relation to Master Directions 2016. According to Mr. Khambata, the express provisions



relating to the procedure and declaration of fraud in Master Directions 2024 are quite distinct from those in Master Directions 2016.

7           Mr. Khambata submitted that the general savings of proceedings contemplated under Section 6 of the General Clauses Act do not apply to show-cause notices. Thus, the proceedings initiated under the Master Directions 2016 come to an end upon notification of Master Directions 2024. Even otherwise, he submitted, it is well settled that when a legislation confers a benefit on a person without inflicting a corresponding detriment on some other person or public generally, the legislation has a retrospective effect. Acting in aid of this interpretation of law, the Petitioner by letter dated 21<sup>st</sup> October 2024 informed SBI that the impugned SCN issued under the Master Directions 2016 stood expressly superseded and hence, it ceases to exist. The Petitioner thus, called upon the SBI to withdraw the impugned SCN. Instead of acquiescing to this request, it is complained, the SBI proceeded

to pass the impugned Order, which is assailed in the present petition.

8 Admittedly, the Master Directions 2016 were the subject matter of consideration of the Supreme Court in the matter of *Rajesh Agarwal (supra)*. In Para 98 of the judgment, the Supreme Court has summarized its conclusions. The same reads thus:

*“98. The conclusions are summarised 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 the 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 with 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.”*  
(emphasis supplied)

9        A plain reading of the summarised conclusions in **Rajesh Agarwal (supra)** clearly indicate that the Supreme Court did not quash the Master Directions 2016 but in fact interpreted the

same and read into the directions, the doctrine of *audi alteram partem*. The Master Directions 2016 did not provide for an opportunity of being heard and hence, such SCN was not contemplated to be given by the Banks, prior to classifying the account of a borrower as fraud. Notwithstanding that the Master Directions 2016 were silent in respect of issuance of Show Cause Notice, admittedly such SCN was issued to the Petitioner.

10 Pursuant to ***Rajesh Agarwal (supra)***, the RBI issued the Master Directions 2024 and addressed a letter dated 15<sup>th</sup> July 2024 to all commercial Banks (including Regional Rural banks) and the All India Financial Institutions (AIFI's) enclosing the Master Direction 2024. It is in this covering letter that the RBI stated that these Directions shall supersede the earlier Directions on the subject. Chapter II of the Master Directions 2024 provides for the Governance structure in Banks for Fraud Risk Management. Directions are given to the Banks to issue a detailed SCN to the persons/entities and its promoters/wholetime and

Executive Directors against whom allegations of fraud are being examined. Banks are directed to formulate a policy in respect of fraud risk management which shall also incorporate measures to ensure compliance with the principles of natural justice. The foot note to this clause makes it clear that ensuring compliance with the principles of natural justice is in consonance with the directions given by the Supreme Court in the *Rajesh Agrawal (supra)*. Thus, the deviation relevant to the present matter in the Master Directions 2024 from the Master Directions 2016 is that a SCN must be issued, containing the complete details of transactions, etc. on the basis of which declaration and reporting of fraud is being contemplated.

11           It is settled law that if a subsequent Government Order or Direction is declared to be in the nature of clarification of the earlier Order/Direction, it may be made applicable retrospectively. It is only if the subsequent Order/Direction is held to be a modification or a substantive amendment of the earlier

order, its application shall be prospective as the retrospective application thereof, would result in withdrawal of vested rights which is impermissible in law. In a decision of the Supreme Court in *State of Bihar v. Ramesh Prasad Verma*<sup>3</sup>, it is observed that it is trite that any legislation or instrument having the force of law which is clarificatory or explanatory in nature and purport, and which seeks to clear doubts or correct an obvious omission in a statute, would generally be retrospective in operation. The footnote to the relevant clause in Chapter II clearly states that ensuring compliance of principles of natural justice is included in the Master Directions 2024, pursuant to the decision in *Rajesh Agarwal (supra)*. Directions to issue a detailed SCN is an integral part of adherence to the principles of natural justice. This modification in the Master Directions 2024 is clarificatory, for the purpose of bringing the same in conformity with the decision of the Supreme Court. It is also settled law that the judgment of a Court operates retrospectively unless expressly made prospective. Thus, the principles of *audi altrem partem* are to be

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read as already existing, right from the beginning, in the Master Directions 2016. In this view of the matter and in consonance with the settled law, the SCN issued by the SBI, although not mandatory at that point of time, is in consonance with the decision in *Rajesh Agarwal (supra)* followed by the clarificatory clause in the Master Directions 2024.

12           As aforesaid, admittedly the impugned SCN was already given to the Petitioner detailing the basis of declaration of fraud as contemplated by SBI. The Petitioner failed to reply the said notice and continued to seek documents, leading to SBI finally proceeding to pass the impugned order. It was in the intervening period i.e., from the date of issuance of the impugned SCN and the final order impugned herein, that the Master Directions 2024 envisaging a SCN came to be issued. SBI was to now ensure that principles of natural justice were followed before any declaration of fraud was made. Issuance of a detailed SCN was mandated. There is no mention in the Master Directions

2024 relating to validity of a SCN being issued prior to the said Directions. Issuance of a detailed SCN to give an opportunity to the borrower of being heard is the only sine qua non as per the Master Directions 2024. As long as the principles of natural justice are complied with and the doctrine of *audi alteram partem* is ensured, there is no violation of the Master Directions 2024 nor the directions issued by the Supreme Court in ***Rajesh Agrawal (supra)***.

13           Futhermore, mere conveying to the Banks, by way of a covering letter, that the Master Directions 2024 supersede the Master Directions 2016 will not render the SCN already issued by the SBI to the Petitioner, invalid. Thus, SBI was entitled to proceed pursuant to the impugned SCN issued prior to the Master Directions 2024, as long as principles of natural justice are complied with. The process initiated by SBI by issuing impugned SCN continues post 2024 Master Directions and the impugned SCN merges with the subsequent process. In this view



of the matter, we are not inclined to accept the arguments of Mr. Khambata that actions of the Bank pursuant to the SCN dated 20<sup>th</sup> December 2023 issued prior to the Master Directions 2024 of RBI are invalid. Thus, the doctrine of supersession of the Master Directions 2016 by issuance of Master Directions 2024 as invoked by Mr. Khambata, fails.

14           We shall now deal with the second submission of Mr. Khambatta, that the impugned order is contrary to the principles of natural justice, inasmuch as, no personal hearing was afforded to the Petitioner.

15           Mr. Khambatta, in support of the said submission, argued that classification of an account as fraud not only results in reporting to investigating agencies but also has grave penal and civil consequences for the borrowers. He submitted that courts have consistently held that before a person is black-listed, *audi alteram partem* must be observed, and that this principle cannot

be impliedly excluded under the Master Directions on Frauds. According to him, natural justice requires that borrowers be served notice, furnished with the forensic audit report and all documents on which reliance is placed, and given an opportunity to represent and be given a personal hearing before their account is classified as fraud. He submitted that *audi alteram partem* i.e. right of personal hearing must be read into the Master Directions 2024 to save itself from arbitrariness. Reliance was placed on *Rajesh Agarwal (supra)*, the judgment of the Delhi High Court in *IDBI v. Gaurav Goel (supra)*, and an order of this Court, by Mr. Khambata, to show that *audi alteram partem* includes not merely the right to make a representation but also envisages a personal hearing. He further pointed out that in *IDBI v. Gaurav Goel (supra)*, the Delhi High Court, after considering *Rajesh Agarwal (supra)*, categorically held that personal hearing forms part of this safeguard. Thus, according to him, the impugned order, having been passed without affording the Petitioner such a hearing, is null and void.

16 Mr. Chinoy submitted that no personal hearing is contemplated under the Master Directions nor does ***Rajesh Agarwal (supra)*** speak of giving a personal hearing. He submitted that what is contemplated is a right to make a representation in order to comply with the principle of natural justice. In the facts, Mr. Chinoy submitted that the question of giving personal hearing even otherwise did not arise, as there was no response from the Petitioner. Mr. Chinoy took us through the Telangana High Court judgment in ***Rajesh Agarwal (supra)***, and the judgment of the Delhi High Court in ***IDBI v. Gaurav Goel (supra)***, as well as the Master Directions of 2016 and 2024 issued by the RBI.

17 Mr. Andhyarujina, learned senior counsel appearing for the RBI submitted that what is contemplated by the Master Directions 2024 and ***Rajesh Agarwal (supra)*** is that the principle of natural justice has to be followed i.e. right to make a representation before an adverse order is passed against a party,

and, the party has no vested right to be given an oral/personal hearing.

18           Before we proceed to decide the said issue, as to whether the right of personal hearing is contemplated under the Master Directions 2024 or by the Apex Court in ***Rajesh Agarwal's*** case, it would be appropriate to reiterate certain facts based on which Petitioner claims right of personal hearing.

19           Admittedly, the Respondent No.1-SBI sanctioned term loans to RCOM and to RTL and also a Non-Fund Based Facility. It appears that the Petitioner was the Promoter and Director of RCOM and RITL, and had given a personal guarantee of INR 1200 crore for the term loans sanctioned on 29<sup>th</sup> August 2016. As RCOM failed to comply with its obligations under restructuring of aforesaid loans, **in around 2017**, the account of RCOM was declared as a Non-Performing Asset by Respondent No. 2 with effect from **26<sup>th</sup> August 2016** in

accordance with the RBI directions. On **7<sup>th</sup> May 2019**, the BDO was appointed to conduct a forensic audit of RCOM for the period from 1<sup>st</sup> April 2013 to 31<sup>st</sup> March 2017. The BDO prepared and submitted its preliminary Forensic Audit Report to SBI on 2<sup>nd</sup> July 2020 and submitted its Final Forensic Audit Report on 15<sup>th</sup> October 2020.

20                   Based on the findings in the BDO Report dated 15<sup>th</sup> October 2020, RCOM's account was declared as a 'fraud' account by the Fraud Identification Committee ("FIC") of Respondent No. 1-SBI on 10<sup>th</sup> November 2020.

21                   In view of the judgment of the Apex Court in ***Rajesh Agarwal (supra)***, the Respondent No.1-SBI withdrew the said “fraud” classification declared by the FIC of Respondent No.1-SBI on 10<sup>th</sup> November 2020, as no Notice or opportunity to make a representation had been given prior to making the said decision classifying RCOM’s account as ‘fraud’.

22                    On 20<sup>th</sup> December 2023, Respondent No. 1 issued a Show Cause Notice to RCOM and its directors including the Petitioner, regarding the conduct of RCOM's loan account and suspected fraudulent activity. RCOM, the Petitioner and other directors were asked to show cause as to why their account/ name should not be categorized and reported as fraud as per the RBI guidelines.

23                    On 3<sup>rd</sup> January 2024, the Petitioner, through his Advocate's letter dated 3<sup>rd</sup> January 2024, responded to the Show Cause Notice refuting the allegations in the show cause notice and persistently stating that he was unable to reply without being furnished all the relevant documents. He also raised a grievance that the Respondent No. 1 had violated the principles of natural justice and its acts were contrary to the decision in ***Rajesh Agrawal (supra)*** as well as the Master Directions 2024.

24                    On **5<sup>th</sup> March 2024**, the Respondent No. 1 responded to the Petitioner's letter / request and provided him with a printed copy of the BDO Report dated 15<sup>th</sup> October 2020 comprising of 389 pages, but without including the annexures thereto. The Petitioner was called upon to make his submissions in writing within 15 days from receipt of the letter. The Petitioner vide his Advocate's letter dated **19<sup>th</sup> March 2024**, acknowledged receipt of Respondent No. 1's aforesaid letter, but stated that *"The Bank instead of providing the documents as requested has only provided an incomplete copy of the investigation report prepared by BDO in which several pages have been redacted."* The Petitioner requested the Bank to provide all the documents and material relied upon by the Bank, including the complete report of BDO and suitable time of at least 4 weeks thereafter to respond.

25                    It appears that there was an exchange of correspondence regarding the incomplete documents of the

forensic audit report received by the Petitioner. Although Mr. Khambata vehemently argued that incomplete documents were furnished by the SBI, during the course of arguments he did not press the said submission, namely, that the forensic audit report furnished to the Petitioner, was incomplete. Thus, we are required to go into the same.

26           Vide letter dated 26<sup>th</sup> September 2024 (*though inadvertently typed as 26<sup>th</sup> September 2023*), Respondent No.1-SBI furnished to the Petitioner the annexures with exhibits of the Forensic Audit Report dated 15<sup>th</sup> October 2020 and once again requested the Petitioner to present his case and make relevant and specific submissions in writing within 21 days, as to why the account and the Petitioner's name should not be categorised and reported as fraud.

27           **After September 2024**, no response was received by SBI to its letter / Notice dated 26<sup>th</sup> September 2024, nor was any



complaint made by the Petitioner of the BDO Report dated 15<sup>th</sup> October 2020 being incomplete or any pages thereof being missing. The Petitioner continued to insist that the Show Cause notice was non est, being issued prior to the superseded Master Directions 2016.

28           As no response/representation was received by Respondent No 1 from the Petitioner despite the aforesaid Notice, the Committee concerned of the Respondent No. 1 passed a reasoned order dated **13<sup>th</sup> June 2025**, identifying the account of RCOM as "Fraud" and stating that the name of the Petitioner, (who was the Chairman, Promoter, Non-Executive and Non-Independent Director during the period under review) would be reported to Respondent No. 2 as per the Master Directions 2024. A copy of the reasoned order was sent to the Petitioner.

29           Mr. Chinoy, during the course of the arguments, brought to our notice that despite the Petitioner being given a complete copy of the Forensic Audit Report along with annexures, and was given time to make its representation, the Petitioner did not respond within the extended timelines, nor requested for a personal hearing. He submitted that in view of the Petitioner's consistent failure to reply to the impugned SCN, the question of giving a personal hearing did not arise. He submitted that even otherwise, ***Rajesh Agarwal's*** decision only contemplates giving an opportunity to the person concerned to whom SCN has been issued to make his representation i.e. to adhere to the principles of natural justice, which is not the same thing as a physical/personal hearing.

30           The legal position as to whether ***Rajesh Agarwal*** (*supra*) mandates personal hearing as urged by Mr. Khambata or it contemplates following principles of natural justice i.e. an

opportunity to make a representation, as contended by Mr. Chinoy, is an issue that falls for our determination.

31 In *Rajesh Agarwal (supra)*, the Supreme Court was considering an appeal against the decisions of the Telangana High Court in *Shree Saraiwwalaa Agro Refineries Ltd. v. Union of India*<sup>4</sup>; in *Yashdeep Sharma v. RBF*; and the judgment of the Gujarat High Court in *Mona Jignesh Acharya v. Bank of India*<sup>6</sup>. The Apex Court upheld the Division Bench judgment of the Telangana High Court in *Rajesh Agarwal* and set-aside the judgments passed in the three aforesaid cases. The Telangana High Court, in Para 76 of its judgment, passed the following directions:

“76. For the reasons stated above, this Writ Petition is, hereby, allowed with the following directions and in the following terms:-

76.1. Firstly, the principle of *audi alteram partem*, part of the principles of natural justice, is to be read in Clause 8.9.4 and 8.9.5 of the Master Circular.

4 2021 SCC OnLine TS 1816

5 2021 SCC OnLine TS 1852

6 2021 SCC OnLine Guj 2811

76.2. Secondly, the decision, dated 15.02.2019, passed by the JLF, and the resolution dated 31.07.2019, passed by the FIC are, hereby, set aside.

76.3. Thirdly, the JLF is **directed to give an opportunity of hearing by furnishing copies of both the Reports**, namely the Forensic Auditor Report, dated 06.04.2018 and the subsequent Report submitted by Dr. K.V. Srinivas, IRP, to the Petitioner, and to the OL.

76.4. Fourthly, the JLF is **directed to give an opportunity of personal hearing both to the Petitioner and to the OL** before taking any decision on the issue whether the account should be classified as ‘fraud’ or not?

76.5. Fifthly, after the JLF has taken its decision, the FIC is directed to pass its resolution whether the decision of the JLF should be confirmed or not?

76.6. Lastly, the said exercise shall be carried out by the JLF within a period of three months from the date of receipt of the certified copy of this judgment. Furthermore, the subsequent exercise by FIC shall be carried out within two months from the date of the decision of the JLF.” (emphasis supplied)

32           The said judgment, as noted herein-above, was challenged by the SBI before the Apex Court. No doubt, the Apex Court upheld the judgment of the Telangana High Court

in *Rajesh Agarwal (supra)* granting a personal hearing to the Petitioner; however, the Supreme Court, in its judgment, held that an opportunity should be given to the borrower, to represent before the concerned Bank. The Supreme Court has summarized its conclusions in Para 98 of its judgment, which we have reproduced in Para 8 herein-above.

33 In *Rajesh Agarwal (supra)*, the Supreme Court was called upon to consider the validity of Master Directions 2016. The Apex Court in Para 54 observed thus:

*“54. In Jah Developers, this Court construed the Master Circular Directions on Willful Defaulters by harmonizing it with the principles of natural justice. Particularly, it was directed that: (i) the First Committee must give its order to the borrower as soon as possible; (ii) the Borrower, thereafter, can file a written representation against the order of First Committee to the Review Committee; and (iii) the Review Committee must pass a reasoned order which must be provided to the borrower.”*

34 Similarly, the Apex Court in *Rajesh Agarwal (supra)*,  
in Para 61 has observed as under:

*“61. In Gorakha Security Services v. State (NCT of Delhi), the issue before the Apex Court pertained to the form and content of a show-cause notice that is required to be served before blacklisting the noticee. A two-judge bench of this Court observed that an order blacklisting a person is stigmatic. The relevant observation is extracted below:*

*“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.”*

35 Thus, it is evident from the aforesaid that *audi alteram partem*, requires that an entity against whom evidence is collected must be informed of the proposed action, supplied the

material relied upon, and given an opportunity to explain why such action should not be taken.

36           Thus, from the aforesaid judgment in ***Rajesh Agarwal (supra)***, it is clear that the principles of natural justice demand that the borrowers must be served a notice, furnished with the forensic audit report, and allowed to submit their representation before their account is classified as fraud. The right contemplated is one of representation, not necessarily of personal hearing. Infact, the right of representation is not read specifically as meaning a right to personal hearing.

37           Infact, subsequent to the judgment in ***Rajesh Agarwal (supra)***, the State Bank of India preferred a Miscellaneous Application before the Apex Court, expressing apprehension that the said judgment may be construed as mandating a personal hearing in every case. The Apex Court, by order dated 12<sup>th</sup> May 2023 in Misc. Application No. 810 of 2023 in Civil Appeal No.

7300 of 2022, clarified that its earlier decision dated 27<sup>th</sup> March 2023 only upheld the judgment of the High Court of Telangana dated 10<sup>th</sup> December 2020, and that the operative directions are confined to those summarised in Para 81 under section 'E' of the judgment. *(Para 81 Section E is Para 98 in the equivalent citation (2023) 6 SCC 1 and the same is reproduced in Para 8 herein-above).*

38           The Apex Court further observed that, insofar as the question of prospective effect is concerned, the applicant bank was at liberty to seek review separately. The Miscellaneous Application was accordingly disposed of.

39           A perusal of the Master Directions 2024 nowhere contemplates a personal hearing. The same provides an opportunity of being heard as per the directions of the Apex Court in *Rajesh Agarwal*.

40           The Master Directions 2024 read with the decision in *Rajesh Agarwal (supra)*, requires an opportunity to submit a



representation before classifying a person/entity, followed by the passing of a reasoned order. Thus, the right available is that of making a representation, and not of a mandatory personal hearing, as contended. Even otherwise, in the present facts, considering that the Petitioner had submitted his response to the impugned SCN as well as subsequent representations, and further, since there was no response to the last communication addressed by the Petitioner to the Respondent-SBI, the Respondent-SBI was well within its powers in passing the impugned order.

41           It is pertinent to note that the Apex Court in its judgment in *Rajesh Agarwal (supra)* has not held/observed that an opportunity of being heard necessarily includes and means an opportunity of personal hearing. It talks about *audi alteram partem* i.e. adherence to the principles of natural justice. Significantly, no request for a personal hearing was made by the Petitioner at any stage. In any event, the grant of a personal hearing is not a matter of right in every case, unless specifically

mandated by statute or rules. The principles of natural justice cannot be applied in a straitjacket formula; their application depends on the facts and circumstances of each case. In the present case, as long as the Petitioner was afforded an adequate opportunity to submit his objections in writing, the requirement of fairness and compliance with the principle of natural justice, stood satisfied.

42 In view of the finding recorded, the decision of the Delhi High Court does not apply in the facts and circumstances of the present case.

43 In fact, one of the orders relied upon by Mr. Khambata was passed by this very Bench in *Anil D. Ambani v. Canara Bank*<sup>7</sup>. We may record that in the said matter, it was the bank which had conceded to grant a personal hearing to the Petitioner therein, and it was in view of such concession that the order came to be passed. Admittedly, RBI was not a party to the

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7 OS WPL/3098/2025 dated 7-2-2025

said proceeding. Thus, the said order was rendered in that specific factual context.

44           Mr. Khambatta also contended that despite the fact, that there were no allegations against the Petitioner in the impugned SCN, and the Petitioner, not being a whole time director of the Company, the Petitioner's account was declared as fraud. It is well settled that once the Company's account is classified or declared to be a fraud account, the promoters / directors who were in control of the Company are liable to penal measures and to be reported as fraud and debarred from raising funds or seeking credit facilities, as they were in control of the Company and responsible for the acts / omissions of the Company. Thus, in view of the aforesaid position, there is no requirement of the impugned SCN containing specific allegations against the individual or against the Promoter and Director having control over the Company. In this case, it is seen that the Petitioner had control over RCOM and that the Annual Reports

of RCOM for the relevant years refers to the Petitioner as being the “Promoter” and “person having control” of RCOM.

45           In this context, it is necessary to reproduce Clause 4.4 and Clause 4.5.2 of the 2024 Master Directions. The same read thus:

**“4.4    *Penal Measures***

**4.4.1** *Persons / Entities classified and reported as fraud by banks and also Entities and Persons associated\* with such Entities, shall be debarred from raising of funds and / or seeking additional credit facilities from financial entities regulated by RBI, for a period of five years from the date of full repayment of the defrauded amount / settlement amount agreed upon in case of a compromise settlement.*

***\*[Footnote 21:***

*(a) if it is an entity, another entity will be deemed to be associated with it, if that entity is (i) a subsidiary company as defined under clause 2 (87) of the Companies Act, 2013 or (ii) falls within the definition of a ‘joint venture’ or an ‘associate company’ under clause (6) of section 2 of the Companies Act, 2013.*

*(b) in case of a natural person, all entities in which she / he is associated as promoter, or director, or as one in charge and responsible for the management of the affairs of the entity shall be deemed to be associated.]”*

*“4.5.2 The penal measures as details in Para 4.4 shall not be applicable to entities/ business enterprises after implementation of the Resolution Plan under IBC or aforesaid prudential framework.”*

46 It is thus evident from the aforesaid, that proceedings when initiated against the Company or Corporate Body, with a view to classify the account of that company as a fraud account and is declared as one, the Promoter/Directors who were in control of the affairs of the company would automatically be liable to penal measures and to be reported as fraud, more particularly, when the Promoter/Director are found to be in control of the company and responsible for the acts and omissions of the Company. The impugned order and the Annual Reports of RCOM on which reliance is placed by the Respondent No.1-Company in its impugned order clearly reveal that the Petitioner was the Promoter and the person having control of RCOM. It is pertinent to note that the role of the other directors, who were exonerated, was different and distinct from that of the present Petitioner, inasmuch as, they were non-executive directors and were not responsible for

the day-to-day functioning of RCOM. The impugned order is a reasoned order and as such, no infirmity can be found in the same.

47           Considering the aforesaid, there is no merit in the aforesaid petition. There is no infirmity in the impugned order dated 13<sup>th</sup> June 2025, passed by the Respondent-SBI, declaring the Petitioner's account as 'fraud'. Petition is accordingly dismissed and disposed of. There shall be no order as to costs.

**DR. NEELA GOKHALE, J.**

**REVATI MOHITE DERE, J.**