

Raman Gupta & Anr vs Reserve Bank Of India & Ors on 19 May, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3183/2020

RAMAN GUPTA & ANR.

.....Petitioners

Through: Mr. Amit Singh Chadha, Senior Advocate
with Mr. Arvind Kumar Gupta, Ms. Purti
Marwaha Gupta and Ms. Heena George,
Advocates.

versus

RESERVE BANK OF INDIA & ORS.

..... Respondents

Through: Mr. Ramesh Babu, Advocate for R-1.
Mr. Shashank Sharma and Mr. Rajeev
Aggarwal, Advocate for R-2.
Ms. Shiva Lakshmi, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 19.05.2020 CM APPL. 11065/2020 & CM APPL. 11066/2020

1. Allowed, subject to all just exceptions.

2. The applications stand disposed-off.

W.P.(C) 3183/2020 & CM APPL. 11064/2020

3. The hearing was conducted through video conferencing.

4. Issue notice.

5. The learned counsel named above accepts notice for the respondents.

6. Reply be filed within four weeks with an advance copy to the learned counsel for the parties.
Rejoinder, if any, be filed before the next date of hearing.

7. The petitioner is aggrieved by being categorised as "fraud" in terms of the RBI Circular dated

01.07.2016 without being granted due prior opportunity of being heard against any such proposed action.

8. Mr. Amit Singh Chadha, the learned Senior Advocate for the petitioner submits that while in the case of „wilful defaulter“ the Reserve Bank of India (RBI) Circular does contemplate an administrative hearing but in the case of fraud, no such hearing has been contemplated. He submits in similar pending cases, this court has prima facie found the said RBI Circular to be wanting and has accordingly stayed further proceedings where the accounts have been categorised as "fraud", without being accorded prior hearing. He refers to the order of this Court in Apple Sponge and Power Ltd. and Ors. vs. Reserve Bank of India and Anr. in WP. (C) 306/2019 dated 15.02.2019. The relevant paras are reproduced as under:-

"9. The contentions and counter-contentions notwithstanding, in my prima facie view there clearly appears to be something amiss inasmuch as 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.....

...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....

....15. Mr. Wali accordingly contends that there is no requirement of a show cause notice or hearing before declaring an account as „fraud“ in the afore-stated RBI Master Circular.....

... 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.....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..."

9. In the present case, Respondent No.2 is a lender to the extent of only 2% of the monies lent by consortium of banks. The lead bank being the State Bank of India (SBI). The latter appointed a Forensic Auditor, M/s M.K. Aggarwal & Co., Chartered Accounts, who after auditing submitted a report to the effect that there was nothing incriminating against the company nor was there any activity or transaction that would tantamount to a fraud in the accounts of the company. A copy of the said Forensic Report is stated to have been sent to all the lender banks. In a meeting of consortium of the banks/lenders on 27.02.2020, they decided to close the Forensic Auditor's Report and declared the account of the petitioner as "No Fraud". The said report was accepted by all the lenders including Respondent no. 2. The petitioner submits that in effect, once R-2 itself having accepted the decision of the consortium cannot hold the petitioner as a "fraud" in terms of the aforesaid RBI Circular. The learned counsel for R-2 submits that he would need to obtain instructions in this regard. Nevertheless, he agrees that a similar categorisation of „fraud has been stayed by this Court in WP. (C) 306/2019, as aforementioned, wherein it was, inter alia, ordered:

"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."

10. Mr. Chadha submits that in terms of the RBI Circular clause 8.12.2 (page 79), re-structuring of grant of additional facilities can be made in the case of RFA or fraud accounts. However, since 98% of the consortium of lenders have accepted the report of the Forensic Auditor as "No fraud", the aforesaid clause should not come in the way of exploring the possibility of re-structuring etc. In any case R-2 itself has accepted that they shall not take any adverse measures in terms of the impugned order.

11. List on 01.07.2020.

12. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsel through email.

NAJMI WAZIRI, J MAY 19, 2020/RW