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

% **Judgment reserved on : 26 September 2024**
Judgment pronounced on: 25 October 2024

\+ W.P.(C) 2765/2023 & CM APPL. 10636/2023

RATUL PURI .....Petitioner

Through: Mr. Vaibhav Mishra, Mr. Ekansh Mishra and Mr. Jayant Chawla, Advs.

versus

BANK OF BARODA .....Respondent

Through: Mr. Kush Sharma, Standing Counsel with Mr. Asiya Khan, Mr. Nishchaya Nigam and Mr. Vagmi Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner has invoked the extraordinary writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, 1950, seeking the following reliefs:

> "**(i)** pass a writ of mandamus and/or certiorari quashing the Impugned Action of the Respondent Bank by which it has arbitrarily, unfairly and unreasonably invoked the Fraud Circular against the Petitioner and declared his account as fraud;
> **(ii)** pass a writ of mandamus declaring that there existed no event of wilful default or fraud qua the account of MBSL, let alone one that can at all be attributed to the Petitioner; and
> **iii)** Pass such other orders as may be deemed fair and equitable in the facts of the case and in the interests of justice."

2. Shorn of unnecessary details, the case of the petitioner is that he

is the Chairman of Hindustan Power Group Private Limited, which operates 1200 MW[1] power plant and supplies electricity to three States *viz.*, State of Uttar Pradesh, State of Madhya Pradesh and State of Haryana. It is stated that in order to run its business, the company was engaged in negotiations with SBI[2] for availing certain loan facilities. To his shock, the petitioner discovered, through an email dated 22.02.2023 from the officers of the SBI, that his name appeared in the Central Fraud Registry[3] at the instance of the respondent/Bank of Baroda (*hereinafter referred as the respondent-bank)* with regard to the account of M/s. Moser Baer Solar Limited ["**MBSL**"]. The petitioner claims that the actions of the respondent-bank are in complete violation of principles of natural justice, and therefore, *void ab initio.* As regards the background leading to the aforesaid categorization, it is stated by the petitioner that his father had founded Moser Baer India Limited ["**MBIL**"] in the year 1983, which initially produced Time Recorder Units. Over time, MBIL diversified its product range, focusing on digital storage, including manufacture of floppy diskettes, and eventually CD[4]s and DVD[5]s, which company had a flourishing business from 1993-2005, but after 2005 suddenly with the change in technology, CDs/DVDs, started slowly becoming obsolete, and therefore, MBIL decided to diversify and enter into other business in the light of growing demands for alternate energy and information on global warming. Thus, MBIL decided to invest in

[1] Megawatt
[2] State Bank of India
[3] CFR
[4] Compact Disks

manufacturing of Solar Cells and Modules. Accordingly, two subsidiaries were found *viz.* M/s. Moser Baer Phot Voltaic Limited (presently known as 'Helios Photo Voltaic Limited') in 2005 and MBSL in 2007.

3. The petitioner further states that, at one point, MBIL's solar business valued at over US$ 1 billion in the year 2007, and there were several financial institutions which had made investments in the project. However, the global financial crisis in the year 2007, compounded by the Government of India's failure to curb dumping by certain foreign countries or to impose substantial duties, significantly impacted MBIL's financial stability and that of its subsidiaries. Consequently, in 2011-12, MBSL approached the Corporate Debt Reconstruction Cell of the RBI[6] and pending consideration of the Flash Report by the bank or consortium banks, a debtor-creditor agreement was entered into with the banks and debtor and in the meanwhile TEV[7] report was sought from an independent agency to a conduct stock audit of the company. Eventually CDR-EG[8], a Master Restructuring Agreement ["**MRA**"] and a Trust and Retention Agreement ["**TRA**"] were drawn, deliberated and signed between the company and the banks to put into effect that CDR package for the company.

4. It is also the case of the petitioner that due to certain differences with his father regarding business operations and his desire to explore

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[5] Digital Video Disks
[6] Reserve Bank of India
[7] Techno Economic Viability
[8] Corporate Debt Restructuring-Empowered Group

other projects independently, the petitioner resigned from his executive position at MBSL w.e.f. 30.04.2012, with the resignation formally recognized from 16.11.2012. This decision was intimated to the respondent-bank in various meetings, as reflected in the minutes of meeting dated 10.10.2012 and 22.03.2013 of the Joint Lenders Meeting. Additionally, the petitioner highlights that respondent-bank, along with other lenders, including PNB[9], insisted on obtaining his personal guarantee along with those of Mr. Deepak Puri and Mrs. Nita Puri. In response, MBSL issued a letter dated 30.03.2013 to all the banks, stating that the petitioner i.e. the Ratul Puri was no longer holding any executive position in the company and instead requested for submitting some other properties as collateral securities for the loans to be advanced.

5. To cut the long story short, the Flash Report of the MBSL for CDR was admitted on 24.05.2012, and the CDR-EG classified MBSL as Class- 'B' Borrower i.e., "*Corporate/promoters effected by external factors and also having weak resource, inadequate reasons and not having support of professional management*". It is submitted that, by way of the Flash Report, the banks, including the respondent-bank, were put to express notice and knowledge of the affairs of the MBSL and also details of the capital infusions, reasons for losses and decline. Following the formal admission of the Flash Report on 24.05.2012, the CDR-EG directed a stock audit and TEV studies, resulting in a TEV report dated 27.09.2012 by a reputed and independent firm i.e., M/s. Feedback Infra and a Stock Audit Report of MBSL on

[9] Punjab National Bank

29.08.2012 by another reputed firm M/s. Mehrotra and Mehrotra Chartered Accountants- both appointed by the consortium banks including the respondent-bank. The petitioner asserts that, based on the Stock Audit Report, as well as TEV report, the CDR-EG approved the FRS[10] in favour of MBSL on 21.01.2013, well after his resignation and exit from the Moser Baer Group of companies. It is stated that the FRS then led to the execution of an MRA dated 28.03.2013 (amended on 27.05.2014) and a TRA dated 05.06.2013 (also amended on 27.05.2014) between the MBSL and the banks, including the respondent-bank, all occurring after the petitioner's departure from the Moser Baer Group. The petitioner emphasizes that, during the aforesaid period, the banks, including the respondent-bank, did not identify any acts of fund diversion by the company, its directors, or promoters. Otherwise, they would have classified MBSL in the 'C' or 'D' category, which relates to events of wilful default.

6. The petitioner claims that, based on his inquiries, the CDR efforts began to decline from 26.10.2016 onwards due to the banks' decision to exit these revival efforts. In 2017, proceedings under Section 7 of the IBC[11] were initiated by the financial creditors of MBSL, which was admitted by the NCLT[12] on 14.11.2017. Subsequently, liquidation proceedings were initiated by the NCLT *vide* order dated 30.05.2019, appointing Mr Arvind Garg as Liquidator.

[10] Final Restructuring Scheme
[11] Insolvency and Bankruptcy Code, 2016
[12] National Company Law Tribunal

7. The petitioner subsequently received a Show Cause Notice ["**SCN**"] dated 13.03.2020 from the respondent *inter alia* alleging that during the relevant period as on 31.03.2015, 2018 and 2019, MBSL had defaulted on payments and had diverted/siphoned off funds, which were not used for the purposes for which they were financed. The petitioner duly replied to this notice through email dated 01.04.2020. However, to his surprise he received another SCN, dated 13.03.2020, on 30.07.2020, which he again responded *vide* reply dated 12.08.2020 *inter alia* bringing to the fore that he had resigned from the Board of Directors of MBSL w.e.f. 16.11.2012, whereby it was proposed to classify or categorize the petitioner as 'wilful defaulter' without providing any material/documents or information.

8. Suffice to state that petitioner submits that he challenged the Notice dated 31.10.2020 for a Personal hearing, which was scheduled for 19.11.2020, by filing W.P.(C) 8729/2020, whereby the Court *vide* order dated 06.11.2020, issued certain directions regarding the manner in which the hearing should be accorded to the petitioner by the respondent-bank. The said directions are not being reproduced herein as they are not relevant. In a nutshell, the hearing continued on the said matter before the Identification Committee of the respondent-bank. During the COVID-19 pandemic, the petitioner discovered that his name appeared as a 'wilful defaulter' on the website of TransUnion CIBIL Ltd., which led to spate of correspondence with the respondent-bank, as well as CIBIL. As the petitioner's name was not removed, he filed W.P.(C) 12737/2022 and this Court *vide* order dated 08.09.2022 disposed of the aforesaid writ petition, directing the

respondent-bank to sent an intimation to CIBIL for updating the said list by deleting the name of the petitioner from the list of Directors/suits filed accounts defaulter within a period of two weeks. In the said background, the petitioner refers to an email dated 22.02.2023 from SBI, whereby he was intimated about his classification and categorization as 'fraud' in the Central Fraud Registry. Despite his attempts to address this with the respondent-bank, he received no satisfactory response, prompting him to file the present writ petition.

9. The respondent-bank in its counter-affidavit through Mr. Vikas Mehra, Chief Manager, working with the respondent-bank, in the Stressed Assets Management Branch, New Delhi dated 30.10.2023 has come with the case that the company was sanctioned credit limit to the tune of Rs. 97 crores from the CFS Branch, New Delhi, in the year 2007 and on 14.10.2012, its account became NPA[13]; and forensic audit was conducted by M/s. Haribhakti & Company, which made the following revelations:

> "**a.** In terms of the RBI guidelines and in order to ensure that no leakage of revenue, the MBSL is allowed to operate and maintain accounts only with the banks under consortium members. The sale proceeds generated from the business/working capital funds lent were not deposited with the complainants/ lending institution! CDR lenders are were routed through banks outside the complainants/ lending institutions/ CDR lenders thereby indicating the fraudulent intentions for siphoning of funds.
> **b.** The MBSL instead of utilising an amount towards repayment of lenders' dues invested a sum of Rs. 696.51 crores in Helios Photovoltaic Limited, a related company, which had been booking losses since 2011-2012, Helios Photovoltaic Limited(hereinafter referred as "HPVL") is a group concern

[13] Non Performing Asset

and is being managed and looked after by related persons. Deepak Puri and Nita Puri arc the directors of the said company. The gross assets as on 31st March 2015 of Helios Photovoltaic Limited were only to the extent of Rs. 455.86 crorcs and as such investments were difficult to recover. There is no arrangement or consent of complainants/ lending institutions/ CDR lenders to the effect.

c. The MBSL has made an interest-free security deposit of Rs. 135.50 Crores to Moser Baur India Limited (MBL), a group concern for a lease rental agreement as per the Forensic Audit Report submitted at ours. These security deposits were on the much higher side as compared to the yearly lease rental paid for land building and utilities deposits and such security deposits ranged upto 58.82 times higher than an agreed annual rental.

d. The Lease rental income amounting to Rs. 142.69 Crores was booked by MBSL which lease rental relating to the utilities which were taken on finance lease from MB in 2010 and leased back as an operating lease to MBIL. The MBSL did not use the utilities taken on a finance lease from MBIL. It was immediately leased back as an operating lease to
MBIL.

e. On review of the agreement provided to the auditors, it was observed that 2 out of 9 agreements had expired before the review period. However, the expenses were booked against the expired agreement, which has impacted an amount of Rs.3. 16 crores.

f. That total supplier advance and loan were given by MBSL as of 31.03.2012 to the tune of Rs 25.60 Crores and as on 31.03.2015 to the tune of Rs 26.97 Crores. No adequate recovery steps have been taken against the doubtful advance and doubtful debts as before making provisions amounting to Rs. 26.24 Crores. The provisions for doubtful advance made during the audit period amounts to Rs. 18.12 Crores and provisions for doubtful debtor mode during the period amounts to Rs. 8.12 Crores.

g. The Forensic Auditor observed that the material has been purchased from and sold to HPVL amounting to Rs. 173.34 Crorcs and Rs. 93.47 Crores respectively the total purchase from HPVL were made 44.6% of the total purchase of MBSL 79.6% of such purchase from HPVL, were purchase of material which was also sold to HPVL The total sale to HPVL, was 15.59% of the total sale of MBSL 86.58% of such sales to HPVL was sales of material which was also purchased from HPVL."

10. It is stated in the counter-affidavit that the forensic report clearly highlighted that capital transactions by the Group concerned

were conducted without proper documentation and involved irrational investments. Consequently, based on these findings, both the companies MBIL and MBSL were classified as 'fraud' on 20.06.2019 and reported to the RBI on 08.07.2019. It is further pointed out that a complaint was preferred by the consortium of banks, including the respondent-bank, against the companies and their directors, alleging acts of fraud and cheating, resulting in wrongful gain to themselves and wrongful loss to the lenders. Subsequently, an FIR was registered bearing No. RC2232020A0002 on 25.06.2020.

11. The petitioner filed rejoinder to the aforesaid counter-affidavit which is dated 15.07.2024, in which it was brought out that the petitioner instituted W.P.(C) 4128/2023 titled as 'Ratan Puri v. Bank of Baroda' assailing the order dated 23.03.2023 passed by the Review Committee of the bank, confirming the order passed by the Identification Committee declaring the petitioner as 'wilful defaulter' under the Master Circular on Willful Defaulter, 2015 issued by the RBI. It is pointed out that the aforesaid writ was decided *vide* judgment dated 01.03.2024 in favour of the petitioner and categorization of the petitioner as 'wilful defaulter' was struck down/quashed for the same being not only in derogation to the Master Circular of the RBI but also falling fowl of decision in the case of **State Bank of India v. Rajesh Aggarwal**[14]. Likewise, another writ was filed bearing W.P.(C) 9491/2023 whereby similar action by the PNB was struck down *vide* judgment dated 29.02.2024.

ANALYSIS & DECISION:

12. Having heard short submissions advanced by the learned counsels for the parties and on perusal of the record, at the outset, the impugned intimation passed by the respondent-bank dated 20.06.2019 cannot be sustained in law. The reasons are not far to seek.

13. First things first, the counter-affidavit by the respondent-bank contains no indication that any SCN was issued to the petitioner proposing his classification or categorization as 'fraud', nor was he informed about the uploading of his name on the Central Fraud Registry of the RBI. There is no *iota* of an averment that any relevant documents, including the copy of the forensic audit report, were ever supplied to him. Evidently, no hearing was afforded to the petitioner, nor was he ever communicated of the decision of the respondent-bank dated 20.06.2019.

14. In the *causa célébere* ***Rajesh Aggarwal (supra)***, the Supreme Court was dealing with a matter where the petitioner had been classified or categorized as 'fraud' under the same 'Master Directions on Fraud' by the RBI and after examining a plethora of case laws on the subject, it was held that the principles of natural justice have to be read, while interpreting and enforcing 'the Master Directions on Fraud' by the RBI. It would be expedient to reproduce the relevant paragraphs in the Judgment by the Supreme Court on the subject in *toto* to understand the whole gamut of issues. It was held as under:

> **"49.** Clause 8.12 of the Master Directions on Frauds deals with the penal measures for borrowers. Clause 8.12.1 provides that penal provisions as applicable to wilful defaulters would apply to fraudulent borrowers, including the promoters and Directors of the

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[14] (2023) 6 SCC 1

borrower company. The consequences that apply to a wilful defaulter under the Master Circular on Wilful Defaulters have been culled out in *Jah Developers* [*SBI* v. *Jah Developers (P) Ltd.*, (2019) 6 SCC 787 : (2019) 3 SCC (Civ) 412] : (SCC p. 795, para 9)

> "*9.* … serious consequences follow after a person has been classified as a wilful defaulter. These consequences are as follows:
> (*a*) No additional facilities to be granted by any bank/financial institution [Para 2.5(*a*)].
> (*b*) Entrepreneurs/Promoters would be barred from institutional finance for a period of 5 years [Para 2.5(*a*)].
> (*c*) Any legal proceedings can be initiated, including criminal complaints [Para 2.5(*b*)].
> (*d*) Banks and financial institutions to adopt proactive approach in changing the management of the wilful defaulter [Para 2.5(*c*)].
> (*e*) Promoter/Director of wilful defaulter shall not be inducted by another borrowing company [Para 2.5(*d*)].
> (*f*) As per Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot be a resolution applicant."

50. In addition to the above consequences, borrowers are also liable to suffer the following consequences under the Master Directions on Frauds:

50.1. No restructuring may be made in the case of an RFA or fraud accounts (Clause 8.12.2).

50.2. No compromise on settlement involving a fraudulent borrower is allowed unless the conditions stipulate that the criminal complaint will be continued (Clause 8.12.3).

50.3. The above consequences show that the classification of a borrower's account as fraud under the Master Directions on Frauds has difficult civil consequences for the borrower. The classification of an account as fraud not only results in reporting the fact to investigating agencies, but has other penal and civil consequences as specified in Clauses 8.12.1 and 8.12.3.

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 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.

62. Classification of a borrower's account as fraud has the effect of preventing the borrower from accessing institutional finance for the purpose of business. It also entails significant civil consequences as it jeopardises the future of the business of the borrower. Therefore, the principles of natural justice necessitate giving an opportunity of a hearing before debarring the borrower from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds. The action of classifying an account as fraud not only

affects the business and goodwill of the borrower, but also the right to reputation."

15. Thus, it was held by the Supreme Court that classification of a borrower's account as 'fraud' has serious consequences inasmuch as such classification or categorization would prevent the borrower from accessing institutional finance for running their business. There is no gainsaying that the civil consequences jeopardize the future of the business of the borrower, and the principles of natural justice necessitate providing an opportunity for a hearing before declaring the borrower ineligible to access institutional finance under Clause 8.12.1 of the Master Directions on Frauds. Lastly, we may also refer to the following conclusions, which were drawn in ***Rajesh Aggarwal (supra)***:

> **"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 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."

16. In view of the foregoing discussion, reverting back to the instant matter, at the cost of repetition, none of the tenets of the principles of natural justice were adhered to in the present matter before passing the impugned order dated 20.06.2019 classifying the petitioner as 'fraud'. Therefore, without further ado I find that the present writ petition should be allowed.

17. Accordingly, the present writ petition is allowed and the impugned order dated 20.06.2019 passed by the respondent-bank and the consequential action declaring, classifying or categorizing the petitioner as 'fraud' is hereby set aside/quashed. Further, in view of the decision of the Co-ordinate Bench in the aforesaid two writ petition *viz.*, W.P.(C) Nos. 9491 of 2023 and 4128 of 2023, it is also directed that no grounds ever existed for declaring, classifying or categorizing the petitioner as 'fraud' on account of non-payment of institutional loans on the part of the MBSL.

18. Resultantly, the respondent-bank is directed to take appropriate measures to ensure that the name of the petitioner classified as 'fraud' is removed from the Central Fraud Registry within 15 days from today.

19. The present writ petition along with pending application stands disposed of. The parties are left to bear their own costs.

DHARMESH SHARMA, J.

October 25, 2024
Sadiq