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

% *Judgment Delivered on: 08.09.2025*

\+ **W.P.(C) 274/2023**

AVANTHA HOLDINGS LIMITED & ANR. .....Petitioners

Through: Mr. Krishnan Venugopal, Sr. Adv. with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta and Mr. Sakshit Bhardwaj, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Sandeep Kumar Mahapatra, CGSC with Mr. Tribhuvam, Adv. for R-1/UOI.
Mr. Sanjeev Sagar, Sr. Adv. with Ms. Nazia Parveen and Mr. Akash Gahlot, Advs. for R-3/SBI.
Mr. Malak Bhatt, Ms. Neeha Nagpal and Ms. Nitya Prabhakar, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The writ petition, as initially filed, sought the relief of declaration to the effect that report dated 27.04.2020 [hereafter 'Pipara Report'], prepared by respondent no.4/Pipara & Co. [hereafter 'Pipara'], commissioned and prepared under the aegis of respondent no.3/State Bank of India (SBI) is void and cannot be relied upon being in complete breach of the principles of natural justice. The petitioners also sought setting aside and quashing of the Pipara Report.

2. During the pendency of present petition, respondent no.3/SBI had

brought on record the declaration as fraud dated 29.05.2020 under Reserve Bank of India (Frauds classification and reporting by commercial banks and select FIs) Directions 2016 [hereafter 'Master Directions on Frauds'] in respect of the account of CG Power and Industrial Solutions Ltd. [hereafter 'CG Power']. Petitioners sought to insert the prayer seeking quashing and setting aside of the said declaration of the account of CG Power to the extent it concerns the transactions undertaken during the period when petitioners were promoters and directors of CG Power.

3. The case set out in the present petition is that in the year 2017, KKR Consortium [hereafter 'KKR'] lent an amount of Rs.900 crores to petitioner no.1 and the same was secured by a pledge of 22% shares of CG Power where petitioner no.1 had 34% of shareholding.

4. On 08.03.2019, KKR invoked the pledge of about 10.8% shares of CG Power, thereby acquiring the shares of CG Power. The balance 10.8% shares of CG Power were invoked on 20.03.2019.

5. Simultaneously, on 08.03.2019 itself, an 'Operations Committee' was formed consisting of Mr. Narayan Seshadri (also appointed as an Additional and Non-Executive Independent Director at CG Power), Mr. K.N. Neelkant and Mr. Sudhir Mathur selected by KKR to focus on operational improvement and restructuring. On the same very day, petitioner no.2 resigned as Non-Executive Director of CG Power.

6. Subsequently, on 24.04.2019, Operations Committee of CG Power appointed Vaish Associates, Advocates to investigate alleged irregularities with regard to certain transactions of CG Power. Vaish Associates in turn appointed Deloitte to conduct an accounting-focused investigation. Incidentally, Deloitte was also the global auditor of KKR. Deloitte submitted

its report to Vaish Associates, Advocates on 05.08.2019 and Vaish Associates submitted the same to CG Power on the same day.

7. Sequel to above, CG Power on 19.08.2019 made a disclosure to Bombay Stock Exchange (BSE) alleging certain irregularities and understatement of related party transactions in the books of accounts of CG Power for the period 2015-19, based on the analysis of the Vaish Report by Mr. Narayan Seshadri and Mr. Sudhir Mathur. Furthermore, on 22.08.2019, a meeting of the lenders of CG Power was convened wherein Mr. Mathur, representing CG Power, reaffirmed the veracity of the disclosure.

8. On 30.08.2019, a circular resolution initiated by Mr. Mathur for removal of Mr. Gautam Thapar as Chairman of CG Power Board was circulated and approved. Subsequently, the lenders were informed about the change in the management of CG Power.

9. The lenders, thereafter, decided to initiate a Resolution Process as per the guidelines contained in RBI circular dated 07.06.2019 and the date of default was fixed as 27.08.2019. A subsequent joint lenders meeting was held on 27.09.2019 wherein it was apparently decided that SBI would appoint a forensic auditor to conduct forensic audit of CG Power for the period 01.04.2015 to 31.08.2019.

10. Accordingly, SBI appointed respondent no.4/Pipara as the Forensic Auditor, and on 30.09.2019, the account of CG Power was ‘Red Flagged’ on the basis of disclosures made to SBI *vide* disclosure dated 19.08.2019.

11. In the meanwhile, Securities and Exchange Board of India (SEBI) on 17.09.2019 had directed BSE to appoint an independent auditor for conducting a detailed forensic audit of books of accounts of CG Power for the Financial Years 2015-19. Accordingly, BSE *vide* its letter dated

10.10.2019 assigned MSA Probe Consulting Pvt. Ltd. to conduct forensic audit of CG Power for the relevant period.

12. MSA Probe Consulting Pvt. Ltd. submitted its final forensic audit report to SEBI on 18.03.2020 thereby highlighting its observation on each of the transactions. Likewise, forensic auditor Pipara, on 27.04.2020, submitted its final report to SBI.

13. A joint lenders meeting was convened wherein the Pipara Report was tabled. It was informed to lenders that as per the Report, conclusion drawn was that fraud had been committed. The report was adopted by majority of lenders. Subsequently, respondent no.3/SBI classified the account of CG Power as fraud *vide* impugned resolution dated 29.05.2020, based on forensic audit conducted by M/s Pipara & Co.

14. Later, on a complaint filed by SBI, CBI registered FIR dated 22.06.2021 against petitioner no.2 and others under Section 120B read with Sections 406, 420, 467, 468, 471, 477A IPC and Section 13(2) read with Section 13(1)(d) of PC Act, 1988.

15. The petitioners, thereafter, filed a writ petition being W.P.(C) 12335/2021 seeking issuance of writ of *mandamus* directing respondent nos.3 and 4 to provide a copy of the said report dated 27.04.2020 to petitioners. This Court *vide* order dated 07.03.2022 allowed the writ petition and directed respondent no.3/SBI to supply a copy of the said report to petitioners. The same was subsequently complied with and copy of the report was furnished to petitioners.

16. Pursuant to the above, petitioners filed the present writ petition in January, 2023, *inter alia*, praying for declaration to the effect that Pipara Report is void and further seeking to quash and set aside the same.

17. The present writ petition, as noted above, was sought to be amended to lay a challenge against impugned declaration of account of CG Power as fraud. The reason put forth in the application seeking amendment was that during the pendency of writ petition, petitioners were made aware that the account of CG Power has been declared as fraud when respondent no.3/SBI had raised an objection regarding the maintainability of writ petition on the ground that petitioners had not challenged the declaration of fraud dated 29.05.2020, which was consequent to the forensic audit report by respondent no.4/Pipara.

18. The application seeking amendment of writ petition was allowed by this Court on 10.11.2023.

19. Thus, petitioners in the present petition essentially assail the Pipara Report, as well as, SBI's decision to declare CG Power's account as fraud.

20. Mr. Krishnan Venugopal, the learned Senior Counsel appearing on behalf of the petitioners assails the forensic audit report, *inter alia*, on the following grounds:

(i) At the time of forensic audit and fraud declaration, the borrower i.e. CG Power was under a new management.

(ii) The new management, after completely ousting the old management, had complained to the lenders in September, 2019 about the functioning of the old management during the period 01.04.2014 to 31.08.2019.

(iii) Only the new management of borrower CG Power was involved in the preparation of Pipara Report.

(iv) On the other hand, the information and documents actually given by the old management were rejected by respondent no.4/Pipara on the ground that only CG Power was required to be heard.

21. To buttress his contention, Mr. Venugopal has invited attention of the Court, *inter alia*, to the following excerpts of the report:

> "*This document has been prepared by M/s. Pipara & Co LLP based on the analysis of various records, information, details, documents etc. provided to us by the CG PISL. ....*
>
> *xxx xxx xxx*
>
> *On 5th February, 2020, after incorporating all the changes, based on comments/evidences provided by various lenders, the report of the Forensic Audit of CG PISL was shared with the present management. ....*"

22. He submits that in regard to the information provided by M/s Bharucha and Partners, Advocates and Solicitors for and on behalf of their client Mr. Gautam Thapar, following observations have been made in the Pipara Report, which show that the documents provided by Mr. Gautam Thapar, erstwhile Chairperson of CG Power, were not considered only on the ground that the same were not received through CG Power:

> *"We have looked into the information provided by Mr. Gautam Thapar through Bharucha & Partners, Advocates & Solicitors, as per their letter dated 6th February, 2020. At the outset we are not in a position to rely upon the said information/submission/evidences, as the same has been supplied in the individual capacity of Mr. Gautam Thapar and same has not received through the Company. Further all these papers/correspondence is pertaining to investigation carried out by the SEBI and therefore, being the matter already under investigation, it may not be appropriate for us to enter into the same as we do not have any authority to deal with the same nor legally bound, as it is beyond our scope of works."*

23. Likewise, the documents furnished by petitioner no.2 were not considered in the Pipara Report as the same were not given through CG Power. Mr. Venugopal has also drawn attention of the Court to the observations in the report to the effect that it is the current management that

had provided all the available information to the auditors.

24. He submits that the current management cooperated with Pipara & Co. (forensic auditors) to the extent it suited them. He contends that the new management had every incentive to ensure that the ousted promoter i.e. petitioner no.1 and directors such as petitioner no.2, were found guilty of wrongdoing by providing incorrect and selective information.

25. In support of his contention, he has drawn attention of the Court to the following observations made in paras 3 and 4 of Chapter 7 of the report:

> *"(3) The identification of the issues in the report is mainly based on the review of records, sample verification of documents / transactions and physical observation of the events. As the basis of sample selection is purely judgmental in view of the time available, the outcome of the analysis may not be exhaustive and representing all possibilities, though we have taken reasonable care to cover the major eventualities. It is pertinent to state that the report has been prepared without any cooperation from the borrower in terms of providing us with accounting data, records or vouchers thereof.*
>
> *(4) All confidential documents like board minutes, salary register, e-mails, legal documents for the loan facilities etc. forming part of the report are provided by the company and therefore the report is solely for the information of Bank (forming part of consortium) and should not be used, circulated, quoted or otherwise referred to for any other purpose, nor included or referred to in whole or in part in any document without our prior written consent."*

26. He submits that Pipara was discharging statutory function in preparing the forensic audit report, in view of Clauses 8.9.4 and 8.9.5 of RBI's Master Directions on Frauds, which has statutory status. Thus, Pipara acted in complete breach of principles of natural justice when it refused to take the submissions of petitioners, and the documents furnished by them, into

account even though the Pipara Report specifically holds petitioner no.2 and Chairman of petitioner no.1, Mr. Gautam Thapar responsible for wrongdoings identified in the said Report.

27. He places reliance on the decision of ***State of Bihar v. L.K. Advani, (2003) 8 SCC 361***, to contend that principles of natural justice must be followed when the report has serious consequences for the reputation of an individual. He submits that the report of forensic auditor has arrived at conclusions of alleged fraud and siphoning of funds, that adversely affects the reputation of an individual or entity.

28. He submits that for fulfilling the requirement of principles of natural justice, petitioners ought to have been allowed to participate during the preparation of forensic audit report. In this regard, reliance has been placed by Mr. Venugopal on the decision of ***SBI v. Rajesh Aggarwal, (2023) 6 SCC 1***.

29. He submits that a forensic auditor 'is an authority' whose report is amenable to challenge, as held by the Division Bench of this Court in ***Uday J. Desai & Ors. v. Union of India & Ors., 2023 SCC OnLine Del 3196***.

30. Elaborating further, he submits that if a forensic report is amenable to challenge on merits, there is no reason that it cannot be challenged on the ground that it has been prepared in violation of principles of natural justice.

31. He submits that the said report is also vitiated because it admits that it did not take into account several key documents which were furnished by petitioner no.2, as well as, Chairman of petitioner no.1 namely, Mr. Gautam Thapar.

32. Lastly, he submits that SBI ought not to have chosen Pipara as the forensic auditor because SBI, in its counter-affidavit itself has admitted, as a

matter of record, the assertions made by petitioner to the effect that numerous criminal cases had been lodged against Pipara.

33. Insofar as declaration of fraud is concerned, Mr. Venugopal submits that the same is also vitiated inasmuch as principles of natural justice were not complied with even at subsequent stage either. Elaborating on his submission, he submits that neither any show cause notice was given to petitioners nor were they afforded any personal hearing by respondent no.3/SBI before declaring CG Power's account as fraud for the period when petitioners were in-charge of its affairs.

34. He submits that declaration of fraud is also vitiated because it relies primarily/solely on Pipara Report, which was prepared in violation of principles of natural justice insofar as the petitioners are concerned.

35. *Per contra*, Mr. Sanjeev Sagar learned Senior Counsel appearing on behalf of respondent no.3/SBI submits that the petitioners in the present case do not have the locus to challenge the declaration of fraud.

36. Elaborating on his submission, he invites attention of the Court to the impugned declaration dated 29.05.2020 to contend that the said decision for declaration of fraud is in relation to CG Power. The account declared as fraud is of CG Power and not of the petitioners. He submits that even the forensic audit report concerns the account of CG Power.

37. He further submits that the present writ petition has been filed by the petitioners in their individual capacities. Neither has CG Power been made a party, against whom the impugned declaration has been made, nor any authorization in their favor by CG Power has been placed on record.

38. He contends that in absence of any authorization from the company itself, the petitioners herein cannot challenge the Pipara Report or the

declaration of fraud. He submits that members or directors or ex-management cannot speak for the company in individual capacity without due sanction from the company itself. In this regard he places reliance on the judgment of the Hon'ble Supreme Court in ***State Bank of Travancore v. Kingston Computers India Private Limited, (2011) 11 SCC 524***.

39. With regard to the forensic audit report by Pipara, Mr. Sagar submits that the said audit was done in respect of the account of CG Power. CG Power, being the borrower, all documents submitted by the said company has been taken into consideration.

40. He further submits that Pipara has duly given reasons for considering certain documents and not considering others. It has explicitly been stated by Pipara that the documents submitted by petitioners have not been taken into account for the reason that the same were not sent through proper channels and thus, there was a cloud on reliability of said documents. Since the proceedings initiated were against CG Power, third parties such as the petitioners could not be allowed to interfere.

41. He submits that it is apparent that there are *inter se* disputes between the current management of CG Power and the erstwhile management which includes the petitioners, however, the appropriate forum for ventilating such issues is the learned NCLT and not this Court. In this regard, he submits that the parties are already contesting before learned NCLT.

42. Mr. Sagar contends that respondent no.3/SBI had no role in the preparation of the forensic audit report. He invites attention of the Court to the Clauses 8.9.4 and 8.9.5 of the Master Directions on Frauds. He further places reliance on the decision of the Hon'ble Supreme Court in ***Rajesh Agarwal*** (supra), particularly para 98.6 to contend that the stage of personal

hearing comes after the audit report has been submitted. Further, he submits that even personal hearing is only granted to the borrower whose account is under scrutiny.

43. Lastly, Mr. Sagar submits that the account of CG Power was 'Red Flagged' on 30.09.2019, respondent no.4/Pipara submitted its report on 27.04.2020, account of CG Power was declared as fraud on 29.05.2020 and FIR in relation to the same was registered on 22.06.2021. The said proceedings cannot now be challenged, at a belated stage, by relying upon the subsequent judgment of the Hon'ble Supreme Court in ***Rajesh Agarwal*** (supra), seeking retrospective application of the law and disrupting already concluded proceedings.

44. Supporting the stand of respondent no.3/SBI, Mr. Malak Bhatt, learned counsel appearing on behalf of respondent no.4/Pipara submits that Pipara was merely discharging the professional mandate as a forensic auditor in accordance with Clauses 8.9.4 and 8.9.5 of the RBI's Master Directions on Frauds.

45. The role of respondent no.4 was limited to conducting a fact-finding exercise and submitting a report to the lenders for the specified financial period with regard to CG Power. He submits that no statutory or adjudicatory function has been performed by respondent no.4 and thus, principles of natural justice are not attracted.

46. In support of his contention, he places reliance on ***Rajesh Agarwal*** (supra), particularly paragraphs 95 and 98.6 wherein obligation for affording fair hearing has been cast only upon the lending banks before classifying an account as fraud.

47. He further submits that the forensic audit report is only a professional

opinion based on the examination of books of account, documents and other materials provided by CG Power's management.

48. Referring to the decisions of this Court in ***Ratul Puri v. Punjab National Bank, 2024 SCC OnLine Del 1412*** and ***Colgate Palmolive India (P) Ltd. v. Union of India, 1979 SCC OnLine Del 242***, he submits that a forensic audit report is merely evidentiary in nature and does not have any independent legal effect unless relied upon by a competent decision-making authority. He therefore, submits that respondent no.4 was under no obligation to provide personal hearing to the petitioners as the consequences, as alleged by them, are result of the independent decisions taken by the banks or investigative agencies. The legal consequences followed not due to any acts of Pipara, but by the competent authorities in exercise of their statutory functions.

49. As regards non-consideration of the documents submitted by petitioners, Mr. Bhatt submits that the scope, duration and terms of engagement for the forensic audit of CG Power were settled by the lenders' consortium.

50. He submits that the documents and information received from CG Power through the authorized representatives were considered and taken into account, however, the submissions of the petitioner no.2 and Mr. Gautam Thapar were not relied upon for preparation of the audit report because the same were furnished by the individuals in their personal capacity and not as appointed representatives of CG Power. He submits that aforesaid reason has duly been recorded in the covering letter as well.

51. Lastly, Mr. Bhatt vehemently denies the allegations and reference of past criminal complaints against Pipara. He argues that such a contention is

untenable as the alleged FIRs were quashed by the Hon'ble Gujarat High Court *vide* judgment passed in ***Naman Gyanchand Pipara v. State of Gujarat, 2023 SCC OnLine Guj 3182***.

52. In rejoinder, Mr. Venugopal submits that the fraud declaration mainly concerns petitioners. Both petitioner no.1, as promoter entity of CG Power, and petitioner no.2, as its director, have faced serious consequences on account of CG Power's account being declared fraud, therefore petitioners have *locus* to challenge the Pipara Report, as well as, the declaration of fraud.

53. Elaborating further, he submits that in terms of Clause 8.12 of the Master Directions on Frauds, not only fraudulent borrower but the promoters and directors of the borrower company suffer penal consequences, which includes denial of institutional finance to promoter entities and debarment of directors from being inducted as directors in borrower companies. Further, the FIR dated 22.06.2021 arising out of SBI's criminal complaint attributes specific roles to both petitioners.

54. He further submits that this Court, in W.P.(C) No. 12335/2021, had directed respondent no.3/SBI to supply a copy of the Pipara Report thereby recognizing the *locus* of the petitioner. He contends that it has already been held that the petitioners have the right to receive a copy of the report, therefore, it cannot be said that they have no *locus* to challenge it.

55. Refuting the submissions of Mr. Sagar, Mr. Venugopal submits that the very fact that new management of CG Power has not challenged the declaration of fraud shows that it is only the petitioners who have been affected by the declaration of fraud.

56. As regard to the contention that the law laid down in ***Rajesh Agarwal***

(supra) cannot be applied retrospectively, he submits that it is trite law that judgment of a court 'declares' the law as it always stood and thus, should apply retrospectively, unless stated otherwise by the said court. He submits that nowhere in ***Rajesh Agarwal*** (supra) has it been said that the law declared therein shall apply prospectively.

57. On the aspect of delay, it is submitted that challenge to Pipara Report could only be laid by the petitioners in 2023 since respondent no.3/SBI had refused to make the Pipara Report available to the petitioners. The same was obtained pursuant to the order dated 07.03.2022 of this Court. Furthermore, declaration of fraud was never communicated to the petitioners. The same has been challenged in the present petition by way of amendment after it was brought on record by SBI on 31.10.2023.

58. Having heard the learned counsels for the parties, the issues that arise for consideration of this Court in the present case can succinctly be formulated in the form of following questions:

a. Whether the forensic audit report, prepared under Clauses 8.9.4 and 8.9.5 of RBI's Master Directions on Frauds, can be challenged on the ground of violation of principles of natural justice?
b. Whether petitioners have *locus* to challenge the declaration of the borrower company's account as fraud in their individual capacity?

59. To find an answer to the first question, apt would it be to refer to Clauses 8.9.4 and 8.9.5 of the Master Directions on Frauds which are reproduced hereinunder for ready reference:

> *"8.9.4 The initial decision to classify any standard or NPA account as RFA or Fraud will be at the individual bank level and it would be the responsibility of this bank to report the RFA or Fraud status of the account on the CRILC platform so that other banks are alerted.* ***In case it is decided at the individual***

bank level to classify the account as fraud straightaway at this stage itself*, the bank shall then report the fraud to RBI within 21 days of detection and also report the case to CBI/Police, as is being done hitherto. Further within 15 days of RFA/Fraud classification, the bank which has red flagged the account or detected the fraud would ask the consortium leader or the largest lender under MBA to convene a meeting of the JLF to discuss the issue. The meeting of the JLF so requisitioned must be convened within 15 days of such a request being received.* ***In case there is a broad agreement, the account should be classified as a fraud****;* ***<u>else</u>*** ***based on the majority rule of agreement amongst banks with at least 60% share in the total lending, the account should be red flagged by all the banks and <u>subjected to a forensic audit commissioned or initiated by the consortium leader</u>*** *or the largest lender under MBA. All banks, as part of the consortium or multiple banking arrangement, shall share the costs and* ***<u>provide the necessary support for such an investigation</u>****.*

8.9.5 The forensic audit must be completed within a maximum period of three months from the date of the JLF meeting authorizing the audit. ***Within 15 days of the completion of the forensic audit, the <u>JLF shall reconvene and decide on the status of the account</u>, either by consensus or the majority rule as specified above.*** *In case the decision is to classify the account as a fraud, the RFA status shall be changed to Fraud in all banks and reported to RBI and on the CRILC platform within a week of the said decision. Besides, within 30 days of the RBI reporting, the bank commissioning/ initiating the forensic audit should lodge a complaint with the CBI on behalf of all banks in the consortium/MBA.* ***For this purpose, if the bank initiating the forensic audit is a private sector bank, the complaint shall be lodged with the CBI by the PSU bank with the largest exposure to the account in the consortium/MBA.*** *If there is no PSU bank in the consortium / MBA or it is a solo bank lending by a private sector bank/foreign bank, the private bank/foreign bank shall report to the Police as per extant instructions. This would be in addition to the complaint already lodged by the first bank which had detected the fraud and informed the consortium/MBA."*

(emphasis supplied)

60. A reading of the aforesaid clauses reveals that initiation or commission of a forensic audit is not a mandatory pre-condition while taking decision of red flagging an account or even declaring it as fraud. It is the discretion of the lender bank(s), or the Joint Lender's Forum (JLF) either to straightaway classify the account as fraud when such fraud is detected or else they may commission or initiate forensic audit for investigating into the alleged discrepancies and possible fraud with regard to the loan account(s). The scheme of the clauses also suggests that the purpose for commissioning an audit is purely investigative.

61. Clearly, Clauses 8.9.4 and 8.9.5 are enabling provisions that allow the banks to commission a forensic audit, if the need so arises, for investigating further into the matter and collect evidence in order to assist in arriving at a decision. Notably, the power to declare an account as fraud lays solely with the banks and not the auditors. The auditors would merely investigate the books of accounts, relevant documents and information available, and convey an expert opinion for the benefit of the adjudicating authority.

62. Thus, forensic audit is only a fact-finding exercise, and it can, at best, only be considered as piece of evidence. Reference in this regard may be had to the decision of this Court in ***Ratul Puri*** (supra) wherein relying upon the decision of Calcutta High Court in ***Prashant Bothra and Anr. v. Bureau of Immigrations and Ors.***[1], although in the context of declaration of wilful defaulter, it was observed that forensic audit report is merely opinion of an expert, which is rendered based on several disclaimers. Therefore, a forensic audit report cannot be held to be conclusive proof of the allegations made

[1] 2023 SCC OnLine Cal 2643

against the auditee without there being independent application of mind by the lender bank(s). The relevant paras of the decision reads thus:

> *"109. From a reading of the orders passed by the Identification Committee and the Review Committee, it is evident that the respondent Bank attributed acts of wilful default to the petitioner only on the basis of the forensic audit report. The question which arises at this juncture is whether the observations made in the forensic audit report can be the sole basis for the respondent Bank to conclude an event of wilful default.*
>
> *110. The nature of the forensic audit report in respect of a company is discussed by the Calcutta High Court in Prashant Bothra v. Union of India.* ***It was held that a forensic audit report, at best, is a piece of evidence in liquidation proceedings, and is in no manner a conclusive proof of any illegality committed under a law. The forensic audit report is merely an opinion of the author, which is based on several disclaimers and it cannot be a conclusive proof of its observations.*** *The relevant observations are reproduced as under: (SCC OnLine Cal paras 21-22)*
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> > *"21. The very premise of the request was a forensic audit report allegedly authored by a particular concern. The said report, at best, is a piece of evidence in the liquidation proceeding and is in no manner conclusive proof of evidence of any illegality committed by any entity. In fact, it is common experience that each and every such forensic audit report contains several disclaimers, restricting the operation of the same to the proceeding in which they are filed, as well as confined to the impression of the authors thereof on the basis of the documents which are available to them.*
> >
> > *22. Under no stretch of imagination can such a report be conclusive proof of the allegations against the petitioners."*
>
> *111. This Court is inclined to agree with the aforesaid proposition of law.* ***Even under the Evidence Act, 1872, the opinion of an expert witness under Section 45 is not a***

> ***conclusive proof. It is subject to cross-examination and the opinion and conclusions of an Expert are subject to challenge.*** *In the present scheme of things, the master circular casts a specific obligation on the respondent Bank to act independently and objectively under Clause 2.1.3 read with Clause 2.5 as discussed above.* ***It would, therefore, be unsafe if lender banks start to declare borrowers as wilful defaulter merely on the basis of observations made in the forensic audit report without there being an independent application of mind.*** *The lender banks must follow the mandate of Clause 2.1.3 read with Clause 2.5 of the master circular and independently find acts of wilful default which are "intentional, deliberate and calculated" and the said conclusion should be based on "objective facts and circumstances of the case". Any other view would lead to consequences where mere cases of default would be categorised as acts of wilful default under the master circular. The master circular is not to be invoked in every case of default but only when the default is wilful default as construed under the scheme of the master circular."*
>
> (emphasis supplied)

63. Under the Master Directions on Frauds, the decision making process of the lender bank(s) is administrative in nature and they have to form an informed opinion.[2] The forensic audit is, hence, commissioned in aide of the process of making such an informed decision, therefore, at the cost of repetition, it is reiterated that said report is merely a piece of evidence before the lender bank(s) or JLF for their consideration before declaring an account as fraud.

64. At this stage, reference may advantageously be had to the following

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[2] Rajesh Agarwal (supra), SCC p. 29, para 40:

"40. The process of forming an informed opinion under the Master Directions on Frauds is administrative in nature. This has also been acceded to by RBI and lender banks in their written submissions. It is now a settled principle of law that the rule of audi alteram partem applies to administrative actions, apart from judicial and quasi-judicial functions. It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity."

paras from ***Rajesh Agarwal*** (supra):

> *"77. RBI and lender banks have further submitted that the requirement of natural justice is already fulfilled under the Master Directions on Frauds as the borrower is allowed to participate during the preparation of the forensic audit report. On the other hand, the borrowers have submitted that the Master Directions do not expressly provide for participation of the borrowers during forensic audit report.* ***It was also submitted that merely seeking inputs of borrowers during the preparation of the forensic audit report does not satisfy the requirements of the principles of natural justice as the borrowers should also be heard before classifying them as fraud.***
>
> *78. In Keshav Mills Co. Ltd. v. Union of India, this Court was dealing with the issue of a takeover of a company by the Government under the IDR Act, 1951 after completion of a full investigation into the affairs of the company.* ***The issue was whether the report of an investigating body appointed by an administrative authority should be made available to the person concerned before the authority takes a decision upon that report.*** *While deciding to lay down a general principle, this Court observed that there may be certain situations where an investigation report is required to be furnished to the party concerned to make an effective representation about the proposed action: (SCC p. 393, para 21)*
>
> > *"21. In our opinion it is not possible to lay down any general principle on the question as to* ***whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report.*** *The answer to this question also must always depend on the facts and circumstances of the case. It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. Whether the report should be furnished or not*

must therefore depend in every individual case on the merits of that case. We have no doubt that in the instant case non-disclosure of the report of the Investigating Committee has not caused any prejudice whatsoever to the appellants."

(emphasis supplied)

79. In Swadeshi Cotton Mills, this Court held that ***a company is entitled to an opportunity to explain the evidence collected against it and represent why the proposed action should not be taken****: (SCC p. 707, para 85)*

"85. The contention does not appear to be well founded. Firstly, this documentary evidence, at best, shows that the Company was in debt and the assets of some of its "units" had been hypothecated or mortgaged as security for those debts. Given an opportunity the Company might have explained that as a result of this indebtedness there was no likelihood of fall in production, which is one of the essential conditions in regard to which the Government must be satisfied before taking action under Section 18-AA(1)(a). Secondly, what the rule of natural justice required in the circumstances of this case, was not only that the Company should have been given an opportunity to explain the evidence against it, but also an opportunity to be informed of the proposed action of take over and to represent why it be not taken."

(emphasis supplied)

80. ***Audi alteram partem has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected.*** *In Tulsiram Patel, this Court explained the wide amplitude of audi alteram partem: (SCC p. 476, para 96)*

"96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, ***the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the***

allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him*, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry."*

(emphasis supplied)

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.****"*

(emphasis supplied)

65. The above observations in ***Rajesh Agarwal*** (supra) makes it plain that involvement of borrower or directors/promoters or seeking inputs from them during the preparation of forensic audit report does not satisfy the requirements of the principles of natural justice. In fact, the 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. In other words, the stage at which principles of natural justice are to be complied with, comes after, and not during the preparation of forensic audit report. This also fortifies that the forensic audit report is merely a piece of evidence that needs to be put to the borrower to afford an opportunity to explain or challenge the findings recorded therein by way of reply to the show cause notice, as well as, at the time of the personal hearing before lender bank(s)/JLF.

66. Further, the auditors' report does not fasten any liability or affect the rights of the borrower, therefore, such a report of forensic auditors, commissioned and acting as per the mandate under Clauses 8.9.4 and 8.9.5 of Master Directions on Frauds, cannot be construed as an administrative decision or a statutory function. It is the bank that takes an administrative decision, which decides the fate of the account based on evidence collected. As noted above, the function of auditors is merely to conduct an investigation within the contours defined by the commissioning bank. Therefore, the auditor's report is not amenable to challenge under Article 226 of the Constitution on the ground of violation of principles of natural justice.

67. The petitioners have challenged the forensic audit report also on the

ground that the adverse remarks contained therein gravely prejudice the petitioners and the findings therein have serious repercussions on their individual reputations. This Court does not find merit in such a contention. As already held, the forensic audit report is nothing but an opinion of expert. No civil or evil consequences flow directly from such a report until and unless some prejudicial administrative decision is taken by the lender bank(s)/JLF on the basis of said report. Therefore, forensic audit report by itself will not cause any prejudice to the petitioners.

68. The petitioners' reliance on the decision of the Hon'ble Supreme Court in ***L.K. Advani*** (supra) is misplaced since the said decision was in the backdrop of the Commissions of Inquiry Act, 1952. Under the said Act, there is a specific provision in the form of Section 8-B which mandates that persons likely to be prejudiced by the report of the commission shall be afforded a reasonable opportunity to be heard and produce evidence in their defence. Furthermore, the inquiry itself under the said statute is a statutory function of the Commission, which culminates into a report, which was made public in the said case. In contrast, the forensic audit report is not to be made public, rather the same is only for the purpose of assisting the lender bank(s) to arrive at an informed decision.

69. Likewise, reliance placed on the decision of the Division Bench of this Court in ***Uday J. Desai*** (supra) to contend that forensic audit report is amenable to challenge before this Court, is also misconceived. Having gone through the decision, it is noted that the decision was rendered in appeal against the judgment of the learned Single Judge. The main prayer in the petition before the learned Single Judge was for quashing and setting aside of the decision of the respondent banks therein declaring the petitioner(s) as

fraud on the ground that no hearing was afforded to them.

69.1. The learned Single Judge dismissed the petition on the ground that the declaration of fraud was on the basis of forensic audit report prepared by M/s Haribhakti & Co. LLP who were appointed with the consent of the petitioners therein, and even had the opportunity to interact with the auditor during the course of audit. Thus, the petitioners therein were held to be precluded from challenging the report considering that the same was prepared with the involvement of petitioners and accordingly, there was no requirement for providing an opportunity of hearing before declaration of fraud.

69.2. Disagreeing with the observations of the learned Single Judge, the Division Bench held that a party who has participated in proceeding before an authority unreservedly, may be precluded from challenging the procedure or the constitution of the Authority; but it would not preclude the party from challenging the conclusion drawn by the concerned authority. The Court also recorded that the forensic audit report was not shared with the appellant therein, therefore, they had no opportunity to address the consortium of banks on the contents of the Forensic Report on the basis of which adverse decision was taken.

69.3. Accordingly, the decision to the extent it held the accounts of the appellant no.5 therein as fraud was set aside, with a clarification that the consortium of banks, or any of the bank, is not precluded from independently taking action in accordance with law after affording the appellants an opportunity to be heard. A reading of judgment, rather clarifies that challenge to forensic audit report would lay before the lender bank(s) post issuance of show cause notice when a copy of the forensic audit report has

been furnished to the person likely to be prejudiced by the decision of the bank. The said judgment does not suggest that the forensic audit report is amenable to substantive challenge before the Constitutional Courts.

70. In view of the above, challenge to the Pipara Report dated 27.04.2020 is rejected.

71. Now, coming to the second question before this Court i.e. whether petitioners ought to have been given a reasonable opportunity of being heard at the time of declaration of fraud in respect to the account of CG Power, it is to be noted that the account of CG Power was scrutinized under the Master Directions on Frauds for the specific period from 01.04.2015 to 31.08.2019. It is not in dispute that during the said period, petitioner no.1 was the promoter company, in control of the management of CG Power, and petitioner no.2 was a Non-Executive Director.

72. Subsequently, new management took control of the borrower company, i.e. CG Power. At the time of audit, the new management was in-charge of the affairs of CG Power. A perusal of the Pipara Report shows that documents submitted to, and considered by Pipara, were supplied by the new management. None of the representations, documents and information supplied by the erstwhile Promoter and Directors of CG Power were taken into consideration by Pipara. Further, it is an admitted case of the respondent no.3/SBI that no show cause notice was served upon them on the assumption that the declaration of fraud was only against CG Power.

73. At this stage, reference can advantageously be made to following paragraphs of ***Rajesh Agarwal*** (supra) wherein the civil and penal consequences under Clause 8.12 of the Master Directions on Frauds have been discussed:

"34. The penal measures for fraudulent borrowers are set out in Clause 8.12 which reads as follows:

8.12. Penal measures for fraudulent borrowers

8.12.1. In general, the ***penal provisions as applicable to wilful defaulters would apply to the fraudulent borrowers <u>including the promoter/Director(s) and other whole-time Directors of the company</u> insofar as raising of funds from the banking system or from capital markets by companies with which they are associated is concerned, etc.*** *In particular,* ***borrowers who have defaulted and have also committed a fraud in the account would be debarred from availing bank finance*** *from scheduled commercial banks, development financial institutions, government-owned NBFCs, investment institutions, etc.* ***for a period of five years from the date of full payment of the defrauded amount. After this period, it is for individual institutions to take a call on whether to lend to such a borrower.*** *The penal provisions would apply to non-whole time Directors (like nominee Directors and independent Directors) only in rarest of cases based on conclusive proof of their complicity.*

8.12.2. No restructuring or grant of additional facilities may be made in the case of RFA or fraud accounts. However, ***in cases of fraud/malfeasance where the existing promoters are replaced by new promoters and the borrower company is totally delinked from such erstwhile promoters/management, banks and JLF may take a view on restructuring of such accounts based on their viability, <u>without prejudice to the continuance of the criminal actions against the erstwhile promoters/management</u>.***

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

8.12.4. In addition to above borrower-fraudsters, third parties such as builders, warehouse/cold storage owners, motor vehicle/tractor dealers, travel agents, etc. and professionals such as architects, valuers, chartered accountants, advocates, etc. are also held accountable if

they play a vital role in credit sanction/disbursement or facilitated the perpetration of frauds. Banks are advisable to report to Indian Banks Association ("IBA") the details of such parties involved in frauds.

8.12.5. Before reporting to IBA, banks have to satisfy themselves of the involvement of third parties concerned and also provide them with an opportunity of being heard. In this regard the banks should follow normal procedures and the processes followed should be suitably recorded. On the basis of such information, IBA would, in turn, prepare caution lists of such third parties for circulation among the banks."

(emphasis supplied)

35. *Clause 8.12.1 provides that the penal provisions as applicable to wilful defaulters would apply to fraudulent borrowers as regards the raising of funds from the banking system and financial institutions.* ***Importantly, under the clause, fraudulent borrowers include promoters, Directors, and other whole-time Directors of the borrowing company. It debars fraudulent borrowers from availing banking finance from the scheduled commercial banks, development financial institutions, government-owned NBFCs, investment institutions, etc. for a period of five years from the date of full payment of the defrauded amount. Even after the completion of the five-year period, it is for the individual financial institutions to decide whether to lend to fraudulent borrowers, including Directors and promoters of the borrowing company.*** *Additionally, under Clause 8.12.2, fraudulent borrowers are denied restructuring or grant of additional facilities by banks and other such financial institutions.*

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48. *RBI and lender banks have argued that the civil consequences contemplated in Clause 8.12.1 of the Master Directions on Frauds are reasonable.* ***Under the said clause, the borrower, including the promoters and Directors of the company, are barred from availing credit from financial markets and credit markets for a period of five years, and possibly even beyond.*** *According to RBI and lender banks, such a restriction has to be perceived from the perspective of public*

interest. ***While acknowledging that the procedure which has been laid down in the Master Directions on Frauds is conceived in public interest, to protect the banking system, we cannot ignore the serious civil consequences which emanate to the borrowers.***

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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 borrower company. The consequences that apply to a wilful defaulter under the Master Circular on Wilful Defaulters have been culled out in Jah Developers: (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.***

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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.***

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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.****"*

(emphasis supplied)

74. A bare perusal of the aforesaid paragraphs reveals that the penal provisions under the Master Directions on Frauds not only affects the borrower, but also the promoters, directors or other whole-time directors of

the borrowing company. Clause 8.12.2 assumes special relevance in the present case as the same suggests that, in case existing promoters are replaced by new promoters and the borrower company is totally delinked from such erstwhile promoters/management, the banks and JLF are at liberty to take a lenient view with regard to the borrower company without prejudice to the continuance of criminal actions against the erstwhile promoters/management. This also explains as to why CG Power has not challenged the order of declaration of its account as fraud.

75. Further, the civil consequences which follow post-declaration as wilful defaulter include debarment of promoter/director of such borrower company from induction into any other borrower company. Such consequences are attracted in the proceedings under Master Directions on Frauds as well.

76. Furthermore, in ***Rajesh Agarwal*** (supra), the Hon'ble Supreme Court has held that the term borrower includes promoters and directors. Therefore, the civil consequences arising from the proceedings under Master Directions on Frauds have a definite bearing on the civil rights of the erstwhile promoter/directors, who were in control and managing the borrower company at the relevant time. Even upon removal from the management, the consequences do no automatically fall through, rather such civil consequences would continue to affect the promoters and directors in their personal capacities.

77. In light of the above, this Court is of the opinion that principles of natural justice ought to equally apply in favour of the erstwhile promoters/directors who were in control of the affairs of the borrower company at the relevant time.

78. In the present case, complete exclusion of the petitioners during the

proceedings before the respondent no.3 bank and other members of the consortium causes grave prejudice to the petitioners as the civil consequences that follow, appear to have been given effect to, which is evident from the registration of FIR by CBI against petitioner no.2, as well as, Chairman of petitioner no.1.

79. Respondent no.3/SBI has also argued that there is considerable delay in filing the present petition and that the judgment in ***Rajesh Agarwal*** (supra) cannot be applied retrospectively. This Court is not convinced by the said contention.

80. Delay in filing the present petition has satisfactorily been explained by Mr. Venugopal, given that the respondent no.3/SBI had completely excluded the petitioners from the proceedings. No show-cause notice was issued to them, let alone a personal hearing. Further, at no point of time the respondent no.3/SBI communicated the impugned order declaring the account of CG Power as fraud, to the petitioners. Therefore, there seems to be substance in the stand of the petitioners that they came to know of the said impugned order only when respondent no.3/SBI filed its counter affidavit in the present petition mentioning about the passing of such order, which led the petitioners to amend the petition to assail the same. Even the forensic audit report, relied upon by the respondent no.3/SBI to declare the account of CG Power as fraud, was supplied after this Court's interference in 2022. Consequently, the present petition came to be filed in the year 2023, initially with a prayer to quash and set aside the said report.

81. Insofar as respondents' contention that the decision in ***Rajesh Agarwal*** (supra) will apply prospectively, suffice it to say that the law is well settled that judgment of the Court will always be retrospective in nature unless the

judgment itself specifically states that the judgment will operate prospectively.[3] The decision in ***Rajesh Agarwal*** (supra) does not suggest that it has been made applicable prospectively.

82. In view of the above discussion, this Court holds the declaration of CG Power's account as fraud insofar as the same concerns transactions undertaken during the period when petitioners were promoters and directors, without granting the petitioners an opportunity to participate in the proceedings, is in the teeth of law exposited in ***Rajesh Agarwal*** (supra) and is accordingly, quashed and set aside.

83. It is clarified that the Respondent no.3/SBI is not precluded from initiating fresh proceedings under Master Directions on Frauds against CG Power, after issuance of show cause notice, as well as, an opportunity to be heard, to the petitioners.

84. The petition is disposed of in above terms.

VIKAS MAHAJAN, J

SEPTEMBER 08, 2025/aj

[3] Kanishk Sinha & Anr. v. The State of West Bengal & Another, 2025 SCC OnLine SC 443