



2024:DHC:7917



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 22 August 2024**
Judgment pronounced on : 15 October 2024

+ W.P.(C) 5899/2023 CM APPL. 23080/2023 CM APPL.
33760/2023 CM APPL. 39350/2023 CM APPL. 48083/2024

M/S PARAS LUBRICANTS LTD.Petitioner

Through: Mr. Alok Kumar, Sr. Advocate
with Ms. Manisha A. Narain,
Mr. Amit Kr. Singh, Mr.
Deepak Kr. Mittal, Mr. Varun
Maheshwari, Mr. Manan Soni
and Mr. Sandeep Singh
Somaria, Advs.

versus

PUNJAB NATIONAL BANK & ORS.Respondents

Through: Mr. Harshit Gupta, Mr. Prabhat
Kumar, Mr. Prashant Vashist
and Mr. Shaun Jomon
Karumathy, Advs. for R-1/PNB

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, for issuance of a writ, order or direction, thereby seeking the following reliefs:

“a) to issue writ of mandamus or any other writ order or direction in the nature thereof directing the Respondent No.1 to remove the account of Petitioner Company, if any, from the classification of Fraud category and accordingly, intimate to the RBI/Respondent No.3 as well as Respondent Nos.2.

b) to issue writ of mandamus or any other writ order or direction in the nature thereof directing the Respondent No.2 not to stop the transactions in any account of Petitioner Company and not to take



any coercive action against any credit facility as being provided to the Petitioner Company.

c) to issue any other Writ order to the Respondent No.1 to pay compensation to the Petitioner Company as qualified by this Hon'ble Court for the financial losses, loss of reputation and goodwill, mental agony and harassment caused by illegal action of the Respondent No.1 bank.

d) to issue an order to the Respondent No.1 to pay the costs of this Petition to the Petitioner Company”

2. The background of the present petition is that the petitioner, a company incorporated under the Companies Act, 1956, with its registered office 311-312, Manglam Paradise, Manglam Place, Sector-3, Rohini, Delhi - 110085, is engaged in the business of manufacturing and selling various lubricant products, including automotive oils, industrial oils, greases, and allied items. The petitioner company has been availing credit facilities from the respondent No.2/SBI¹, SME Branch, Connaught Circus, New Delhi, under Cash Credit Account No. 39731566578 since October 2020. Dispute arose when the respondent No. 2/SBI, *via* an email dated 06.04.2023, communicated to the petitioner company as follows:

“We have received official communication that PNB has reported your account as FRAUD account to RBI on 30.03.2023.

“Kindly advise us reason for that immediately so that we can proceed further in this matter.”

3. It is stated that the petitioner company does not have any account with the respondent No.1/PNB² and the PNB, without providing a prior notice, and/or without an opportunity for a hearing, classified the petitioner company's account as "fraud." Upon receipt of the email from respondent No.2/SBI on 06.04.2023, the petitioner

¹ State Bank of India

² Punjab National Bank



company promptly contacted PNB's customer care division and relevant offices, supplying details of its previous account and credit facilities with the erstwhile Oriental Bank of Commerce [“OBC”]. To cut the long story short, after series of correspondence and meetings with the concerned officials, the respondent No.1/PNB's Customer Care *vide* email dated 23.04.2023 informed the petitioner company that the complaint had been closed citing remarks received from the concerned division.

4. Concurrently, the petitioner company, issued a letter dated 11.04.2023, to respondent No.1/PNB and its Ashok Vihar Branch, requesting that they address the matter and represent it to respondent No.2/SBI, that none of the petitioner company's accounts were fraud accounts. Despite the service of this letter, respondent No.1/PNB neither responded nor made any representation to SBI or RBI³ and failed to remove the petitioner company's account from the fraud list.

5. It is pertinent to mention that there was some history to the disputes between the parties. It is a matter of record that the petitioner company had been availing loan facilities from OBC from its Ashok Vihar Branch, New Delhi, which bank merged with respondent No.1/PNB on 01.04.2020 and facilities were transferred to respondent No.1/PNB. The loans were extended to the petitioner company and secured by collaterals including personal guarantees and mortgage of the immovable properties from two individuals, namely Mr. Vijay Bansal and his wife Smt. Suman Bansal, who were directors of the petitioner company as well, besides Smt. Shanti Devi i.e. the mother



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of Mr. Vijay Bansal. A property bearing No. C-2/4, Prashant Vihar, Rohini, Delhi was mortgaged and upon resignation of Mr. Vijay Bansal and his wife from the directorship, they notified the OBC of their withdrawal of personal guarantees and the petitioner company provided an alternative property *viz.*, B-4828 Meera Bagh, Paschim Vihar, Delhi and property located at *Khasra* No. 1242, Tikri Kalan, Delhi-110041 as a substitute security. It appears that the OBC refused to release the mortgage properties and personal guarantees of Smt. Shanti Devi and others so much so that the account of the petitioner company was declared as ‘NPA⁴’ and proceedings were initiated by filing O.A. No. 152/2006 before Debt Recovery Tribunal-III, Delhi [“**DRT-III**”] on 18.12.2006. However, eventually parties were able to negotiate for an amicable settlement and entire principal amount with interest on delayed payments was made. A request was lodged by the petitioner company *vide* letter dated 29.09.2011 for issuance of the ‘no due certificate’ and release of all properties and O.A. No. 152/2006 was withdrawn.

6. It appears that the aforesaid properties, which were offered as securities against the loans led to the filing of a criminal complaint by Mr. Devender Pal *vide* FIR⁵ No. 513 dated 25.07.2007 against Mr. Shaminder Pal, Mr. Paras Kumar Bansal (Managing Director of the petitioner company) and Mr. S.N. Marwah (Chief Manager of OBC) under Section 420/468/471/34 of the Indian Penal Code, 1860. The

³ Reserve Bank of India

⁴ Non-Performing Asset

⁵ First Information Report



gist of the allegations was that, it was falsely and fraudulently claimed that the properties at Meera Bagh and Tikri Kalan were owned by Mr. Shaminder Pal and Mr. Devender Pal, which were mortgaged against the credit facilities obtained by the petitioner company. The aforesaid criminal proceedings resulted in OBC not releasing the title documents upon which the petitioner company filed W.P. (C) 1541/2013 titled as '*Paras Lubricants v. Oriental Bank of Commerce & Anr.*' and this Court *vide* order dated 27.09.2013 allowed the writ petition directing the OBC to release the properties of the concerned parties and issue 'no dues certificate'.

7. It is in the said background that the petitioner company states that they were setting up a new plant in Daman and had been utilizing loan facilities from respondent No.2/SBI but for the report by the respondent No.1/PNB, classifying the petitioner company as 'fraud', the respondent No.2/SBI has put hold of the disbursement of term loan facility as on 06.04.2023. The respondent No.2/SBI through its email dated 15.04.2023 notified the petitioner company, that should its account remain designated as fraudulent by any bank, respondent No.2/SBI would be compelled to impose a debit freeze on all of the petitioner company's accounts. Furthermore, respondent No.2/SBI indicated that all credit facilities extended to the petitioner company would be suspended, and transactions in the petitioner company's accounts would be ceased effective 30.04.2023.

REPLY BY RESPONDENT NO. 1

8. The respondent No.1/PNB in its reply contended that the petitioner company is suppressing the material facts since the account



opened in 1987, which was initially introduced by Shri Pawan K. Jain, an ex-employee of the bank and a relative of the company's promoters, Shri Vijay Kumar Bansal and Shri Paras Kumar Bansal. The petitioner company initially received credit facilities of Rs. 6.00 Lac in 1988, which were periodically renewed and enhanced, reaching Rs. 1495 Lacs by 31.03.2005. In 2006, the petitioner company sought to renew the credit facility and requested to replace the personal guarantees of Shri Vijay Kumar Bansal and Smt. Shanti Bansal, who had provided a property in Prashant Vihar as surety, with alternative properties located in Meera Bagh, Paschim Vihar, and Tikri Kalan, Delhi, owned jointly by Mr. Shaminder Pal and Mr. Devender Pal.

9. Subsequently, respondent No.1/PNB accepted the petitioner company's request to release the personal guarantees of Shri Vijay Kumar Bansal and Smt. Shanti Bansal, replacing them with the personal guarantees of Shri Shaminder Pal and Shri Devender Pal. These guarantors executed agreements and mortgaged their properties at B-482, Meera Bagh, and Factory Godown at Tikri Kalan, Delhi, in favour of the bank on 23.06.2006. The credit limits were extended until 30.09.2006, but before further renewal, Letter of Credits devolved, resulting in overdrawn that was not regularized. Consequently, the account was classified as an NPA on 29.09.2006. The bank issued a Recall Notice on 11.01.2007 under the Securitization Act, 2002, and, due to failure to regularize the account, filed OA No. 152/2006 before the DRT, seeking recovery of Rs 889.52 Lacs from the borrower and the guarantors.

10. Thereafter, the petitioner company submitted the OTS, which



was approved by the MC of the erstwhile Oriental Bank of Commerce on 20.02.2009, granting relief of Rs. 253.65 Lac. The approval was communicated to the branch on 04.02.2009 and to the petitioner company on 14.03.2009. The Bank was advised on 07.01.2010 to retain the condition of withdrawing cases to avoid complications. The account was closed on 15.10.2011 following the OTS, but the Original Application No. 152/2006 before the Debts Recovery Tribunal-III, Delhi, was withdrawn on 31.10.2011 without a joint compromise decree. On 16.05.2012, during the hearing of MA No. 81/2012 in the same case, the Branch Head, Shri B. B. Bansal, stated that nothing was outstanding, leading to the Tribunal allowing MA No. 81/2012. However, since the bank failed to obtain the joint compromise decree, a subsequent MA No. 312/2012 was filed, and on 18.09.2012, the Tribunal ordered compliance with all compromise conditions to prevent the failure of the settlement.

11. That the petitioner filed Writ Petition (Civil) No. 1541/2013, titled “Paras Lubricants Limited vs. Oriental Bank of Commerce”, before this Court, asserting that despite settlement payments made towards the outstanding loan, the bank had unlawfully retained the title deeds of the mortgaged properties and failed to assist in the withdrawal of a criminal case against its employees. By order dated 27.09.2013, this Court directed the bank to release the mortgaged properties and remove the liens from the Registrar of Companies [“RoC”] records. In compliance with this order, the bank released the mortgaged properties and removed the liens from the Registrar of Companies records.



12. Respondent No. 1/PNB submits that the crux of the current dispute revolves around the petitioner company's alleged fraudulent actions in modifying the personal guarantee. Specifically, it is claimed that the Petitioner, in collusion with Mr. Shaminder Pal, Mr. S.N. Marwah, and other unknown individuals, sought to defraud respondent No. 1/PNB by offering properties at B-482, Meera Bagh, Paschim Vihar, Delhi, and at 1242, Tikri Kalan, Delhi, without the consent of Mr. Devender Pal and by submitting fabricated notarized documents. The petitioner company has purportedly concealed these fraudulent actions and is now seeking relief from this Court while failing to disclose his involvement in the fraud for which an FIR No. 513 of 2007 was registered at Police Station Ashok Vihar. It is noted that any settlement regarding the loan recovery does not exempt respondent No.1/PNB from pursuing necessary actions following the report of fraud. Moreover, based on the bank loan documents, forensic reports, and evidence of the nonexistence of a purported notary, IO⁶ Subodh Kumar Gupta has filed a Challan before the learned CMM⁷ (NW) Rohini, Delhi, indicating that documents such as the Agreement of Guarantee, Affidavit, and Undertaking executed by Mr. Devender Pal are forged.

13. Thereupon the respondent No.1/PNB conducted an internal investigation into the fraud allegations raised by Mr. Devender Pal. The investigation report dated 23.11.2020 confirmed that Mr. Paras Bansal, in collusion with Mr. Shaminder Pal and Mr. S.N. Marwah,

⁶ Investigating Officer

⁷ Chief Metropolitan Magistrate



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attempted to defraud the respondent No.1/PNB by presenting false and fabricated guarantor surety. Consequently, the Trial Court charged these individuals under Sections 420, 468/471 IPC read with Section 120-B IPC for fraud and cheating. Mr. Paras Bansal, Mr. S.N. Marwah, and Mr. Shaminder Pal were found to have engaged in unlawful conduct with the intent to defraud the bank. In adherence to RBI guidelines and the Government policy, the respondent No.1/PNB filed a Fraud Report dated 05.10.2021 against the petitioner company following a thorough inquiry and investigation.

14. That the respondent No. 1/PNB, following an internal investigation, lodged a police complaint on 01.08.2022 with P.S. Ashok Vihar seeking the registration of an FIR against Mr. Paras Kumar Bansal (Director, M/s Paras Lubricants Limited), Mr. S. N. Marwah (Ex-AGM, OBC), and Mr. Saminder Pal (Director and Guarantor) for offenses of cheating, criminal breach of trust, and forgery. Upon detection of the fraud, the respondent promptly reported the matter to its Bank and subsequently to the respondent No.3/RBI in compliance with the Banking Regulation Act,1949.

15. It is contended that the petitioner company is attempting to mislead this Court by misrepresenting the order passed in W.P. (C) No. 1541 of 2013, wherein a property given as personal guarantee was released upon payment under a One Time Settlement. It is pertinent to note that the order of this Court was based on the absence of any banking regulation prohibiting the release of mortgaged property once payment was made under OTS. It is also submitted that the petitioner has distorted this order to obscure the illegality in presenting the



collateral to the erstwhile Oriental Bank of Commerce (now PNB) for credit facility renewal. The present writ petition is a misuse of legal process intended to circumvent the outcome of FIR No. 513/2007. The chargesheet and internal investigation clearly demonstrate that the petitioner company, in conspiracy with others, caused wrongful gain to themselves and loss to the Bank. The declaration of the petitioner company's account is justified as per RBI guidelines and regulations.

ANALYSIS AND DECISION:

16. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have also perused the relevant record of the case. At the outset, the impugned action by the respondent No.2/SBI based on the inputs provided by the respondent No.1/PNB, which itself is not lawful, cannot be sustained in law.

17. The broad facts of this case are not in dispute. It is common case that the petitioner company never held a bank account with the respondent No.1/PNB but with erstwhile bank OBC, which was later merged with the respondent No.1/PNB. Anyhow, although the account of the petitioner company was declared as 'NPA' and the proceedings were initiated before DRT-III, an 'OTS' was reached with the petitioner company and the amount together with interest was paid in full, pursuant to which OBC issued 'no dues certificate' on 17.10.2011, after closing the account of the petitioner company on 15.10.2011. It is also brought out that the proceedings were withdrawn at the instance of the OBC, which were pending before the DRT-III. The OBC merged with the PNB on 01.04.2020 long after the



petitioner company's account had been closed and thus, there was no foundation available to respondent No.1/PNB to declare the account of the petitioner company as 'fraud'. Merely because some person filed a complaint and it led to criminal proceedings which are *sub judice* before the Court of law, would not by itself afford any justification to respondent No.1/PNB classifying the petitioner company as 'fraud'.

18. Unhesitatingly, the act of the respondent No.1/PNB is completely *dehors* and *ultra vires* of RBI Master Circular dated 01.07.2016 described as 'Master Circular on Fraud'. It is admitted case of respondent No.1/PNB that prior to declaring the petitioner company's account as 'fraud', the respondent No.1/PNB did not communicate the material gathered against the petitioner company, nor was any opportunity of hearing was provided to the petitioner company so as to respond or explain the said evidence and fraud declaration was made *ex parte* without any notice or explanation from the petitioner company.

19. Secondly, the issuance of impugned letter dated 06.04.2023 from respondent No.2/SBI suspending credit facilities to the petitioner company effective from 30.04.2023 also cannot be sustained in law. Reference can be invited to decision in the case of **SBI v. Rajesh Agarwal**⁸, wherein based on identical factual premise, the Supreme Court held that:

“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

⁸ (2023) 6 SCC 1



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.”

20. It is but apparent that arbitrary and capricious exercise of its powers by the respondent No.1/PNB has led to civil consequences which have seriously jeopardize the commercial viability of the petitioner company and prejudicial to the interest of the borrower i.e., petitioner company. Such drastic measures without observing principles of natural justice and throwing all canons of law to the wind bring about disastrous consequences, not only for the petitioner company but also its employees and eventually deleterious effects on the economy as well.

21. In view of the foregoing discussion, this Court has no hesitation in holding that the due process of law has not been followed by the respondent No.1/PNB and the respondent No.2/SBI. They have mechanically taken action against the petitioner company without hearing and without taking an objective view of the matter.

22. Accordingly, the present writ petition is allowed, and a writ of *mandamus* is issued against the respondent No.1/PNB with the direction to disclaim the account of the petitioner company as ‘fraud’;



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and accordingly respondent No. 1/PNB is directed to intimate the respondent No.2/SBI as well as the respondent No.3/RBI regarding removal of the name of the petitioner company from such category. A writ of *mandamus* is also issued thereby quashing the letter dated 06.04.2023 by the respondent No.2/SBI and resume the operation of the bank account of the petitioner company.

23. In view of the peculiar facts and circumstances of the case, I find that relief claimed by the petitioner company seeking compensation for financial loss, loss of reputation and goodwill besides mental agony and harassment caused by the illegal action of the respondent No.1/PNB warrant that the petitioner company should be compensated. Accordingly, a token cost of Rs. 5,00,000/- is imposed upon the respondent No.1/PNB which be paid within one month from today in the bank account of the petitioner company with respondent No.2/SBI, failing which, the respondent No.1/PNB shall be liable to pay such costs with interest @ 18% per annum from the date of filing of the petition i.e. 30.04.2023, till realization.

24. The writ petition along with pending application(s) stands disposed of accordingly.

DHARMESH SHARMA, J.

OCTOBER 15, 2024

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