2026 INSC 323

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4243-4244 OF 2026
(@ Special Leave Petition (C) Nos. 20618-20619 of 2025)

State Bank of India …Appellant(s)

Versus

Amit Iron Private Limited & Ors. …Respondent(s)

With

CIVIL APPEAL NO.4245 OF 2026
(@ Special Leave Petition (C) 38805 of 2025)
(@ Diary No. 55628 of 2025)

J U D G M E N T

K. V. Viswanathan, J.

1. Six decades ago, it was aptly proclaimed that principles of natural justice cannot be cut and dried or nicely weighed and measured (***Ridge vs. Baldwin***[1]). This Court rightly

[1] 1964 AC 40

described it as a flexible concept, to be adapted to circumstances. Its elasticity, however, has been tested to its limits in several cases. We are here confronted with one such. While the Reserve Bank of India (for short "RBI") and the appellant-Banks contend that a notice, an opportunity to reply, and a reasoned order should serve the ends of justice, the borrowers implore that they are entitled to a "personal hearing" before classifying their account as a "fraud account." The other issue that arises is the "borrowers" entitlement to the Forensic Audit Reports.

2. Leave granted.

3. The core issue that arises in the case revolves around the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016 (hereinafter referred to as the "Master Directions-2016") and the Reserve Bank of India (Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions Directions, 2024 (hereinafter referred to as the "Master Directions-2024").

4. When the matter came up on 04.11.2025, this Court directed the impleadment of RBI as a party-respondent in the matter in Civil Appeal arising out of SLP(C) Nos. 20618-20619/2025. The RBI has been duly impleaded and also been heard in the matter.

5. The respondent-borrowers herein contend that the issues are no longer *res integra* since the matter has been concluded by the judgment of this Court dated 27.03.2023 in ***State Bank of India and Others vs. Rajesh Agarwal and Others***[2]. The appellant-Banks as well as the impleaded respondent - RBI submit to the contra.

FACTS IN CIVIL APPEAL ARISING OUT OF SLP(C) NOS.20618-20619/2025:-

6. On 20.08.2019, the loan account of respondent No.1 was classified as a Non-Performing Asset (NPA) by the appellant-State Bank of India on account of defaults in repayment obligations. On 27.12.2023, the appellant-Bank issued a show cause notice to the respondents alleging various acts of

[2] (2023) 6 SCC 1

non-compliance with the agreed terms of the loan documents, commission of irregularities in financial conduct suggesting fraudulent activity. The respondents were asked to show cause as to why the account should not be categorized and reported as "fraud" (as per the RBI guidelines). On 08.02.2024, respondent Nos.1 and 2 submitted replies and denied any breach of the terms and conditions of the loan agreement. On 13.03.2024, the appellant-Bank communicated to the respondents that the loan account has been classified as "fraud" and a speaking order passed in this regard was communicated.

7. The respondents filed a Writ Petition before the High Court at Calcutta. By a judgment dated 07.08.2024, a learned Single Judge interpreted the judgment of this Court in ***Rajesh Agarwal*** (*supra*) to mean that the borrower should be given an opportunity to explain in person and further that the Forensic Audit Report should be supplied to the borrower. The Court held that the borrower should be allowed to represent his case before the authority, by way of a personal

hearing and, thereafter, the order ought to have been passed. The Writ Petition was allowed in the above terms. The appellant-Bank carried the matter in appeal to the Division Bench. The Division Bench, by its judgment dated 12.03.2025 dismissed the appeal and did not interfere with the directions of the learned Single Judge. Aggrieved, the appellant-Bank is before us.

FACTS IN CIVIL APPEAL ARISING OUT OF SLP(C) NO.38805/2025:-

8. On 27.03.2012, the appellant-Bank of India classified the account of M/s Liliput Kidswear Limited, of which the respondent No.1 was the representative/promoter, as a Non-Performing Asset under the prudential norms of the RBI. Thereafter, the first forensic audit was carried out. On 18.08.2023, a show cause notice was issued calling upon respondent No.1 to show cause on the findings in the Forensic Audit Report. Respondent No.1 was informed that in case no reply is received within 15 days of the communication, it shall be presumed that they have nothing

to say in the matter. The respondent No.1 was further informed that upon expiry of the above period, the Bank shall proceed ahead with the examination of the fraud angle in terms of RBI Master Circular/Bank's guidelines on fraud classification and reporting. The respondent No.1 filed its reply. On 03.01.2024, a second show cause notice was issued incorporating the forensic findings of another forensic auditor. The respondent No.1 filed its reply on 04.02.2024.

9. On 14.05.2025, the appellant-Bank passed an order classifying the account of M/s Liliput Kidswear Limited as "Fraud".

10. The respondent No.1 filed a Writ Petition before the High Court of Delhi at New Delhi alleging that no personal hearing was afforded before the adverse order was made. A learned Single Judge, by his judgment dated 06.06.2025, quashed the order dated 14.05.2025 and directed the grant of personal hearing and also to furnish the audit report to respondent No.1 herein. The Division Bench, by its

judgment dated 29.07.2025, confirmed the order of the learned Single Judge. Aggrieved, the appellant is before us.

QUESTIONS FOR CONSIDERATION:-

11. In the above background, the questions that arise for consideration are – (a) Does the decision in ***Rajesh Agarwal*** (*supra*) recognize a right inhering in the account holder/borrower to a personal/oral hearing before the account is declared/classified as "fraud" under the Master Directions of the RBI? (b) Whether the issuance of a show cause notice, the consideration of the reply filed by the borrower and the obligation to pass a reasoned order setting out the relevant facts/circumstances relied upon, the submissions made in response to the show cause notice and the reasons for classification of account as "fraud" would satisfy the principles of natural justice? (c) Whether there is an obligation on the banks to furnish the entire Forensic Audit Report to the borrowers before declaration of the account as "fraud"?' If not, whether the furnishing of the

conclusions of the Forensic Audit Report would serve the ends of justice?

12. We have heard Mr. Tushar Mehta, learned Solicitor General of India, for the State Bank of India and the Bank of India; Mr. Venkatesh Dhond, learned senior counsel for the RBI; and Mr. Parag P. Tripathi, learned senior counsel and Mr. K. Parameshwar, learned senior counsel for the borrowers. We have also perused the written submissions filed by them, including the written submissions filed by Ms. Purti Gupta, learned Counsel for the intervenor.

MASTER DIRECTIONS OF RBI: -

13. In this case, we need to discuss both the Master Directions-2016 as well as the Master Directions-2024. In Civil Appeal arising out of SLP(C) Nos. 20618-20619/2025, the entire proceedings leading to the classification of the account as "fraud" commenced and culminated before the Master Directions-2024 came into force. Insofar as Civil Appeal arising out of SLP(C) Diary No.55628/2025, while the

show cause notice and reply came on record when the Master Directions-2016 held the field, by the time the order was passed the Master Directions-2024 had come into force. Further, the Master Directions-2016 were directly in issue in ***Rajesh Agarwal (supra)***. The RBI, expressly, in the 2024 guidelines refers in the footnote to the judgment in ***Rajesh Agarwal (supra)***. Hence, the determination of what the scenario was under the Master Directions-2016; what was the holding in ***Rajesh Agarwal (supra)***; and what are the terms of Master Directions-2024 assume significance.

14. The Master Directions of the RBI are issued under Section 35A of the Banking Regulation Act, 1949. Section 35A reads as under:

> "**35A. Power of the Reserve Bank to give directions**.–
> (1) Where the Reserve Bank is satisfied that–
> (a) in the public interest; or
> (aa) in the interest of banking policy; or
> (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
> (c) to secure the proper management of any banking company generally;

> it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.
> (2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

As would be clear, the RBI, on being satisfied that in the public interest; in the interest of banking policy; felt the need to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company and to secure the proper management of any banking company generally, deems it necessary to issue directions to banking companies generally or to any banking company in particular, it may do so. The Section also makes it clear that the banking companies are bound to comply with the said directions.

15. It should also be noticed that under Section 21 of the Banking Regulation Act, 1949, if the RBI finds it necessary or expedient in the public interest or in the interests of depositors or banking policy to do so, may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular. The Section further provides that on determination of such policy, all banking companies shall be bound to follow this regulation.

PURPOSE AND OBJECTIVES OF THE MASTER DIRECTIONS: -

16. The Master Directions-2016 sets out as its purpose in Clause 1.3 that the directions were to provide a framework to banks to detect and report frauds early and take timely consequent actions. The timely consequent actions would include reporting to the investigative agencies so that fraudsters are brought to book early; examining staff accountability and ensuring effective fraud risk management. Further, these directions were aimed to enable

faster dissemination of information by RBI to banks on the details of frauds, unscrupulous borrowers and related parties. This would ensure that necessary safeguards / preventive measures by way of appropriate procedures and internal checks can be introduced and caution exercised while dealing with such parties by the banks. Clause 2.2 of the Master Directions-2016 and Clause 6.1 of the Master Directions-2024 read together broadly categorized the following incidents as fraud:-

> **"(i) Misappropriation of funds and criminal breach of trust;**
> **(ii) Fraudulent encashment through forged instruments;**
> **(iii) Manipulation of books of accounts or through fictitious accounts, and conversion of property;**
> **(iv) Cheating by concealment of facts with the intention to deceive any person and cheating by impersonation;**
> **(v) Forgery with the intention to commit fraud by making any false documents/electronic records;**
> **(vi) Wilful falsification, destruction, alteration, mutilations of any book, electronic record, paper, writing, valuable security or account with intent to defraud;**
> **(vii) Fraudulent credit facilities extended for illegal gratification;**
> **(viii) Cash shortages on account of frauds;**

(ix) Fraudulent transactions involving foreign exchange;
(x) Fraudulent electronic banking/digital payment related transactions committed on banks; and
(xi) Other type of fraudulent activity not covered under any of the above."

17. Clause 8 of the Master Directions-2016 dealing with the objective of the framework also set out that the idea was to achieve the purpose of the directives as set out in Clause 1.3 while ensuring that the normal conduct of business of the banks and their risk taking ability is not adversely impacted and no new and onerous responsibilities are placed on the banks.

EARLY WARNING AND RED FLAGGING: -

18. Clause 8.3 of the Master Directions-2016 and Clause 3 of the Master Directions-2024 deal with Early Warning Signals (EWS) and Red Flagging of accounts. A Red Flagged Account (RFA) is one where a suspicion of fraudulent activity is thrown-up by the presence of one or more EWS indicators, alerting/triggering deeper investigation from potential fraud angle and initiating preventive measures by the banks.

19. The guidelines also stipulate that the bank may use external auditors including forensic experts or an internal team for investigations before taking a final view on the RFA. Within a period of six months, banks are obligated to either lift the RFA status or classify the account as fraud.

20. The State Bank of India informs us that during the period when account remains red flagged, the bank exercises greater caution in dealing with the account. Further, other banks through a shared reporting system such as CRILC (Central Repository of Information on Large Credits) are also able to see the 'red flagged' status.

PROCEDURE UNDER THE 03.02.2024 MASTER DIRECTIONS-2024 : -

21. ***Rajesh Agarwal*** (*supra*) was occasioned because the Master Directions-2016 were silent about any opportunity of hearing being afforded to the borrower before declaring the account as "fraud" account. Before we deal with ***Rajesh Agarwal*** (*supra*), it should be pointed out that in the Master Directions-2024, in Chapter-II, Clause 2.1.1.1 to 2.1.1.4 set

out the procedure through which an account is classified as "fraud". The Master Directions-2024 in the footnote refers to the judgment of this Court in ***Rajesh Agarwal*** (*supra*). Clause 2.1 which consists of four sub-paras is extracted hereinbelow:-

> "**2.1 Governance Structure in banks for Fraud Risk Management**
>
> 2.1.1 There shall be a Board approved Policy on fraud risk management delineating roles and responsibilities of Board / Board Committees and Senior Management of the bank. The Policy shall also incorporate measures for ensuring compliance with principles of natural justice in a time-bound manner which at a minimum shall include:
>
> 2.1.1.1 Issuance of a detailed Show Cause Notice (SCN) to the Persons, Entities and its Promoters /Whole-time and Executive Directors against whom allegation of fraud is being examined. The SCN shall provide complete details of transactions / actions / events basis which declaration and reporting of a fraud is being contemplated under these Directions.
>
> 2.1.1.2 A reasonable time of not less than 21 days shall be provided to the Persons / Entities on whom the SCN was served to respond to the said SCN.
>
> 2.1.1.3 Banks shall have a well laid out system for issuance of SCN and examination of the responses / submissions made by the Persons

> / Entities prior to declaring such Persons / Entities as fraudulent.
>
> 2.1.1.4 A reasoned Order shall be served on the Persons / Entities conveying the decision of the bank regarding declaration / classification of the account as fraud or otherwise. Such order(s) must contain relevant facts / circumstances relied upon, the submission made against the SCN and the reasons for classification as fraud or otherwise."

22. The contention of the respondents before us is that ***Rajesh Agarwal* (*supra*)** read into Master Directions-2016 an opportunity to grant a personal hearing and not just the need for issuance of show cause notice, consideration of a reply and the passing of a reasoned order. This has been the main bone of contention between the parties. The High Courts in both the matters before us have accepted this interpretation. There is no dispute that in both the cases before us notice was issued, reply elicited and reasoned orders made. It is not disputed that in both cases personal/oral hearing was not given. Were the banks obliged to grant a personal/oral hearing to the borrower is the significant issue before us. No

doubt, there is no challenge to the validity of the Master Directions-2024. However, the learned counsel for the respondents contended that if ***Rajesh Agarwal (supra)*** did, in fact, mandate the grant of a personal hearing, it is only fair that Chapter-II, Clause 2.1 of the Master Directions-2024 also be understood to encompass an oral/personal hearing.

CERTAIN RELEVANT STATISTICS: -

23. Before we grapple with the present issues, certain statistics which have been placed before us by the RBI and which, to say the least, are alarming, need to be set out. The Annual Report of RBI for 2024-25 indicates that while the total number of fraud cases in FY 2022-2023 was 13,494, in FY 2023-2024 it was 36,060 and in FY 2024-25 it was 23,953. What is more shocking is the amounts involved in these fraud cases. While in FY 2022-23 it was Rs.18,981 crores, in FY 2023-24 it was Rs. 12,230 crores, and in FY 2024-25 it was Rs. 36,014 crores. The note indicates that these are only data in respect of frauds of Rs.1 lakh and above which are reported. The chart, as produced, is set out hereinbelow:-

Fraud Details from RBI Annual Report 2024-25

	Frauds Cases - Area of Operations				(Amount in ₹ crore)	
Area of Operation	2022-23		2023-24		2024-25	
	Number of Frauds	Amount Involved	Number of Frauds	Amount Involved	Number of Frauds	Amount Involved
1	2	3	4	5	6	7
Advances	4,021	17,542	4,118	10,072	7,950	33,148
	(29.8)	(92.4)	(11.4)	(82.4)	(33.2)	(92.1)
Off-balance Sheet	13	280	11	256	8	270
	(0.1)	(1.5)	-	(2.1)	-	(0.7)
Forex Transactions	13	12	19	38	23	16
	(0.1)	(0.1)	(0.1)	(0.3)	(0.1)	-
Card/Internet	6,699	278	29,082	1,457	13,516	520
	(49.7)	(1.5)	(80.6)	(11.9)	(56.5)	(1.4)
Deposits	652	259	2,002	240	1,208	527
	(4.8)	(1.4)	(5.6)	(2.0)	(5.0)	(1.5)
Inter-Branch Accounts	3	0	29	10	14	26
	-	-	(0.1)	(0.1)	(0.1)	(0.1)
Cash	1,485	159	484	78	306	39
	(11.0)	(0.8)	(1.3)	(0.6)	(1.3)	(0.1)
Cheques/DDS. *CIC.*	118	25	127	42	122	74
	(0.9)	(0.1)	(0.4)	(0.3)	(0.5)	(0.2)
Clearing Accounts	18	3	17	2	6	2
	(0.1)	-	-	-	-	-
Others	472	423	171	35	800	1,392
	(3.5)	(2.2)	(0.5)	(0.3)	(3.3)	(3.9)
Total	**13,494**	**18,981**	**36,060**	**12,230**	**23,953**	**36,014**
	(100.0)	**(100.0)**	**(100.0)**	**(100.0)**	**(100.0)**	**(100.0)**

- : Nil/Negligible

Note: 1. Figures in parentheses represent the percentage share of the total.

2. Data are in respect of frauds of ₹1 lakh and above reported during the period.

3. The figures reported by banks and FIs are subject to

changes based on revisions filed by them.

4. Frauds reported in a year could have occurred several years prior to year of reporting.

5. Amounts involved reported do not reflect the amount of loss incurred. Depending on recoveries, the loss incurred gets reduced. Further, the entire amount involved is not necessarily diverted.

6. As on March 31, 2025, 783 frauds amounting to ₹ 1,12,911 crore were withdrawn by banks due to non-compliance with the principles of natural justice as per the judgment of the Hon'ble Supreme Court dated March 27, 2023.

7. Data pertaining to 2024-25 includes fraud classification in 122 cases amounting to ₹18,674 crore, pertaining to previous financial years, reported afresh during the current financial year after re examination and ensuring compliance with the judgement of the Hon'ble Supreme Court, dated March 27, 2023

Source: RBI Supervisory Returns."

24. The Bank group-wise details have also been made available. It will be seen that in public sector banks for the FY 2024-25 there were 6,935 cases of frauds and amount involved was Rs.25,667 crores and in private sector banks for the FY 2024-25 the fraud cases were 14,233 and the amount involved was Rs.10,088 crores. The full chart is set out hereinbelow:

Fraud Details from RBI Annual Report 2024-25

Fraud Cases - Bank Group-wise

(Amount in ₹ crore)

Bank Group/institution	2022-23		2023-24		2024-25	
	Number or Frauds	Amount involved	Number of Frauds	Amount involved	Number of Frauds	Amount involved
1	2	3	4	5	6	7
Public Sector Banks	3,331	12,557	7,460	9,254	6,935	25,667
	(24.7)	(66.2)	(20.7)	(75.6)	(29.0)	(71.3)
Private Sector Banks	8,971	5,206	24,207	2,722	14,233	10,088
	(66.4)	(27.4)	(67.2)	(22.3)	(59.4)	(28.0)
Foreign Banks	804	292	2,899	154	1,448	181
	(6.0)	(1.5)	(8.0)	(1.3)	(6.0)	(0.5)
Financial Institutions	9	888	1	1	2	13
	(0.1)	(4.7)	-	-	-	-
Small Finance Banks	311	31	1019	64	1,217	58
	(2.3)	(0.2)	(2.8)	(0.5)	(5.1)	(0.2)
Payments Banks	68	7	472	35	113	6
	(0.5)	-	(1.3)	(0.3)	(0.5)	-
Local Area Banks	0	0	2	0	5	1
	-	-	-	-	-	-
Total	**13,494**	**18,981**	**36,060**	**12,230**	**23,953**	**36,014**
	(100.0)	**(100.0)**	**(100.0)**	**(100.0)**	**(100.0)**	**(100.0)**

Nil/Negligible

Note: 1. Figures in parentheses represent the percentage share of the total.

2.Data are in respect of frauds of ₹1 lakh and above reported during the period.

3.The figures reported by banks and FIs are subject to changes based on revisions filed by them.

4.Frauds reported in a year could have occurred several years prior to year of reporting.

5.Amounts involved reported do not reflect the amount of loss

incurred. Depending on recoveries, the loss incurred gets reduced. Further, the entire amount involved is not necessarily diverted.

6.As on March 31, 2025, 783 frauds amounting to ₹ 1,12,911 crore were withdrawn by banks due to non-compliance with the principles of natural justice as per the judgment of the Hon'ble Supreme Court dated March 27, 2023.

7.Data pertaining to 2024-25 includes fraud classification in 122 cases amounting to ₹18,674 crore, pertaining to previous financial years, reported afresh during the current financial year after re-examination and ensuring compliance with the judgement of the Hon'ble Supreme Court, dated March 27, 2023

Source: RBI Supervisory Returns."

25. A close reading of the chart also indicates for the FY 2024-25 while the public sector banks accounted for 29 percent of the total cases of frauds, it accounted for 71.3 percent of the total amount involved in the fraud.

CONTENTIONS OF THE RBI AND THE BANKS:-

26. Mr. Venkatesh Dhond, the learned Senior Advocate, appearing for the RBI, at the outset, clarified that the role of the RBI was confined to issuing supervisory directions. The supervisory directions outlined the procedural and reporting obligations of regulated entities and it is not the role of the RBI to interfere with case-specific decisions. Learned senior counsel, however, submitted that the judgment in ***Rajesh***

Agarwal (supra) only mandated the banks to serve notice and give an opportunity to explain the conclusions of the forensic audit report. According to the learned senior counsel, consistent with the observations in ***Rajesh Agarwal (supra)***, the 2024 Master Directions on frauds makes the final determination of only "fraud" based on documentation and data that the bank possesses which either came from the borrower or was already in the borrowers explicit knowledge.

27. Learned senior counsel, submitted that the 2024 Master Directions mandates detailed show cause notice, reasonable time for reply, an examination of the response and the making of a reasoned order. According to the learned senior counsel, ***Rajesh Agarwal (supra)*** did not, by any measure, mandate a personal/oral hearing. On the contrary, according to the learned senior counsel, ***Rajesh Agarwal (supra)*** made it explicit that personal/oral hearing was not mandatory and that the principle of *audi alteram partem* is sufficiently met if the written/documentary response of the

borrower/noticee is duly considered and a speaking order passed.

28. Learned senior counsel submits that "opportunity of a hearing" or "opportunity of being heard" contemplated in ***Rajesh Agarwal (supra)*** is not a "personal/oral" hearing. Learned senior counsel submitted that since unlike the 2024 directions, the 2016 directions did not have explicit clauses providing for notice, reply and the making of a reasoned order, the challenge to the 2016 directions were on not being given an opportunity to present a defence. Learned senior counsel relies on ***State Bank of India*** vs. ***Jah Developers Private Limited and Others***[3], and ***Gorkha Security Services*** vs. ***Government (NCT of Delhi) and Others***[4], which, in turn, were relied on in ***Rajesh Agarwal (supra)*** to contend that oral hearing is not an absolute requirement of the principle of natural justice and that a consideration of a written representation would suffice. Dealing with Para seventy-five

[3] (2019) 6 SCC 787
[4] (2014) 9 SCC 105

of ***Rajesh Agarwal (supra)***, learned senior counsel, contends that the hearing contemplated was not an oral/personal hearing.

29. According to the learned senior counsel, if there was any doubt whether ***Rajesh Agarwal (supra)*** intended to the contra, the same was brought to a quietus by the clarification issued by this Court on 12.05.2023 in M.A. No. 810 of 2023.

30. Learned senior counsel submitted that prescribing a personal/oral hearing to every borrower before classifying an account as fraud is neither warranted nor practicable or desirable. According to the learned senior counsel, the contention of the respondents to that effect will not only have undesirable consequences but has the potential to undermine the very objective of the directions, namely, to ensure timely and speedy detection and reporting of fraud to the RBI. According to the learned senior counsel, the 2024 master directions include and embody the principles of natural justice in the form that RBI considers most expedient and appropriate since they take note of : the observed

realities of the banking sector and credit facilities; draw from past experience of the working/administration of the master directions; are alive to the width, diversity and extent of potential fraud case; the need for mechanism of timely detection, identification and reporting of fraud which act as a diagnostic tool and a deterrent, and recommend an efficient administrative process at the same time not convert the same into a court adjudication.

31. According to the learned senior counsel, banks ought to be provided certain "play in the joints" and that is why the RBI has not made oral hearing as part of the process and confer any right on the borrower to insist on an oral hearing. According to the learned senior counsel, frauds are of various hues and what has been set out as categories are only illustrative. Learned senior counsel submits that in view of the same, a straitjacket formula for all cases would be both conceptually inappropriate and practically inexpedient.

32. Learned senior counsel submits that the classification of fraud is based on objective documented evidence such as

financial statements, transaction records, stock statements and security valuations which are all within the knowledge of the borrower. Learned senior counsel submits that the classification is an internal administrative decision of the banks, required by regulatory guidelines to trigger mandatory reporting, asset preservation and immediate systemic risk mitigation. Learned senior counsel submits that insisting on oral hearing would convert a swift administrative process into a protracted procedure causing significant delays. According to the learned senior counsel, borrowers would then resort to demand for cross examination and all these dilatory tactics would severely impede prompt reporting to law enforcement.

33. This delay will provide borrowers an opportunity to dissipate assets, destroy evidence or even abscond resulting in the grave prejudice to public interest. Learned senior counsel submits that the charts only reflect concluded cases where accounts have been classified and do not reflect the cases that are underway. According to the learned senior

counsel, imposing a personal hearing will cause significant logistical and infrastructural burden. According to the learned senior counsel, as per the procedure fixed in the Master Directions, the Committee could deliberate at their convenience after the essential banking functions for the day are over, which would not be the case if officials are to be designated for hearing the large number of borrowers at an appointed time. If oral hearing is insisted, senior officials of the bank who would otherwise need to attend core banking functions will be totally engaged in conducting personal hearings seriously prejudicing the business of the banks.

34. Elaborating on the concept of *audi alteram partem*, learned senior counsel submits that the rules of natural justice are not embodied rules and as to what aspect of natural justice would apply to a given case would depend on the facts and circumstances of the case, the framework of law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

[***A.K. Kraipak*** vs.***Union of India***[5]]. Learned senior counsel submits that deference is usually shown to the views of the experts and the RBI, being the regulator having factored in natural justice in the form of show cause notice, reply and the need for a reasoned order, personal hearing ought not to be insisted and was in fact not insisted upon in ***Rajesh Agarwal (supra)***.

SUBMISSIONS ON BEHALF OF THE BANKS: -

35. Mr. Tushar Mehta, the learned Solicitor General, who appeared for the appellant-banks extensively referred to the 2016 and 2024 directions and particularly the purpose and the objective behind the issuance of the directions. Learned Solicitor General elaborated on the Early Warning Signals [EWS] and the Red Flagging Accounts [RFA] concepts highlighted in the directions and explained the significance of the same. Learned Solicitor General contends that under the procedure prescribed in the Master Directions the account holder is aware even before the issuance of show

[5] (1969) 2 SCC 262

cause notice about his account showing early warning signals and, therefore, would be declared a red flagged account; the borrower participates in the process of audit when there is a direction for forensic audit; service of show cause notice along with the conclusions of the forensic audit report; the consideration of the reply in detail, and the making of a reasoned order taking into consideration the facts of the case and the explanation of the account holder which is served upon the borrower. According to the learned Solicitor General, the procedure prescribed is in conformity with the principles of natural justice.

36. Learned Solicitor General reiterated the point that grant of a personal hearing will defeat the purpose behind the master directions and cause prejudice to the banks by creating stumbling blocks for early and timely detection of reporting of fraud; early and timely reporting to the investigative agencies; faster dissemination to banks the details of fraud and fraudulent borrowers, and taking of safeguards and preventive measures by banks. Learned

Solicitor General submits that large banks handled hundreds of potential fraud alerts involving multiple lenders and complex borrower groups. According to the learned Solicitor General, banks not only deal with corporate borrowers but also deal with retail accounts where frauds occur.

37. Learned Solicitor General submits that imposing a compulsory layer of personal hearing in every case would inevitably lead to an increased case load on the banks and delay decision-making including the reporting of frauds. Learned Solicitor General highlighted the aspect that multiple directors may each seek personal hearing and that will cause further delay and enormous prejudice to the public interest. Learned Solicitor General dwelt upon how in recent times instances of loan fraud have increased and how banks have been badly affected by the fraudulent practice of the borrowers especially large borrowers resulting in loss of billions of public money.

38. Learned Solicitor General submitted that some of the Early Warning Signals [EWS] which would alert the bank officials about the wrongdoings in the loan accounts are default in undisputed payment to the statutory bodies as declared in the annual report; bouncing of high-value cheques; delay in payment of outstanding dues; funds from other banks to liquidate outstanding loan amount except when they are in normal course; exclusive collateral charge to the number of lenders without NOC of existing charge lenders; dispute on title of collateral securities and critical issues, if any, highlighted in the stock audit report. According to the learned Solicitor General, these signals put the banks on alert and trigger a detailed investigation into accounts. Learned Solicitor General submits that the bank prepares a report on the red flagged accounts which is to be put up to the Special Committee of the Board for monitoring and follow-up of Frauds (SCBF).

39. The Fraud Monitoring Group [FMG] of the banks is entrusted with the responsibility to take a call on whether an

account in which EWS are observed should be classified as RFA or not within a month of detection of EWS. Learned Solicitor General submits that in case the account is classified as RFA, the FMG will stipulate the nature and level of further investigations or remedial measures to protect the bank's interest. Learned Solicitor General submits that the report is thereafter put up to the special committee of the board for monitoring and follow-up cases of fraud with the SCBF with the observations/decisions of the FMG. Thereafter, the bank uses external auditors including forensic experts or an internal team for investigation before taking a final view on the RFA.

40. Under the Master Directions, within a total time-frame of 180 days, banks have to either lift the status of a red flagged account or classify the account as fraud. Learned Solicitor General submits that once an account is classified as fraud by the individual bank, it is the responsibility of the bank to report the bank status on the CRILC platform so that other banks are alerted. Thereafter, the fraud has to be reported

to RBI and also to the CBI/Police. Learned Solicitor General submits that in consortium lendings, the individual bank which has red flagged the account of detected fraud would ask the consortium leader or the largest lender under the Multiple Banking Arrangements [MBA] to convene a meeting of the Joint lending Forum [JLF] to discuss the issue. Based on the majority of at least 60% share, the account should be red-flagged by all the banks and would be subjected to a forensic audit commissioned/initiated by the consortium leader or the largest lender under the Multiple Banking Arrangements.

41. Learned Solicitor General highlighted all these aspects to drive home the point that the decision involves officials from top level management after necessary forensic audits. Learned Solicitor General submits that an oral/personal hearing would act as a forewarning to the fraudsters and would give an opportunity for the borrower to delay/abscond, secret assets and siphon off funds from other

banks and hamper investigation by the law enforcement agencies.

42. Learned Solicitor General submits that the ultimate and the overriding objective underlying the purpose of the Master Directions were to ensure that the borrowers who are found to have committed fraud, should be debarred immediately from further availing of financial assistance. Dealing with ***Rajesh Agarwal (supra)***, learned Solicitor General submitted that all that the judgment did was to read the *audi alteram partem* into the directions of 2016. Learned Solicitor General submitted that natural justice is a flexible concept and must not be unnecessarily expanded contrary to public interest.

43. Learned Solicitor General further contended that para 81 and para 98.6 of the judgment in ***Rajesh Agarwal (supra)*** only mandate furnishing finding and conclusions respectively, from the forensic audit report and submits that that would serve the ends of justice.

CONTENTIONS OF THE BORROWERS: -

44. Shri K. Parameshwar, learned senior counsel, for the respondent borrower (in Civil Appeal @ SLP (C) Nos. 20618-20619/2025) submits that in ***Rajesh Agarwal (supra)***, it was specifically held that principles of natural justice could not be impliedly excluded owing to onerous civil consequences on the borrower. Specific attention was drawn to paras 98.2, 98.3, 98.4, 98.5, 98.6 and 98.7 of the judgment in ***Rajesh Agarwal (supra)*** to contend that the court interpreted *audi alteram partem* in the context of the Master Directions to include "an opportunity to explain the evidence against it" and "be allowed to represent why the proposed action should not be taken". He drew specific attention to para 81 of the judgment in ***Rajesh Agarwal (supra)***. According to the learned senior counsel, this specific direction was not disturbed or modified in the subsequent orders of this Court dated 12.05.2023 and 18.07.2023.

45. Learned senior counsel submitted that the appellant-Banks specifically sought a clarification in the application for

clarification that the judgment did not afford "a personal hearing". Learned senior counsel submitted that considering that the Miscellaneous Application was disposed of without any clarification, there is no manner of doubt that ***Rajesh Agarwal (supra)*** contemplated personal hearing. Learned senior counsel further submitted that similarly, a prayer was made in the clarification application to clarify that providing relevant extracts from the forensic audit report would meet the ends of justice and that since no clarification was made on the same, it would mean that furnishing the full report was mandatory.

46. According to the learned senior counsel, the appellant-Banks are only re-agitating the issue and that the appellant is cherry-picking since in other cases too where the State Bank of India is a party, personal hearing was held to be mandatory by the High Court and those judgments have not been challenged by the appellant-Banks. Learned senior counsel submitted that a party, similarly situated, is entitled

to the benefit of judicial pronouncement on the principle of parity.

47. Learned senior counsel invited attention to the judgment of the High Court of Telangana at Hyderabad which was called in question in ***Rajesh Agarwal (supra)***. Drawing the attention to para 70.4 of the High Court judgment, learned senior counsel submits that a direction to grant "opportunity of personal hearing" was ordered. Learned senior counsel submitted that this Court in ***Rajesh Agarwal (supra)*** upheld the judgment of the Telangana High Court. Hence, opportunity of personal hearing ought to be afforded. Learned senior counsel referred to a large number of High Court judgments which directed the banks to provide personal hearing to the borrower while initiating action under the master directions.

48. Learned senior counsel submits that the appellants are inviting the court to treat respondent-borrowers in a manner as if they are already guilty. Learned senior counsel submits that the submission that due to urgency and systemic risk,

oral opportunity is to be denied is inherently and structurally prejudicial because it presumes the correctness of an accusation and expects the borrowers to destroy the presumption without a personal hearing.

49. Dealing with a query from the Court as to whether the doctrine of merger will not foreclose the Court from looking at the judgment of the Telangana High Court in ***Rajesh Agarwal (supra)***, learned senior counsel contends that reliance on the doctrine of merger is not justified. According to the learned senior counsel, this Court consciously affirmed the judgment of the Telangana High Court mandating personal hearing. Learned senior counsel drew attention to the fact that in ***Rajesh Agarwal (supra)***, the Court was well aware of the need for oral hearing because it highlighted and characterised cases before it, where personal hearing had been ordered and where no relief was granted in terms of personal hearing. Learned senior counsel submitted that in ***Rajesh Agarwal (supra)***, this Court expressly overruled the judgment of the Gujarat High Court in ***Mona Jignesh***

Acharya vs. ***Bank of India***[6],. In ***Mona Jignesh Acharya (supra)***, the Gujarat High Court held that personal hearing was not mandatory in every situation. Learned senior counsel submitted that in the judgment of the Gujarat High Court, the Court had ordered issuance of notice, receipt of reply and passing of a reasoned order. This judgment was overruled by this Court in ***Rajesh Agarwal (supra)***.

50. Learned senior counsel relied upon the judgment of this Court in ***T. Takano*** vs. ***Securities and Exchange Board of India and Another***[7], for disclosure of relevant material and how it can only be subjected to narrow exceptions. According to the learned senior counsel, ***Takano (supra)*** mandates that all material relevant to the adjudicatory satisfaction must be disclosed and that the authorities *ipse dixit* that it has not relied on any particular material was not determinative if the material had nexus to the decision. According to the learned senior counsel, the forensic audit report is a central investigating material and not a peripheral

[6] 2021 SCC OnLine Guj. 2811
[7] (2022) 8 SCC 162

document. Learned senior counsel submits that the concurrent findings of the learned Single Judge and the Division Bench that the declaration of fraud cannot stand without supply of the forensic audit report was a fact sensitive application of these decisions. Learned senior counsel submitted that civil consequences are grave for an account holder inasmuch as it blacklists the borrower from institutional finance; is inextricably linked to criminal proceedings and exposes the borrower to insolvency and bankruptcy proceedings. According to the learned senior counsel, all these constitute "civil death" and serious reputational stigma and hence the bank should be subjected to rigorous procedural standards like a personal hearing.

51. Learned senior counsel submits that the contention that the process of personal hearing would "paralyze the entire process" is a completely untenable submission. According to the learned senior counsel, banks have been routinely granting personal hearing under the wilful defaulter

directions, since the oral hearing will be structured time-bound and is not a proceeding akin to a trial.

52. Drawing attention to the facts, learned senior counsel submits that in Civil Appeal @ SLP(C) Nos. 20618-20619 of 2025 while the forensic reports were completed on 02.11.2020 and 24.12.2022, the show cause notice was issued on 27.12.2023, after three years.

53. Dealing with the statistics furnished by the Reserve Bank of India, learned senior counsel contends that it is only an attempt to overwhelm the Court and paint a picture of impracticality to hold personal hearings. Learned senior counsel submits that the threshold for EWS in RFA was an exposure of Rs. 50 crores and statistics of cheque frauds and small retail frauds would not present the correct picture. Learned senior counsel for the respondent submits that applying the impact and effect test on fundamental rights, there is serious infringement on the fundamental rights under Article 19(1)(g) as a fraud declaration mandatorily debars them from institutional finance. Further, a fraud

declaration virtually forecloses access to capital and impacts eligibility under Section 29A of the Insolvency and Bankruptcy Code, 2016 and also exposes them to criminal proceedings. Learned senior counsel contends that the Court must be circumspect of the procedure prescribed by mere administrative instructions. Learned senior counsel submits that the proportionality standard created by this Court while evaluating violation of fundamental rights must apply with even more vigour while considering the impact of the master directions. Learned senior counsel submits that full disclosure of the forensic audit report and minimal oral hearing is the least restrictive alternative which will not only reduce the risk of error but also uphold the regulatory objectives of early detection and timely reporting. Learned senior counsel canvassed on the application of the principle of non-retrogression considering the holding in ***Rajesh Agarwal (supra)***, which according to the learned senior counsel, has guaranteed oral hearing. Learned senior

counsel submits that enormous prejudice has been caused to the respondent by non-grant of a personal hearing.

54. Shri Parag P. Tripathi, learned senior counsel, submitted that this Court upheld the judgment of the Telangana High Court. It specifically directed personal hearing to be given. Learned senior counsel submitted that "hearing in ***Rajesh Agarwal (supra)*** meant personal hearing". Learned senior counsel submitted that the specific argument of the banks before this Court in ***Rajesh Agarwal (supra)*** was that the borrowers had no right to personal hearing. Learned senior counsel drew specific attention to para seventy-five of the judgment in ***Rajesh Agarwal (supra)*** and highlighted the use of the phrase "reply and representation" separately. Learned senior counsel submits that the judgment sets out a three-stage process: notice; opportunity to explain, and representation (personal hearing). Learned senior counsel submits that if reply and representation meant only written submission, the use of the word "representation" was otiose.

55. Learned senior counsel submitted that banks ought to disclose the audit reports and referred to para 95 of ***Rajesh Agarwal (supra)*** to reinforce the point. Learned senior counsel inviting attention to the Miscellaneous Application filed by the State Bank of India for clarification in ***Rajesh Agarwal (supra)*** and submitted that clarification was sought on three aspects: that hearing contemplated in the judgment did not include personal hearing; that providing relevant extracts from the forensic auditor report would meet the ends of justice, and that the judgment should have prospective application. According to the learned senior counsel, the clarification application brought out for the first time the issue of oral hearing and the Court, according to the learned senior counsel, made it clear by reiterating the judgment of the High Court.

56. According to the learned senior counsel, if the Court which passed the clarificatory order in ***Rajesh Agarwal (supra)*** was of the view that oral hearing was not necessary or not contemplated in the main judgment, it would have

taken the opportunity to clarify the same while disposing of the Miscellaneous Application.

57. Learned senior counsel submits that the Reserve Bank of India issued a master circular dated 30.07.2024 on wilful defaulters and with regard to the wilful defaulters, the judgment in ***Rajesh Agarwal (supra)*** was fully accepted since according to the learned senior counsel, under the said circular, forensic audit report as also all documents in the show cause notice were to be supplied and the Review Commission was to give a personal hearing. Referring to the Annual Report of the RBI for 2024-25, learned senior counsel, submits that this Circular of 30.07.2024 was issued taking into account the various judgments of this Court and the High Courts.

58. Learned senior counsel submits that classification as fraud has serious consequences and that personal hearing provides a valuable and the jurisprudentially approved justice-oriented healing to such a party. Learned senior counsel relied on U.S. Supreme Court judgment of ***Goldberg***

vs. ***Kelly***[8] to contrast between oral submissions and written submissions. Learned senior counsel submits that judges change their minds under the influence of oral arguments and relied on judgments in support of the proposition.

59. Learned senior counsel disputed the argument of time being of essence by setting out that while in the case of the borrower represented by him, the forensic audit reports were dated 21.08.2022 and 28.03.2023 (addendum); the first show cause notice was issued on 27.09.2023. Thereafter, a second auditor was appointed on 30.10.2023 and a second show cause notice was issued on 03.01.2024 and the final order was made on 14.05.2025. Learned senior counsel submits that the arguments advanced by the RBI and the banks to negate personal hearing like there being no right of a personal hearing and that it can only be considered on case by case basis; that the documents are the basis for proceeding; that there are a large number of cases and that

[8] 397 US 254 (1970)

time is of essence are all not valid arguments compared to the consequences that will ensue to the borrower.

HOLDING IN RAJESH AGARWAL (*SUPRA*): -

60. Time is ripe now to make a brief analysis of the judgment in ***Rajesh Agarwal (supra)***. In ***Rajesh Agarwal (supra)***, this Court dealt with four Civil Appeals and a Writ Petition. Three Civil Appeals arose out of the judgments from the High Court of Telangana at Hyderabad, one Civil Appeal arose from a judgment of the High Court of Gujarat and the Writ Petition was by the petitioner in the Gujarat High Court who had challenged the validity of the Master Directions of 2016 before this Court. Of the three judgments of the Telangana High Court, in the lead case namely, ***Rajesh Agarwal (supra)***, the High Court had read the principles of natural justice into the Master Directions of 2016. Hence, the State Bank of India was in appeal to this Court. In the two other Appeals from Telangana, the High Court had declined to grant relief to the writ petitioners and the writ petitioners

therein were in appeal here. In the matter from Gujarat, namely, ***Mona Jignesh Acharya (supra)*** [SLP (C) No. 3388 of 2022] the Division Bench of the Gujarat High Court had, while declining to read in natural justice, gave an opportunity to the borrower to file a representation post the declaration of the account as a fraud account and had directed the bank to decide on the representation. The borrower in the Gujarat matter had also filed Writ Petition (C) No. 138 of 2022 challenging the validity of the Master Directions 2016. As pointed out earlier, unlike the 2024 directions, the 2016 master directions were absolutely silent on the principle of natural justice to be adopted before classifying an account as a fraud account.

61. The question that the Court considered was whether the principle of natural justice should be read into the master directions 2016. The Court, at the very outset in Para 2 made it clear that for the reasons that were to follow the principles of natural justice particularly the rule of *Audi Alteram Partem*

had to be necessarily read into the master directions on fraud to save it from the arbitrariness.

62. The contention of the RBI and the lender banks were that the clamor for reading principles of natural justice into the circular was devoid of merit. They contended that the master directions on frauds were necessitated to protect the interests of the depositors and for timely detection and dissemination of information and reporting about the fraud. They specifically contended that the principles of natural justice are not applicable since the classification is done only for reporting the matter to the law enforcement agency. They emphatically submitted that principles of natural justice are not applicable at the stage of setting the process of criminal law in motion implying thereby, if that were so, principles of natural justice cannot apply to classify the account as fraud accounts. Express submissions were made to the effect that issuing of a Show Cause Notice may forewarn the borrower and hamper the investigation by the law enforcement agencies. The borrowers on the other hand

contended that classification of an account as fraud carries significant consequences akin to black listing which affected their right to reputation. They contended that since the classification of account as fraud entailed significant civil consequences, hence the principles of natural justice ought to be read into the master directions on frauds.

63. The Court clarified, at the outset, that *'Audi Alteram Partem'* depended on the facts and circumstances of the case, the express language and basic scheme of the statute under which the administrative powers is exercised as well as the nature and purpose for which the power is conferred and the final effect of the exercise of that power (Para 36). The Court thereafter held that civil consequences ensued to the borrower (Para 50.3).

64. Thereafter, the Court dealt with the judgment of ***Jah Developers (supra)***, wherein a procedure for consideration by the first Committee, prior to the issuance of Show Cause Notice and how the first Committee was mandated under the circular pertaining to willful defaulters to consider the

submissions before recording the finding of fact of willful default. The Court observed that if the Committee deemed it necessary it could also provide a personal hearing to the borrower and the promoters/whole time director of the borrowing company in the case of willful default. Thereafter, the Court in ***Jah Developers (supra)*** dealt with the second stage before the Review Committee. Thereafter, the Court held that while consequences for an account declared as fraud is the same as willful default, in the case of fraud account certain additional consequences also ensue.

65. What is significant to note is that even in ***Jah Developers (supra)*** in the case of willful defaulter, as per the extant procedure, there was no right of personal hearing to the defaulter and only if the first Committee so desired a hearing at the discretion of the Committee it was to be given.

66. In ***Rajesh Agarwal (supra),*** this Court held that the bar from raising finances from financial markets and capital markets which were to visit the borrowers if the account is classified as 'fraud' tantamounts to 'civil death' apart from

violation of Article 19(1)(g). In view of the same, this Court held that principles of natural justice should be made applicable and that a person against whom an action of debarment is sought should be given an opportunity of being heard. This Court further held that the action of classifying an account as fraud not only affected the business or goodwill of the borrower but also the right to reputation. This Court held that since the master directions did not exclude a right of hearing to the borrowers the principle of natural justice can be read into the same.

67. Much debate centered around Para 75 & 81 of ***Rajesh Agarwal (supra)*** **a**nd hence, the same are extracted hereinbelow for a complete understanding:-

> **"75.** As mentioned above, Clause 8.9.6 of the Master Directions on Frauds contemplates that the procedure for the classification of an account as fraud has to be completed within six months. The procedure adopted under the Master Directions on Frauds provides enough time to the banks to deliberate before classifying an account as fraud. **During this interval, the banks can serve a notice to the borrowers, and give them an opportunity to submit their reply and representation regarding the findings of the forensic audit report. Given the wide time-frames contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is**

reasonably practicable for banks to provide an adequate opportunity of a hearing to the borrowers before classifying their account as fraud.

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)

68. The argument of learned Senior Counsel for the borrowers is that since the Court used the word "reply and representation", both cannot mean the same and hence post the reply there ought to be a personal hearing.

69. We are not persuaded to read the said phrases like a statute. Read in the context of the entire judgment, it is clear that what was contemplated was only a Show Cause Notice, a written representation in the form of a reply. All that the

Court meant was to reply to the Show Cause Notice and represent against the findings in the forensic report while submitting their response to the Show Cause Notice. Thereafter, this Court, after reading in principles of natural justice, upheld the constitutional validity of the master directions. The Court also mandated that the order passed there on must be reasoned so as to comport with fairness and must also indicate due application of mind.

70. The Court made the following operative directions in its conclusion: -

> "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."

71. Much was made out of the fact that in the penultimate paragraph of ***Rajesh Agarwal (supra),*** this Court upheld the judgment of the High Court of Telangana at Hyderabad and set aside the judgment of the High Court of Gujarat. We have hereinafter explained in the context of the doctrine of merger as to which decree would operate as the final pronouncement.

72. ***Rajesh Agarwal (supra)*** resulted in an application for clarification filed by the State Bank of India with the following prayers: -

> "a) clarify that the hearing contemplated in the judgment dated 27.03.2023 passed in C.A. No. 7300 of 2022 & batch is not understood to be personal hearing and that the banks can decide the time frame of adjudication depending upon the urgency of the matter;
>
> b) Clarify that providing relevant extracts from the forensic auditor report, would meet the ends of justice;
>
> c) Clarify that the judgment dated 27.03.2023 in CA No. 7300 of 2022 & batch matters, to be prospective in operation."

73. This Court disposed of the clarification application MA 810/2023 in C.A. No. 7300/2022 by ordering as follows:

> "1. The apprehension which has been expressed by the Solicitor General of India is that since the judgment of the Division Bench of the High Court of Telangana dated 10 December 2022 was upheld in the judgment of this Court dated 27 March 2023, the judgment of this Court may be interpreted in the future to mean that the grant of a personal hearing is mandatory though it has not been so directed in the conclusions set out in paragraph 81 of the judgment.
>
> 2 While upholding the judgment of the High Court of Telangana dated 10 December 2020, the operative directions of this Court are those which are summarized in paragraph 81 in section 'E' of the judgment.

> 3 The Solicitor General states that in respect of his submission that the judgment of the Court should be granted only prospective effect, the State Bank of India may be advised to file a review separately.
>
> 4. The Miscellaneous Application is disposed of.
>
> 5 Pending applications, if any, stand disposed of."

74. Nothing was said of the prayers made and we have to read and understand the judgment as it stands. To our understanding, ***Rajesh Agarwal (supra)*** did not recognize any right in the borrower to a personal hearing from the Banks before classifying their accounts as a fraud account.

75. We must also for the sake of completion of record note that a review petition filed has also been dismissed in the following terms:-

> "1 Application for listing the review petition in open Court is rejected.
>
> 2 Delay condoned.
>
> 3 Having perused the review petition, there is no error apparent on the face of the record. No case for review under Order XLVII Rule 1 of the Supreme Court Rules 2013. The review petition is, therefore, dismissed."

PRINCIPLES OF NATURAL JUSTICE – OBJECTIVES AND CONTOURS:-

76. The ultimate objective of the principles of natural justice is to ensure fairness in action and prevent miscarriage of justice. It has always been held to be a flexible concept. As to what rule of natural justice should apply was to depend, to a great extent, on the facts and circumstances of the case, the framework of the law under which the enquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. In ***A.K. Kraipak and others*** v. ***Union of India and others***[9], this Court held as follows:-

> "**20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.** The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it

[9] (1969) 2 SCC 262

was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. **As observed by this Court in Suresh Koshy George v. University of Kerala [1968 SCC OnLine SC 9] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."**

(Emphasis supplied)

77. In ***Natwar Singh v. Directorate of Enforcement and Another***[10], quoting with approval the judgment of the House of Lords in ***Lloyd v. McMahon***[11] and reiterating the

[10] (2010) 13 SCC 255

[11] (1987) 1 All ER 1118 (HL)

fundamental principle that canons of natural justice have to be adapted to the circumstances, this Court held as under:-

> **"26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, courts can insist and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.**
>
> **27.** In *Lloyd* v. *McMahon*, Lord Bridge observed:
>
> > **"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional**

> **procedural safeguards as will ensure the attainment of fairness."**
>
> **28.** As Lord Reid said in *Wiseman* v. *Borneman*:
>
> "… For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose."
>
> **29.** It is thus clear that the extent of applicability of the principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry."
>
> (Emphasis supplied)

78. The flexibility in the concept of natural justice is inevitable as it encompasses different layers and as to which one would be applicable would, as held in ***A.K. Kraipak*** **(*supra*)**, depend on the nature of the enquiry and the framework of the law under which it is held. For example, an opportunity to be served with a show cause notice and eliciting a reply with an obligation to pass a reasoned order is one facet of natural justice. Another facet is the grant of an interview to the noticee whereby he is personally heard by virtue of an oral hearing. A yet higher facet is where in the said process of a personal hearing he is given the facility of

cross-examination of witnesses. To top it all, could be such cases where the opportunity to be represented by a lawyer or a legally trained mind is guaranteed.

RIGHT TO PERSONAL HEARING VIS-À-VIS DISCRETION OF THE AUTHORITY:-

79. In the absence of any rule being prescribed in the statute or rule or in regulations or in any policy, what would meet the requirements effectively would depend on the circumstances and the nature of the enquiry. One cannot start with the assumption that as of right, a noticee is entitled to personal hearing. In ***Madhya Pradesh Industries Ltd. v. Union of India And Others***[12], K. Subba Rao J., as the learned Chief Justice then was, felicitously explained the situation thus:-

> "**10.** As regards the second contention, **I do not think that the appellant is entitled as of right to a personal hearing.** It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed Rule 55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against

[12] (1966) 1 SCR 466

any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. **The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal. The facts of the present case disclose that a written representation would effectively meet the requirements of the principles of natural justice.... ."**

(Emphasis supplied)

80. Elucidating on the difference between a right to a personal hearing in the noticee and the discretion of the authority to grant one in a given case and further explaining how it was not an incident of natural justice that personal hearing must be given (except in proceedings in courts of law) a Constitution Bench of this Court in ***Union of India v. Jyoti Prakash Mitter***[13], speaking through Chief Justice J.C. Shah observed as under:-

> **"26. Article 217(3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed.** The respondent was on that account entitled to make a representation. **But it is not necessarily an**

[13] (1971) 1 SCC 396

incident of the Rules of natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an opportunity of a personal hearing is invalid. The President is performing a judicial function when he determines a dispute as to the age of a Judge, but he is not constituted by the Constitution or a court. **Whether in a given case the President should give a personal hearing is for him to decide.** The question is left to the discretion of the President to decide whether an oral hearing should be given to the Judge concerned. The record amply supports the view that the President did not deem it necessary to give an oral hearing. There were no complicated questions to be decided by the President……"

(Emphasis supplied)

81. In the same vein are the observations of another Constitution Bench of this Court in ***State of Maharashtra And Another v. Lok Shikshan Sansatha And Others***[14] wherein it was held:-

"24. From the mere fact that there is no right provided for the applicant being heard before his application is rejected, it cannot be held that there is a violation of

[14] (1971) 2 SCC 410

the principles of natural justice. On the other hand, it is seen that the District Committees have considered the claims of the writ petitioners as well as of the respective third respondents therein and recommended to the educational authorities that the claims of the latter are to be accepted. The reasons for rejection of the applications have also been given in the orders passed by the educational authorities.

25. When all the relevant circumstances have been taken into account by the District Committee and the educational authorities, there is no violation of any principle of natural justice merely for the reason that the applicants were not given a hearing by the educational authorities before their applications were rejected. The particulars which have to be mentioned in the prescribed application form are very elaborate and complete. The provisions in the Code read along with the instructions given by the State in the circular letter, dated October 5, 1965, refer to various relevant and material factors that had to be taken into account for the purpose of deciding whether the application is to be granted or not. As we have already pointed out it is not the case of any of the writ petitioner that these relevant factors have not been considered by the District Committees. Nor is it their case that the reasons given for rejection of the applications are not covered by the provisions contained in the Code. Clauses (1) and (2) of Rule 3 are not to be read in isolation as has been done by the High Court. On the other hand, they must be read along with the other various clauses contained in the same rule as well as the detailed instructions given by the Government in the circular letter, dated October 5, 1965. It follows that the reasoning of the High Court that these two sub-clauses violate Article 14 cannot be accepted."

(Emphasis supplied)

82. In ***Union of India and Another v. Jesus Sales Corporation***[15], this Court emphasizing how it is up to the authority to decide in a given case on special facts if a personal hearing is warranted and how the noticees cannot insist and courts cannot invalidate orders for want of a personal hearing where the points raised in the representation are duly considered, observed as under:-

> "**5.** ……It need not be pointed out that under different situations and conditions the requirement of compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. **If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions.** Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. **When principles of natural justice require an opportunity to**

[15] (1996) 4 SCC 69

be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. **Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing.** But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded. ……"

(Emphasis supplied)

83. Emphasizing that just results can be achieved on written representation and due consideration, this Court reiterating the holding in ***Gorkha Security Services*** (*supra*) held as under in ***Jah Developers (Supra).***

"**15.** The next question that arises is whether an oral hearing is required under the Revised Circular dated 1-7-2015. We have already seen that the said circular makes a departure from the earlier Master Circular in that an oral hearing may only be given by the First Committee at the first stage if it is so found necessary. **Given the scheme of the Revised Circular, it is difficult to state that oral hearing is mandatory. It is even more difficult to state that in all cases oral hearings must be given, or else the principles of natural justice are breached. A number of**

judgments have held that natural justice is a flexible tool that is used in order that a person or authority arrive at a just result. Such result can be arrived at in many cases without oral hearing but on written representations given by parties, after considering which, a decision is then arrived at. **Indeed, in a recent judgment in *Gorkha Security Services* v. *State (NCT of Delhi)* this Court has held, in a blacklisting case, that where serious consequences ensue, once a show-cause notice is issued and opportunity to reply is afforded, natural justice is satisfied and it is not necessary to give oral hearing in such cases (see para 20).**

16. When it comes to whether the borrower can, given the consequences of being declared a wilful defaulter, be said to have a right to be represented by a lawyer, the judgments of this Court have held that there is no such unconditional right, and that it would all depend on the facts and circumstances of each case, given the governing rules and the fact situation of each case. Thus, in Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] , in the context of election law, this Court held: (SCC p. 439, para 63)

"63. In Wiseman v. Borneman, 1968 Ch 429 : (1968) 2 WLR 320 : (1967) 3 All ER 1045 (CA)] there was a hint of the competitive claims of hurry and hearing. Lord Reid said: 'Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him' (emphasis added). We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke

of fairness except in very exceptional circumstances. Even in [Wiseman v. Borneman, 1971 AC 297 : (1969) 3 WLR 706 (HL)] where all that was sought to be done was to see if there was a prima facie case to proceed with a tax case where, inevitably, a fuller hearing would be extended at a later stage of the proceedings, Lord Reid, Lord Morris of Borth-y-Gest and Lord Wilberforce suggested 'that there might be exceptional cases where to decide upon it ex parte would be unfair, and it would be the duty of the tribunal to take appropriate steps to eliminate unfairness' (Lord Denning, M.R., in Howard v. Borneman (2), 1975 Ch 201 : (1974) 3 WLR 660 (CA)] summarised the observations of the Law Lords in this form). No doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for. Disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases, be sufficient compliance. It is even conceivable that an urgent meeting with the parties concerned summoned at an hour's notice, or in a crisis, even a telephone call, may suffice."

(Emphasis in original)

PRECEDENTS CITED BY THE BORROWERS: -

84. The decision in ***State of U.P. And Others v. Maharaja Dharmander Prasad Singh And Others***[16] turned on its own facts, where due to the complexity the Court not only directed grant of the personal hearing but granted opportunity to

[16] (1989) 2 SCC 505

adduce evidence. The said case has no application to the issue that we are currently considering.

85. In ***Olga Tellis And Others v. Bombay Municipal Corporation and Others***[17], the reading of para 47 to 49 indicates that the Court was considering the contention of the authorities that notice need not be given of a proposed action. The reference to ***S.L. Kapoor vs. Jagmohan And Others***[18] only reinforces this aspect.

86. ***S.L. Kapoor*** (*supra*) was a case where the New Delhi Municipal Committee was not put on notice and not given an opportunity to explain. The further question about the aspect of the futility of notice was also considered. Hence, the said case does not carry the case of respondents any further.

87. ***Jayendra Vishnu Thakur vs. State of Maharashtra And Another***[19] pertains to a criminal trial in a Court of law and it is in that context that ***Goldberg vs. Kelly***[20] was cited. There

[17] (1985) 3 SCC 545
[18] (1980) 4 SCC 379
[19] (2009) 7 SCC 104
[20] 397 US 254 (1970)

was much debate at the bar on the applicability of the judgment in ***Goldberg*** (*supra*).

88. Mr. Parag P. Tripathi, learned senior advocate, vehemently championed for the applicability of the said judgment, especially the passage where a case for allowing oral hearing was mentioned and the written submissions were categorized as unsatisfactory. The Learned Solicitor General and Mr. Venkatesh Dhond, learned senior advocate strongly refuted the submission by arguing that ***Goldberg*** (*supra*) has expressly been rejected in India and referred to the judgment in ***A.K. Roy v. Union of India and others***[21]. Reference was made to ***A.K. Roy*** (*supra*) wherein this Court adverted to the "due process" clause which was peculiar to the United States Constitution. This Court in ***A.K. Roy* (*supra*)** also referred to the dissenting opinion of the Black, J., in ***Goldberg (supra)*** and the approval of dissenting opinion of Chief Justice Burger in ***Goldberg* (*supra*)** in the case of ***Mae***

[21] (1982) 1 SCC 271

Wheeler v. John Montgomery[22] which described the majority opinion in ***Goldberg* (*supra*)** as "unwise and precipitous". Attention was invited to the holding in ***A.K. Roy* (*supra*)** that rules of natural justice are not rigid norms of unchanging content and ought to vary according to the context and that they have to be tailored to the suit the nature of the proceeding in relation to which the particular right is claimed as a component of natural justice. The learned Solicitor General referred to the judgment of the United States Supreme Court in ***F. David Mathews v. George H. Eldridge***[23] contending that the holding in ***Goldberg* (*supra*)** was diluted.

89. In the teeth of the overwhelming holdings by the Constitution Benches of this Court referred to in the earlier part of this judgment about the flexible nature of the concept of natural justice and as to how no right to claim a personal hearing inheres in the notice and how it is the discretion of the authority (except of the proceeding in the Court of law or

[22] 25 L.Ed. 2d 307
[23] 424 US 319 (1976)

if expressly prescribed) the judgment of the United States Supreme Court in ***Goldberg (supra)*** need not detain us any longer.

90. The judgment in ***Dr. S Sengupta v. CN Holmes***[24] and the observations of Lord Justice Laws cited by Sh. Parag P. Tripathi, learned senior advocate is totally inapplicable. Those observations came to be made in a certain context. Lord Justice Laws had made an order refusing permission to appeal to a certain Dr. Sengupta against the judgment of the Administrative Court. Dr. Sengupta had renewed his application and a bench of Simon Brown and Tuckey LJJ had granted permission. Thereafter, the substantive appeal came up before a three-judge bench of Lord Justice Laws, Jonathan Parker and Keene, LJJ. An application was made that Justice Laws having declined leave ought to recuse from the proceeding. In the context of rejecting the recusal application and in the process of explaining how judges do

[24] [2002] EWCA Civ 1104

change their mind after hearing oral submissions and how an earlier rejection of leave could not be characterized as leading to bias, observations were made by Lord Justice Laws to the following effect:- *"He would know of the central place accorded to oral argument in our common law adversarial system. This, I think, is important, because oral argument is perhaps the most powerful force there is, in our legal process, to promote a change of mind by a judge."*

The context in which the observations were made clearly demonstrate that they have absolutely no relevance to the case at hand.

91. ***R vs. Parole Board ex parte Smith***[25] cited by the respondents was a case where a parole license was cancelled for breach of a condition. In the context of personal liberty, the House of Lords observed speaking through Bingham J., as under:-

> "The common law duty of procedural fairness does not, in my opinion, require the Board to hold an oral hearing in every case where a determinate sentence prisoner resists

[25] [2005] UK HL 1

> recall, if he does not decline the offer of such a hearing. But I do not think the duty is as constricted as has hitherto been held and assumed. Even if important facts are not in dispute, they may be open to explanation or mitigation, or may lose some of their significance in the light of other new facts. While the Board's task certainly is to assess risk, it may well be greatly assisted in discharging it (one way or the other) by exposure to the prisoner or the questioning of those who have dealt with him. It may often be very difficult to address effective representations without knowing the points which are troubling the decision-maker. The prisoner should have the benefit of a procedure which fairly reflects, on the facts of his particular case, the importance of what is at stake for him, as for society."

In the same judgment, Lord Slynn of Hadley held that there was no absolute rule that there must be an oral hearing in every case but if there was a doubt as to whether the matter can fairly be dealt with, the board should be pre-disposed in favour of an oral hearing. Lord Hope of Craighead, Lord Walker and Lord Carswell agreed with Bingham L.J. The observations made in the context of deprivation of liberty and that too as to how the parole board should exercise discretion in favour of hearing, cannot be used on the facts of the present case to seek a right of hearing by the noticee-borrowers.

APPLICATION OF LAW TO THE CASE AT HAND:-

92. While deciding on which aspect of natural justice would befit the circumstances herein, one has to necessarily keep in mind the purpose and objective of the directions of the RBI. A well laid out system has been prescribed in the master directions. When there was a deafening silence on the aspect of natural justice in the 2016 directions, this Court stepped in, and in ***Rajesh Agarwal (supra)*** read into the circular the principle of natural justice. We have analyzed the judgment in ***Rajesh Agarwal (supra)*** earlier and we have concluded that the Court did not hold that the borrowers have a right of personal hearing, when the Court held that principles of natural justice like issuance of a Show Cause Notice, supply of the relied upon material and the obligation to pass a reasoned order were essential.

93. We are persuaded to accept the stand of the RBI that the procedure of issuing a show cause notice, furnishing of the evidentiary material, eliciting a reply and the obligation to pass a reasoned order will meet the requirements of fairness

and also thwart mis-carriage of justice. The RBI considering the fact that frauds in accounts are of various hues has opined that granting a right of personal hearing to each and every borrower would be practically inexpedient considering a large volume of cases that have already arisen. Independent of this, as rightly contended by the RBI, the classification of fraud is predominantly based on documentary evidence such as financial statements, transaction records, stock statements and security valuations and other documentary evidence. Oral hearing is bound to convert an administrative process which was intended to be swift, into a protracted one, defeating the very purpose of the exercise. It would also cause significant logistical and infrastructural burden apart from providing opportunity to recalcitrant borrowers who are in possession of the money of the depositors to dissipate assets, destroy evidence or even abscond causing enormous prejudice to public interest. It will also put public money in jeopardy as borrowers will continue to enjoy exposures from banks. Logistically also, it will seriously

encumber the working hours of the bank officials. While consideration of the representation and the making of a reasoned order could be made by the committee even beyond banking hours, a personal hearing would mean that it will have to be held during office hours. This will also cause enormous inconvenience to public interest.

94. The learned Solicitor General rightly expressed an apprehension that if personal hearing is recognised as a right, multiple Directors may seek multiple personal hearings and this will throw the banking operations into disarray. Further, the total timeline under the Master Directions is 180 days for the banks to either lift the status as a Red flagged account or to classify the account as fraud. It will be impossible to stick to the timeline if a right of personal hearing is to be guaranteed.

95. More importantly, in the ultimate analysis, the exercise of classification of accounts, is in the broad sense a housekeeping due diligence, internally carried out by the bank. It is an internal administrative decision, to trigger

mandatory reporting for asset preservation and risk mitigation.

96. The process of a show cause notice with the supply of the evidentiary material, consideration of the representation and the mandate to pass a reasoned order are more than adequate safeguards. This balances the need for promptitude with the requirement to maintain fairness in action.

97. In matters of regulatory policy made by a regulatory authority like the RBI unless the policy is contrary to the constitutional principles or ultra vires any statute, a Court interpreting the policy will defer to the views of the experts. In ***Akshay N. Patel*** v. ***Reserve Bank of India and Another***[26], this Court explained the principle thus.

> **"62. Thus, it is settled that RBI is a special, expert regulatory body that is insulated from the political arena. Its decisions are reflective of its expertise in guiding the economic policy and financial stability of the nation. Adverting to the facts of this case, RBI is empowered by FEMA to manage, regulate, and supervise the foreign exchange of India. It is trite law that courts do not interfere with the economic or**

[26] (2022) 3 SCC 694

regulatory policy adopted by the Government. This lack of interference is in deference to the democratically elected Government's wisdom, reflecting the will of the people. As held by a three-Judge Bench of this Court in Internet & Mobile Assn. 46, the regulations introduced by RBI are in the nature of statutory regulation and demand a similar level of deference that is accorded to executive and Parliamentary policy."

98. Equally, for this reason, we are not impressed with the argument that the RBI having granted personal hearing to the banks in the Master Circular dated 30.07.2024 on 'wilful defaulter' ought to provide a personal hearing while classifying accounts as 'fraud accounts'. As rightly pointed out by the RBI, the classification of accounts under the wilful defaulter circular is on entirely distinct grounds from those of classification of fraud accounts. They belong to two different categories and are of a qualitatively different order. Under the 28.11.2025 circular, which was the same as in the 30.07.2024 circular [Clause 3(t)], wilful default and wilful defaulter were defined as under: -

"(xviii) "wilful default"

(A) by a borrower shall be deemed to have occurred when the borrower defaults in meeting payment/repayment

obligations to the lender and any one or more of the following features are noticed:

(a) the borrower has the capacity to honour the said obligations;

(b) the borrower has diverted the funds availed under the credit facility from lender;

(c) the borrower has siphoned off the funds availed under the credit facility from lender;

(d) the borrower has disposed of immovable or movable assets provided for the purpose of securing the credit facility without the approval of the lender;

(e) the borrower or the promoter has failed in its commitment to the lender to infuse equity despite having the ability to infuse the equity, although the lender has provided loans or certain concessions to the borrower based on this commitment and other covenants and conditions.

(B) by a guarantor shall be deemed to have occurred if the guarantor does not honour the guarantee when invoked by the lender, despite having sufficient means to make payment of the dues or has disposed of immovable or movable assets provided for the purpose of securing the credit facility, without the approval of the lender or has failed in commitment to the lender to infuse equity despite having the ability to infuse the equity, although the lender has provided loans or certain concessions to the borrower based on this commitment.

(xix) "wilful defaulter" shall mean:

(a) a borrower or a guarantor who has committed wilful default and the outstanding amount is ₹ 25 lakh and above, or as may be notified by Reserve Bank of India from time to time, and

(b) where the borrower or a guarantor committing the wilful default is a company, its promoters and the director (s), subject to the provisions of Paragraph 5(14), or

(c) in case of an entity (other than a company), persons who are in charge and responsible for the management of the affairs of the entity."

99. It has been rightly contended that contrasted with the categories of fraud as set out in Clause 6.1 of the 2024 Master Directions read with Clause 2.2 of the 2016 Master Directions (see Para 16 hereinabove), it will be clear that in the case of fraud, there is an element of criminality. In the case of a wilful default, though it may involve financial default, there is not as yet an element of criminality. This, in any event, is the perception of the regulator. If the regulator, keeping in mind the various factors decides to give personal hearing before classifying an account as a wilful default account and decides not to grant a hearing as of right in the case of a 'fraud accounts' and instead grants an opportunity to file a representation after issuance of a show cause notice and the supply of evidentiary material and further mandates the passing of a reasoned order, courts cannot second guess the

regulator. A 'wilful default account' and a 'fraud account' are not on par and no discrimination can be complained of on that score.

100. The procedure set out in ***Rajesh Agarwal (supra)*** which has been incorporated in the reincarnated master direction 2024, strikes a fair balance between promptitude and fairness. We find that the procedure is intended to imbue in the process an element of fairness and attempts to thwart miscarriage of justice.

101. We hold that the RBI in its Master Directions of 2024 has correctly understood the scope of ***Rajesh Agarwal (supra)*** and has incorporated Clause 2.1 including sub-Clauses 2.1.1.1 to 2.1.1.4, which amply takes care of the lacunae identified in ***Rajesh Agarwal (supra)***.

102. That a Court of law cannot be oblivious to the administrative realities and ought to strike a delicate balance has been repeatedly emphasized. In ***Chairman, Board of***

Mining Examination *v.* ***Ramjee***[27]***,*** V.R. Krishna Iyer, J. speaking for this Court in his inimitable style stated thus: -

> **"13. ……Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt — that is the conscience of the matter."**

103. Mr. K. Parameshwar, learned Senior Counsel in support of his passionate plea for a personal hearing sought refuge in the 'doctrine of proportionality'. According to the learned Senior Counsel, it is only a minimum oral hearing which could be characterized as a least restrictive alternative. Learned Senior Counsel relied upon the judgment of this Court in case ***K. S. Puttaswamy and Another*** v. ***Union of India and Others***[28], and ***Modern Dental College & Research Centre and Others*** v. ***State of Madhya Pradesh and***

[27] (1977) 2 SCC 256
[28] (2017) 10 SCC 1

Others[29], in support of the proposition. We have found that the procedure evolved in ***Rajesh Agarwal (supra)*** as reiterated in the master direction of 2024 more than meets the requirements to ensure fairness and saves miscarriage of justice. That procedure evolved is a proportionate response to the situation. Hence, the argument based on Article 19(1)(g) is also misconceived since the procedure to classify accounts, evolved to protect money of public, is after all a reasonable restriction. Similarly, in view of what we have held the argument based on the theory of non-retrogression also lacks merit.

104. In their effort to persuade us that ***Rajesh Agarwal (supra)*** has mandated personal hearing to the borrower, Mr. Parag Tripathi and K. Parameshwar, learned senior Counsels read and reread and minutely scanned the said judgment. Realizing that not once in the judgment containing ninety-eight Paragraphs did the Court use the word personal hearing, as part of this Court's holding, learned Senior

[29] (2016) 7 SCC 353

Counsels were still undeterred. They then fell back upon the judgment impugned in ***Rajesh Agarwal (supra)*** passed by the High Court of Telangana. Pointing to the very last paragraph, in a chorus, they exclaimed, 'Eureka' and submitted that the word 'personal hearing' has been employed once by the said High Court.

105. It is very well settled that judgments of Court are not to be read like theorems of Euclid (***Haryana Financial Corporation and Another*** v. ***Jagdamba Oil Mills and Another***[30]). Secondly, under the doctrine of merger, it is well settled that once the Superior Court has disposed of the lis and irrespective of whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the Superior Court, Tribunal or Authority which is the final binding of an operative decree, wherein merges the decree passed by the Court below. It has also been clarified that in certain cases reasons for decision can also be said to have merged in the order of Superior Court if

[30] (2002) 3 SCC 496

the superior Court has while formulating its own judgment or order either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgment or order of the fora below. This is not the scenario here (See, ***Kunhayammed and Others*** v. ***State of Kerala and Another***[31], and ***S. Shanmugavel Nadar*** v. ***State of T.N. and Another***[32],).

106. Equally, the argument that because this Court set aside the judgment of the Gujarat High Court in ***Mona Jignesh Acharya (supra)***, personal hearing inheres as a right in the borrower is also misconceived. Apart from what we have set out hereinabove, it must be remembered that in ***Mona Jignesh Acharya (supra)***, the High Court had only given an opportunity to make a post-decisional representation.

107. Hence, in law, what will prevail is the final judgment of this Court in ***Rajesh Agarwal (supra)*** and as to what it states has already been interpreted by us hereinabove.

[31] (2000) 6 SCC 359
[32] (2002) 8 SCC 361

108. Further, it must never be forgotten and this has been reiterated from time immemorial that a case is only an authority for what it actually decides and it cannot be quoted for a proposition that may seem to follow logically (See ***Quinn*** v. ***Leathem***[33]). We are not suggesting that what the learned Senior Counsels contend logically follows, but we are only paraphrasing the principle in ***Quinn (supra)***. The principle in ***Quinn (supra)*** has been accepted by this Court. (See ***Goodyear India Limited and Others*** v. ***State of Haryana and Another***[34]. Thus, we reiterate that ***Rajesh Agarwal (supra)*** did not recognize in the borrower a right of personal hearing.

109. Considerable arguments were advanced on how different High Courts have ordered the grant of personal hearing and banks have not appealed against the same. We are here concerned with interpreting the Circulars and laying down the correct legal position. Our interpretation cannot depend on conduct of banks in individual cases.

[33] [1901] A.C. 495
[34] (1990) 2 SCC 71)

Similarly, the argument that on facts in the present two cases banks have taken considerable time to initiate proceedings and they could have granted personal hearing also lacks merit, for stray instances cannot form the foundation for interpreting the legal position.

DISCLOSURE OF THE AUDIT REPORT: -

110. In Civil Appeal arising out of SLP (C) Nos. 20618-20619/2025 the High Court has categorically held that in terms of directions in ***Rajesh Agarwal (supra),*** the writ petitioner was entitled to the copies of the Forensic Audit Reports which were referred to in the Show Cause Notices and which were relied upon by the appellant-Bank in the proceedings to classify the accounts of the borrower as a fraud account. As discussed earlier, Para 95 of the Judgment in ***Rajesh Agarwal (supra)*** categorically held as under: -

> "In the light of the legal position noted above, we hold that the rule of *Audi Alteram Partem* to be read in Clauses 8.9.4 and 8.9.5 of the master directions on fraud. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by ***furnishing a copy of the audit reports*** and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud."

111. Earlier, in Para 81, the Court held that the borrower should be given an opportunity to explain the findings in the forensic audit report and to represent before the account is classified as fraud. In the conclusion at Para 98.6, set out hereinabove, this Court in ***Rajesh Agarwal (supra)*** directed that the borrower must be served a notice and given an opportunity to explain the conclusions of the forensic report.

112. The High Court has rightly followed the judgment of ***Rajesh Agarwal (supra)*** on this aspect of the matter. The learned Solicitor General of India, Mr. Tushar Mehta, submits that this Court in ***Rajesh Agarwal (supra)*** only directed the conclusion of the forensic audit report and not the entire report to be furnished. According to the learned Solicitor General, since the entire audit report would become a subject matter of criminal investigation the forensic audit report cannot be given. According to the Solicitor General the Show Cause Notice outlines the forensic auditor's

conclusion in detail so that the account holder can effectively respond.

113. In response, Shri K. Parameshwar, learned Senior Advocate, submitted that the forensic audit report is not a peripheral or a background document. According to the learned Senior Counsel, it is a central investigative material used to infer fraud. Learned Senior Counsel, relied on the holding of this Court in ***Rajesh Agarwal (supra).*** The learned Senior Counsel also relied upon the judgment of this Court ***T. Takano (supra)***, to contend that this Court held that all material relevant to the adjudication must be disclosed.

114. The learned Solicitor General, sought to distinguish the judgment in ***T. Takano (supra)*** and contended that in the concluding directions all that is directed is that there was an obligation to disclose the material relevant to the proceedings. Learned Solicitor General further drawing attention to Para 62.5 of ***T. Takano (supra)*** contended therein it was held, that the right to disclosure was not absolute and the disclosure of information may affect other

third party interest and the stability and orderly functioning of the securities market.

115. In ***T. Takano (supra),*** this Court held that the authority issuing the show cause notice should prima facie establish that the disclosure of the report would affect the third party rights and the stability and orderly functioning of the securities market. Thereafter, the onus would then shift to the noticee to prove that the information is necessary to discuss its case appropriately.

116. The only justification given for denial of disclosure of the full report, is that the entire audit report would become a subject matter of criminal investigation. We find no merit in this submission. Once the criminal proceedings are launched, Investigating Authority will independently investigate and file a charge sheet/complaint of which the forensic audit report may be a part.

117. In ***Madhyamam Broadcasting Limited*** v. ***Union of India and Others***[35], this Court, highlighting the importance of the disclosure of relevant material, this Court held as under: -

> **"66.** MHA disclosed the material forming the opinion for denying of security clearance solely to the High Court. The High Court instead of deciding if any other less restrictive but equally effective means could have been employed, straight away received the material in a sealed cover without any application of mind. **It is now an established principle of natural justice that relevant material must be disclosed to the affected party. This rule ensures that the affected party is able to effectively exercise their right to appeal.** When the State Government claims non-disclosure on the ground of public interest under Section 124 of the Evidence Act, the material is removed from the trial itself. As opposed to this method, when relevant material is disclosed in a sealed cover, there are two injuries that are perpetuated. *First*, the documents are not available to the affected party. *Second*, the documents are relied upon by the opposite party (which is most often the State) in the course of the arguments, and the court arrives at a finding by relying on the material. In such a case, the affected party does not have any recourse to legal remedies because it would be unable to (dis) prove any inferences from the material before the adjudicating authority.
>
> **67. This form of adjudication perpetuates a culture of secrecy and opaqueness, and places the judgment beyond the reach of challenge.** The affected party would be unable to "contradict errors, identify omissions, challenge the credibility of informants or refute false allegations". [*Adil Charkaoui* v. *Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness*, 2007 SCC OnLine Can SC 9 : (2007) 1 SCR 350

[35] (2023) 13 SCC 401

(Can SC)] The right to seek judicial review which has now been read into Articles 14 and 21 is restricted. A corresponding effect of the sealed cover procedure is a non-reasoned order.

68. In Amit Kumar Sharma v. Union of India, (2023) 20 SCC 486 : 2022 SCC OnLine SC 1570] , one of us (D.Y. Chandrachud, J.) speaking for the Court commented on the procedural infirmities which the procedure of sealed cover perpetuates : (SCC paras 25-26)

> "25. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with "reasonable probability" influence the decision of the authority must be disclosed. **A one-sided submission of material which forms the subject-matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence."**
>
> (Emphasis supplied)

118. Hence, we direct that as held in ***Rajesh Agarwal (supra)*** the forensic audit reports ought to be disclosed if they are to be considered relevant by the banks in classifying the account as fraud.

119. In ***T. Takano (supra),*** relying upon ***Natwar Singh (supra)*** which, in turn, relied upon ***Dhakeswari Cotton Mills***

Limited. v. ***Commission of Income Tax, West Bengal***[36], this Court in Paras 37 and 38 held as under: -

> **"37.** During the course of the adjudication, the fundamental principle is that material which is used against a person must be brought to notice. As this Court observed : (*Natwar Singh case* [*Natwar Singh* v. *Director of Enforcement*, (2010) 13 SCC 255] , SCC p. 269, paras 30-31)
>
> > "*30. The right to fair hearing is a guaranteed right. Every person before an authority exercising the adjudicatory powers has a right to know the evidence to be used against him*. This principle is firmly established and recognised by this Court in *Dhakeswari Cotton Mills Ltd.* v. *CIT*, (1955) 1 SCR 941 : AIR 1955 SC 65. However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. *If relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing*. The law is fairly well-settled if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he can prepare his defence. ***However, there are various exceptions to this general rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to the public interest because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in the future*** **(see *R.* v. *Secy. of State for Home Deptt., ex p H*, 1995 QB 43 : (1994) 3 WLR 1110 : (1995) 1 All ER 479 (CA)]).**"
>
> (Emphasis supplied)

[36] (1954) 2 SCC 602

120. Thereafter, dealing with exceptions to the duty of disclosure, this Court held as under: -

> **Exceptions to the duty to disclose**
>
> **55. ……The RTI Act attempts to balance the interests of third-party individuals whose information may be disclosed and public interest in ensuring transparency and accountability. The RTI Act is reflective of the parliamentary intent to facilitate transparency in the administration, which is the rationale for the disclosure of information. This is subject to certain defined exceptions.**
>
> **56. We cannot be oblivious to the wide range of sensitive information that the investigation report submitted under Regulation may cover, ranging from information on financial transactions and on other entities in the securities market, which might affect third-party rights.** … … … … … … … … … … … … … … … … The right of the noticee to disclosure must be balanced with a need to preserve any other third-party rights that may be affected.
>
> **57.** In *Natwar Singh* [*Natwar Singh* v. *Director of Enforcement*, (2010) 13 SCC 255] , this Court has observed that there are exceptions to the general rule of disclosing evidentiary material. This Court held that such exceptions can be invoked if the disclosure of material causes harm to others, is injurious to public health or breaches confidentiality. While identifying the purpose of disclosure, we have held that one of the crucial objectives of the right to disclosure is securing the transparency of institutions. **The claims of third-party rights vis-à-vis the right to disclosure cannot be pitted as an issue of public interest and fair adjudication. The creation of such a binary reduces and limits the purpose that disclosure of information serves. The respondent should prima**

facie establish that the disclosure of the report would affect third-party rights. The onus then shifts to the appellant to prove that the information is *necessary* to defend his case appropriately.

59. The appellant did not sufficiently discharge his burden by proving that the non-disclosure of the above information would affect his ability to defend himself. **However, merely because a few portions of the enquiry report involve information on third parties or confidential information on the securities market, the respondent does not have a right to withhold the disclosure of the relevant portions of the report. The first respondent can only claim non-disclosure of those sections of the report which deal with third-party personal information and strategic information on the functioning of the securities market.**

60. Therefore, the Board should determine such parts of the investigation report under Regulation 9 which have a bearing on the action which is proposed to be taken against the person to whom the notice to show cause is issued and disclose the same. It can redact information that impinges on the privacy of third parties. It cannot exercise unfettered discretion in redacting information. On the other hand, such parts of the report which are necessary for the appellant to defend his case against the action proposed to be taken against him need to be disclosed. It is needless to say that the investigating authority is duty-bound to disclose such parts of the report to the noticee in good faith. If the investigating authority attempts to circumvent its duty by revealing minimal information, to the prejudice of the appellant, it will be in violation of the principles of natural justice. The court/appellate forum in an appropriate case will be empowered to call for the investigation report and determine if the duty to disclose has been effectively complied with."

(Emphasis supplied)

Thereafter, this Court concluded as under: -

"62. The conclusions are summarised below:

62.1. The appellant has a right to disclosure of the material *relevant* to the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in *Natwar Singh* [*Natwar Singh* v. *Director of Enforcement*, (2010) 13 SCC 255] based on the stage of the proceedings. It is sufficient to disclose the materials *relied* on if it is for the purpose of issuing a show-cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings.

62.2. The Board under Regulation 10 considers the investigation report submitted by the investigating authority under Regulation 9, and if it is satisfied with the allegations, it could issue punitive measures under Regulations 11 and 12. Therefore, the investigation report is not merely an internal document. In any event, the language of Regulation 10 makes it clear that the Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9.

62.3. The disclosure of material serves a threefold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions.

62.4. A focus on the institutional impact of suppression of material prioritises the process as opposed to the outcome. The direction of the Constitution Bench of this Court in *Karunakar* [*ECIL* v. *B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] that the non-disclosure of relevant information would render the order of punishment void only if the aggrieved person is able to prove that prejudice has been caused to him due to non-disclosure is founded both on the *outcome* and the *process*.

62.5. The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. The respondent should prima facie establish that the disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities

> market. The onus then shifts to the appellant to prove that the information is *necessary* to defend his case appropriately.
>
> **62.6.** Where some portions of the enquiry report involve information on third parties or confidential information on the securities market, the respondent cannot for that reason assert a privilege against disclosing any part of the report. The respondents can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market."

121. The Show Cause Notice and reply as well as the procedure contemplated in Para 2.1, which is a reiteration of what was held in ***Rajesh Agarwal (supra),*** are with regard to proceedings that have civil consequences for the borrower. It may be a trigger for initiation of criminal proceedings but as far as the right to reputation as well as impacting Article 19(1)(g) rights, the matter stood concluded with ***Rajesh Agarwal (supra).*** In view of the same, following the holding in ***T. Takano (supra***), we hold that the borrower has a right to be disclosed of the material relevant to the proceeding against him including disclosure of the audit report.

122. The right to disclosure is not absolute if the disclosure of any part affects third party interest. In the opinion of the

bank, the bank should communicate that the disclosure of such part would affect third party rights. Thereafter the borrower will have an opportunity to respond that the information is necessary to represent effectively.

123. If, thereafter, some portion of the forensic audit report or other material are found to impinge upon third-party rights in the opinion of the bank, the bank can withhold disclosure of those parts of the report.

124. We hold that the supply of the Forensic Audit Report is the rule. The exceptions are what have been set out hereinabove. Unlike in the case of ***T. Takano (supra)*** which dealt with the securities market, instances will be rare where; in the forensic audit reports of banks where the borrower is associated at the stage of making the report, any claim for privilege of any part of the report may arise. However, in the exceptional cases that they do arise, the above procedure should be followed.

125. The furnishing of findings and conclusion alone would not tantamount to compliance with the principles of natural justice. The reasons for the findings and conclusion will be in the body of the report and a complete sense of the findings and conclusions can be made only after reading to the contents of the report. It is apt to recall the memorable words of this Court in ***Union of India*** *v.* ***Mohal Lal Capoor And Others***[37] which read as under:-

> "Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

CONCLUSIONS: -

126. In view of the discussion hereinabove, we hold: -

[37] (1973) 2 SCC 836

a) ***Rajesh Agarwal (supra)*** did not recognize any right in the borrower to a personal hearing by the banks before classifying their account as a fraud account;

b) The RBI in its Master Directions of 15.07.2024 correctly understood the scope of ***Rajesh Agarwal (supra)*** and incorporated Clause 2.1.1.1, 2.1.1.2, 2.1.1.3, and 2.1.1.4 as the procedure to be followed before classifying an account as a fraud account;

c) The procedure set out in ***Rajesh Agarwal (supra)*** which has been incorporated in the Master Directions of 2024 strikes a fair balance between promptitude and fairness and duly comports with the principles of natural justice ensuring fairness to the borrower whose account is likely to be classified as a fraud account.

d) Wherever audit reports are available, including forensic audit reports, the same shall be furnished to the borrower and their representation on the

report, including on the findings and conclusions be elicited, in case the banks consider the audit report relevant for classifying the account as fraud account. In view of the same, disclosure by furnishing copies of the audit report, including the forensic audit report to the borrower is mandatory. Supply of reports in digital form will be valid compliance;

e) As held in ***T. Takano (supra)***, if the banks, for reasons to be recorded establish that the disclosure of any part of the report would effect the privacy of third parties, in that exceptional situation banks would be justified to withhold those portions of the report which concern third party rights;

f) We reiterate that the rule is to supply the audit reports, including the forensic audit reports since even under Clause 4 of Chapter IV of the 15.07.2024 Master Directions post the red-flagging of the account banks use the audit mechanism for

further investigation. Even in the exceptional cases we hope and expect that the banks will not unreasonably use the power of redaction since that will only end up delaying the culmination of proceedings. Clause 4.1.4 also reiterates that banks shall ensure the principles of natural justice. That this was the legal position even under the 2016 Master Directions is clear from para 95 of ***Rajesh Agarwal (supra)***;

g) The judgments of the High Courts which have taken a contrary view to what we have held hereinabove would stand overruled.

DIRECTIONS: -

127. In view of what we have held hereinabove,

i) Civil Appeal @ SLP (C) Nos. 20618-20619 of 2025 is partly allowed. While we set aside that part of the order of the Division Bench in F.M.A. 1201 of 2024 dated 12.03.2025 which upheld the learned Single Judge's order directing grant of personal hearing to

the respondent-herein, we uphold the order of the Division Bench insofar as it held that the respondent-herein was entitled the copies of the forensic audit reports. Consequently, the Fraud Identification Committee of the appellant-Bank shall furnish the forensic audit reports and after granting an opportunity to the respondent to file its reply proceed in accordance with the Master Directions of the RBI, and pass fresh orders depending on the conclusion they arrive at.

ii) Insofar as Civil Appeal @ Special Leave Petition Diary No. 55628 of 2025 is concerned, the appeal is partly allowed. While the direction of the learned Single Judge as confirmed by the Division Bench in LPA 472 of 2025 dated 29.07.2025 to grant a personal hearing to the respondent is set aside, the directions insofar as they mandate the furnishing of the forensic audit reports are upheld. Consequently, the appellant-Banks shall furnish the forensic audit reports and after

granting an opportunity to file a representation proceed in accordance with the Master Directions of the RBI, and pass fresh orders depending on the conclusion they arrive at.

128. There will be no order as to costs in both the appeals.

.....J.
[**J.B. PARDIWALA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
7th April, 2026