# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

INTERIM APPLICATION (L) NO.35924 OF 2025
WITH
INTERIM APPLICATION (L) NO.35925 OF 2025
IN
SUIT (L) NO.35923 OF 2025

Anil D. Ambani .. Applicant
IN THE MATTER BETWEEN:
Anil D. Ambani .. Plaintiff
Versus
Indian Overseas Bank and Ors. .. Defendants

WITH
INTERIM APPLICATION (L) NO.37574 OF 2025
WITH
INTERIM APPLICATION (L) NO.37575 OF 2025
IN
SUIT (L) NO.37573 OF 2025

Anil D. Ambani .. Applicant
IN THE MATTER BETWEEN:
Anil D. Ambani .. Plaintiff
Versus
IDBI Bank Ltd. and Ors. .. Defendant

WITH
INTERIM APPLICATION (L) NO.37868 OF 2025
WITH
INTERIM APPLICATION (L) NO.37865 OF 2025
IN
SUIT (L) NO.37862 OF 2025

Anil D. Ambani .. Applicant
IN THE MATTER BETWEEN:
Anil D. Ambani .. Plaintiff
Versus
Bank of Baroda and Ors. .. Defendants

.....

- Mr. Gaurav Joshi, Senior Advocate a/w. Mr. Ameet Naik, Mr. Piyush Raheja, Mr. Abhishekh Kale, Mr. Devashish Jagirdar and Mr. Ronit Doshi, Advocates i/by Naik Naik & Company for Plaintiff in

Suit (L) No.35923 of 2025 and Applicants in Interim Application (L) No.35924 of 2025 and Interim Application (L) No.35925 of 2025.

- Mr. Ashish Kamat, Senior Advocate a/w Mr. Ameet Naik, Mr. Abhishek Kale, Mr. Devashish Jagirdar and Mr. Rohit Doshi i/b Naik Naik & Company for Plaintiff in Suit (L) No.37573 of 2025 and Applicants in Interim Application (L) No.37575 of 2025 and Interim Application (L) No.37574 of 2025.
- Mr. Mayur Khandeparkar a/w Mr. Ameet Naik, Mr. Abhishek Kale, Mrs. Madhu Gadodia, Mr. Devashish Jagirdar, and Mr. Ronit Doshi, Advocates for Plaintiff in Suit (L) No.37862 of 2025 and Applicants in Interim Application (L) No. 37865 of 2025 and Interim Application (L) No.37868 of 2025.
- Mr. Zal Andhyarujina, Senior Advocate a/w Ms. Akansha Agarwal, Mr. Babu Sivaprakasam, Ms. Nandita Bajpai, Ms. Rahat Kalptri and Mr. Vijay Srinivasan, Advocates i/by Yogesh Pirtani for Defendant No.1 in Suit (L) No.35923 of 2025 and Respondent No.1 in Interim Application (L) No. 35924 of 2025.
- Mr. Zarir Bharucha, Senior Advocate a/w. Mr. Rishi Thakur and Ms. Dhwani Gala, Advocates for Defendant No.1 in Suit (L) No.37573 of 2025.
- Mr. Kevic Setalvad, Senior Advocate a/w. Mr. Jeehan Lalka, Mr. Nishit Dhruva, Ms. Niyati Merchant and Ms. Rajlaxmi Pawar, Advocates i/by MDP Legal for Respondent No.1 in Suit (L) No.37862 of 2025 and Applicants in Interim Application (L) No.37868 of 2025 and Interim Application (L) No.37865 of 2025.
- Mr. Kunal Dwarkadas, a/w. Mr. Rahul Dwarkadas, Ms. Prachi Dhanani, Mr. Raushan Kumar and Mr. Aniket Kharote, Advocates i/by RJD and Partners for Defendant Nos.2 and 3 in all Suits.

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : DECEMBER 24, 2025.**

**JUDGEMENT:**

**1.** Heard Mr. Joshi and Mr. Kamat, learned Senior Advocates and Mr. Khandeparkar, learned Advocate for Plaintiff / Applicant, Mr. Andhyarujina, Mr. Setalvad and Mr. Bharucha, learned Senior Advocates for Defendant No.1 - Bank and Mr. Dwarkadas, learned Advocate for Defendant Nos.2 and 3 in all three (3) suits.

**2.** In Indian Overseas Bank Suit (L) No. 35923 of 2025, Interim Application (L) No. 35925 of 2025 is filed by Plaintiff seeking interim reliefs under Order XXXIX Rule 1 & 2 of Civil Procedure Code, 1908 (for short '**CPC**') and Interim Application (L) No.35924 of 2025 is filed seeking order under Order II Rule 2 of CPC. In IDBI Bank Ltd. Suit (L) No. 37573 of 2025, Interim Application (L) No. 37575 of 2025 is filed by Plaintiff seeking interim reliefs under Order XXXIX Rule 1 & 2 of CPC and Interim Application (L) No. 37574 of 2024 is filed seeking order under Order II Rule 2 of CPC. In Bank of Baroda Suit (L) No. 37862 of 2025, Interim Application (L) No. 37865 of 2025 is filed by Plaintiff seeking interim reliefs under Order XXXIX Rule 1 & 2 of CPC and Interim Application (L) No. 37868 of 2025 is filed seeking order under Order II Rule 2 of CPC. Interim Application (L) No.35925 of 2025, Interim Application (L) No.37575 of 2025 and Interim Application (L) No.37865 of 2025 and are taken up for hearing for grant of interim reliefs. Pleadings are completed.

**2.1.** Mr. Andhyarujina, Mr. Setalvad and Mr. Bharucha, learned Senior Advocates appearing for the Banks and Mr. Dwarkadas, learned Advocate for Defendant Nos.2 and 3 oppose interim reliefs.

**3.** Mr. Joshi, learned Senior Advocate for Plaintiff would submit that Plaintiff was the Non-Executive Director of Reliance Communications Limited (for short "**RCOM**") from its inception till the

year 2019. He would submit that RCOM, Reliance Telecom Limited (for short "**RTL**") and Reliance Infratel Limited (for short "**RITL**") together with its 98 subsidiaries operated as a Single Economic Unit.

**3.1.** He would submit that on 01.07.2016, Reserve Bank of India issued Master Directions on Fraud – Classification and Reporting by Commercial Banks and select FIs (for short "**2016 RBI Master Directions**") and in terms of Clause 8.9.4 thereof a Forensic Audit was required to be carried out before classifying a person as a "Fraud".

**3.2.** He would submit that in June 2017, Joint Lenders' Forum (for short "**JLF**") of which Defendant No.1 – Bank is a Member considered appointment of an Audit firm for Forensic Review of RCOM, RTL and RITL. He would submit that Banks were primarily interested in recovery of their dues through sale of assets of the said Companies.

**3.3.** He would submit that in September 2017, Ericsson Indian Pvt. Ltd. filed Company Petition against RCOM. He would submit that on 15.05.2018 RCOM was admitted into Corporate Insolvency Resolution Process (for short "CIRP") by National Company Law Tribunal and the Board of Directors stood superseded by the Resolution Professional.

**3.4.** He would submit that, in the meanwhile, on 07.05.2019, State Bank of India (for short "**SBI**") as the lead lender of the

consortium appointed Defendant No.2 – BDO LLP as Forensic Auditor. He would submit that on 15.10.2020, Defendant No.2 – BDO LLP submitted Forensic Audit Report (for short "**FAR**") to SBI. He would submit that on 19.01.2021, Plaintiff's erstwhile Advocates addressed letter to Defendant No.2 – BDO LLP seeking clarification on the FAR. He would submit that on 03.02.2021, Defendant No.2 – BDO LLP through its Advocates replied and confirmed that no conclusion of fraud or breach of trust was arrived at in respect to Plaintiff and Plaintiff's accounts.

**3.5.** He would submit that Reserve Bank of India issued new Master Directions on Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions Directions, 2024 (for short "**the 2024 RBI Master Directions**") on 15.07.2024 wherein Clause 10 expressly provided that the 2024 RBI Master Directions superseded the 2016 RBI Master Directions. He would submit that Clause 4.1 readwith Footnote No.14 of the 2024 RBI Master Directions, clarify and mandate that the Auditor qualified to conduct an audit under "relevant statutes" be appointed as External Auditor. He would submit that proceedings under the 2024 RBI Master Directions are founded upon this principle and if Forensic Audit conducted by an entity lacking statutory qualification, the defect is jurisdictional and vitiates the proceedings at inception.

**3.6.** He would submit that on 02.12.2024 after a lapse of 4 years Defendant No.1 – Indian Overseas Bank (for short "**IOB**") issued Show Cause Notice to Plaintiff under the 2024 RBI Master Directions solely on the basis of the FAR dated 15.10.2020. He would submit that on 12.12.2024, Plaintiff's Advocate addressed letter to Defendant No.2 – BDO LLP seeking copy of the FAR and documents relied upon by the Auditor. He would submit that on 18.01.2025, Defendant No.1 – IOB in its reply furnished a copy of FAR however the same was shared without its Annexures. He would submit that due to incomplete disclosure by Defendant No.1 – IOB, Plaintiff on 10.03.2025 once again addressed letter to Defendant No.1 – IOB seeking complete disclosure of all documents and Annexures relied upon in preparation of the FAR.

**3.7.** He would submit that on 10.09.2025, Plaintiff received letter from Defendant No.1 scheduling a personal hearing on 09.10.2025. He would submit that pursuant thereto on 29.09.2025, an RTI Application was filed by one Ms. Siddhi Vora, a third party seeking clarification whether Defendant No.2 – BDO LLP was registered with the Institute of Chartered Accountants of India (for short "**ICAI**"). He would submit that on 24.10.2025, the RTI reply confirmed that Defendant No.2 – BDO LLP was not registered with the ICAI. He would submit that a profile verification revealed that Defendant No.3, the

author and sole signatory of the FAR is not a Chartered Accountant (for short "**CA**") and did not hold a Certificate of Practice as CA and was not a Member of ICAI.

**3.8.** He would submit that Clause 4.1 read with Footnote 14 of the 2024 RBI Master Directions mandates Forensic Audit must be conducted by an Auditor who is qualified as Auditor under the relevant statutes. He would submit that the FAR prepared by Defendant No.2 – BDO LLP is not an entity competent to conduct the External Audit. He would submit that the Report prepared by Defendant No.2 - BDO LLP does not bear the signature of a Chartered Accountant Partner who has acted in preparation of the Report as mandated by law. He would submit that Defendant No.2 is the author and sole signatory of the Report and admittedly he is not a CA. He would submit that Show Cause Notice issued by Defendant No.1 - IOB is founded solely on the said Report and therefore it cannot be sustained in law. He would submit that Sections 2(b), 2(e) and 6 of the Chartered Accountants Act, 1949 restrict audit practice to ICAI - registered Chartered Accountants holding valid Certificate of Practice. Hence, he would submit that an entity and a signatory who is not a qualified CA and does not hold a valid Certificate of Practice cannot under the 2024 RBI Master Directions be permitted to conduct Forensic Audit or prepare a Report in that regard or such Report can

be relied upon for indictment.

**3.9.** He would submit that Forensic Audit was conducted solely by Defendant No.3 on information and documentation furnished by the Corporate Debtor, the Resolution Professional and the Lenders and most importantly erstwhile Directors or Management Personnel of the Company were never afforded an opportunity to offer their explanation neither was the Forensic Report shared with Plaintiff until it was referred to in the Show Cause Notices issued by various banks and was supplied for the first time on 18.01.2025.

**3.10.** He would submit that Defendant No.2 – BDO LLP in its reply has effectively admitted its non-compliance with statutory qualification requirements prescribed under the 2024 RBI Master Directions. He would submit that in that view of the matter there is no dispute that Defendant No.2 – BDO LLP is not a CA firm and that the signatory of the FAR is not a CA. He would submit that this position is clearly established from internal page No.380 of the Report wherein Defendant No.2 has described itself as an “accounting consultant firm” and not an Audit firm which is a primary requirement under the 2024 RBI Master Directions. He would next submit that the Report does not bear a Unique Document Identification Number (UDIN) which is made mandatory for all Certificates, GST and Tax Audit Reports, and other attestation functions undertaken or signed by a practicing CA as per

ICAI requirements. He would submit that copy of RTI reply conclusively establishes that Defendant No.2 – BDO LLP is not a member of ICAI.

**3.11.** He would submit that Defendant No.1's reliance on Defendant No.2 - BDO LLP's empanelment with the Indian Banks' Association (for short "**IBA**") or being empanelled by SEBI as an Auditor as a defence and justification for its appointment as External Auditor / Forensic Auditor is misplaced and misconceived in law as IBA lacks statutory authority and neither it is backed by a governmental body. He would submit that the 2024 RBI Master Directions issued by RBI operate within a binding statutory framework requiring banks to engage Auditors for external audit strictly in accordance with law. He would submit that considering IBA's or for that matter SEBI's empanelment as sufficient would amount to delegating RBI's statutory mandate to a non-statutory private body like IBA which is impermissible in law and render the provisions of the Companies Act, 2013 nugatory. He would argue that from the above conduct there is a clear malice in law on the part of Defendant No.1 to rely on such a Report which does not *prima facie* meet the statutory compliances and qualifications of its author.

**3.12.** He would submit that the Report if read is nothing but inconclusive, incomplete and error-ridden. He would submit that

Defendant No.2 - BDO LLP in its reply through its Advocate has categorically confirmed that no conclusion of fraud or breach of trust is drawn in the said Report qua the Plaintiff's 3 Companies' accounts which were investigated. He would submit that Defendant Nos.1 and 2 have not refuted this in their reply filed to the Interim Application neither dealt with it or clarified the same. He would submit that the entire exercise of preparing the Report is rendered futile as only 24 CA Certificates are reviewed whereas 341 Certificates were not made available or examined, further 42% Bank Accounts were omitted from review despite which adverse findings and conclusions are drawn which once again establish malice in law and facts on the part of Defendant No.1 in relying on the Report for indicting the Plaintiff.

**3.13.** He would submit that the Report on the face of record lacks of information and is ridden with incomplete data. He would submit that "Management Comments" were taken only from the Resolution Professional under CIRP and no consultation with Plaintiff or erstwhile management of the 3 Companies was made which is a clear violation of the principles of natural justice rule of *audi alteram partem.* He would submit that despite repeated written requests for supplying documents relied upon in preparation of the Report, Defendant No.1 – IOB failed to furnish the same which was necessary for an effective response to the Show Cause Notice.

**3.14.** He would submit that the law governing repeal and supersession of statutory instruments is settled, namely that proceedings under a superseded regime cannot continue unless expressly saved. In support of his above submissions he has referred to and relied upon decisions of the Privy Council, Supreme Court and this Court in the case of ***Nazir Ahmad Vs. King Emperor***[1]***, OPTO Circuit India Limited Vs. Axis Bank and Ors.***[2]***, Arun Kumar and Ors. Vs. Union of India and Ors.***[3] ***, Kholapur Canesugar Works Ltd and Another Vs. Union of India*** [4]***, Tara Singh and Others Vs. State of Rajasthan***[5] and ***Kangana Ranaut Vs. MCGM and Ors.***[6]

**3.15.** Mr. Joshi, learned Senior Advocate would submit that Section 2 and Section 5(o) of the Banking Regulation Act, 1949 are relevant in this regard and read thus:-

> *"**2. Application of other laws not barred.**— The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the [Companies Act, 1956], and any other law for the time being in force."*
>
> ***5.*** *Interpretation:-*
> *xxxxxx*
> *xxxxxx*
> ***(o)*** *all other words and expressions used herein but not defined and defined in the Companies Act, 1956 (1 of 1956), shall have the meanings respectively assigned to them in that Act."*

**3.16.** Next, he would draw my attention to Section 226 of the Companies Act, 1956 wherein there was a specific provision which

1 44 L.W. 583
2 (2021) 6 SCC 707
3 (2007) 1 SCC 732
4 (2000) 2 SCC 536
5 (1975) 4 SCC 86
6 2020 SCC OnLine Bom 3132

stated that Auditor appointed shall not be qualified as Auditor of the Bank unless he is a Chartered Accountant.

**3.17.** He would submit that the same provision has transitioned into Section 141(1) and (2) read with Section 145 of the Companies Act, 2013 which is the relevant statute for consideration. He would submit that if argument of the Banks is to be accepted then there will be two different yardsticks of eligibility, viz; one under the 2016 RBI Master Directions and second under the 2024 RBI Master Directions for determining qualification of External Auditor. He would submit that External Auditor will have to be a person having the basic minimum requisite qualification of Chartered Accountant for Audit as envisaged by the relevant statutes.

**3.18.** He would submit that in Writ Petition No.3037 of 2025, SBI relied upon the same FAR, but the contention of competency, validity and qualification of the author of the Report and its signatory qua the 2024 RBI Master Directions was not raised, neither argued nor adjudicated by the Division Bench however it was permitted only because the circular therein was held to be entirely clarificatory in the limited context of a Show Cause Notice. He would persuade the Court to allow the present Interim Application in the interest of justice on the basis of the aforesaid submissions.

**4.** Mr. Kamat, learned Senior Advocate for Plaintiff in the second Suit has adopted the principal submissions made by Mr. Joshi and for the sake of brevity they are not repeated and reiterated and stand adopted as if traversed herein. In addition to those submissions, to the extent of some differential facts concerning IDBI Bank he would make some additional submissions as under:-

**4.1.** He would submit that on 31.05.2024, Defendant No.1 – IDBI Bank issued Show Cause Notice to Plaintiff under the 2024 RBI Master Directions placing sole reliance on FAR dated 15.10.2020 and on 19.06.2024 Advocate for Plaintiff addressed letter to the Bank requesting for copies of all documents which were relied upon to prepare the Forensic Report. He would submit that between 17.01.2025 to 23.07.2025, Defendant No.2 - BDO LLP supplied extracts of the FAR and later supplied the full Report albeit without its Annexures. He would submit that on 23.07.2025, Defendant No.2 - BDO LLP supplied the full Report with its Annexures however supporting documents were not annexed. He would submit that further correspondence was addressed to Defendant No.2 - BDO LLP seeking the supporting documents however Defendant No.2 - BDO LLP refused to furnish the same.

**4.2.** He would submit that Defendant No.1 seeks stay of Show Cause Notice on jurisdictional grounds which are raised for the first

time in the present proceedings. He would submit that since Plaintiff was not supplied with any supporting documents to the Report, he was unable to effectively reply to the alleged fraud as enumerated in the Show Cause Notice dated 31.05.2024. He would submit that Defendant No. 1 addressed reply dated 17.01.2025 to Plaintiff stating that only extracts of the relevant documents would be made available to Plaintiff hence even considering this at the highest, cause of action in present suit against IDBI arose on 17.01.2025. Hence he would submit that there is no delay in filing of present Suit and the Suit is filed within limitation. He would refer to and rely upon the letter dated 03.02.2021 addressed by the Advocates of Defendant No.2 asserting that no conclusion of fraud or breach of trust was arrived at in the FAR qua the Plaintiff's Companies' Accounts.

**4.3.** He would fairly inform that in the meanwhile Plaintiff filed Writ Petition (L) No. 34065 of 2025 against IDBI Bank seeking deferment of personal hearing, however on 28.10.20205 the said Petition was withdrawn reserving liberty to raise all contentions.

**4.4.** He would refer to and rely upon the decision of the Calcutta High Court in the case of ***Prashant Bothra and another Vs. Bureau of Immigrations and Others***[7] (in support of Plaintiff's case) and another decision of this Court in the case of ***Ankit Bhuwalka Vs. IDBI Bank and***

7 2023 SCC Online Cal 2643

***Another***[8] wherein Paragraph No.26 in the case of *Ankit Bhuwalka (supra)* is relevant and reproduced hereunder:-

> *"**26**. It is thus clear from the table that the position of the borrower as relied upon by the wilful defaulter committee is as per the transaction review report dated March 5, 2020 prepared by the auditor M/s. G.D. Apte and Co. At the cost of repetition, it is necessary to note that the resolution professional had made an application before the National Company Law Tribunal bearing I.A. No. 133 of 2020 under section 60 read with section 66 of the Insolvency and Bankruptcy Code. By its order dated March 10, 2021, the National Company Law Tribunal disposed the application holding that the same was premature and directed the resolution professional to carry out basic enquiry of all surrounding facts to make out his case, make enquiries from all concerned parties with reference to the transactions highlighted in the forensic report, and arrive at some definite conclusion before referring the matter to the Tribunal under section 66 of the Code. The National Company Law Tribunal has also observed that the forensic report prepared by the auditors simply assumes the transactions to be fraudulent and the conclusions that funds were siphoned away were reached in a summary manner. We specifically enquired with both the counsels as to whether the forensic report commented upon by the National Company Law Tribunal was the same as the transaction audit report referred to in the show-cause notice. We were assured by both the counsels that it was the same report. It is thus safe to accept that the basis of issuance of the show-cause notice was primarily the findings in the transaction audit report, which were observed by the National Company Law Tribunal to be mere assumptions. Considering the grave consequences that follow a finding by the wilful defaulter committee, the degree of proof required and expected to have been relied upon by the wilful defaulter committee should be much higher and not simply based on a transaction audit report which itself was unacceptable to the National Company Law Tribunal."*

**4.5.** On the basis of the aforesaid submissions he would urge the Court to consider the challenge to the jurisdictional fact raised in the first instance by Plaintiff herein and allow the Interim Application.

**5.** Mr. Khandeparkar, learned Advocate for Plaintiff in the third suit would adopt the submissions made by Mr. Joshi and Mr. Kamat

8 2025 SCC OnLine Bom 96

and for the sake of brevity they are not repeated and reiterated herein and stand adopted as if traversed herein. He would make the following additional submissions:-

**5.1.** He would submit that Defendant No.1 – Bank of Baroda issued Show Cause Notice dated 02.01.2024 to Plaintiff under the 2024 RBI Master Directions placing sole reliance on the same FAR dated 15.10.2020 prepared by Defendant No.2. He would submit that Plaintiff through his Advocates addressed letter dated 19.01.2024 requesting copies of all documents relied upon to prepare the FAR and Plaintiff received the FAR vide letter dated 27.06.2024.

**5.2.** He would submit that Plaintiff filed Writ Petition (L) No. 9342 of 2025 challenging Show Cause Notice issued by Defendant No.1 however he withdrew the same on 17.04.2025. He would submit that on 02.09.2025 Defendant No.1, placing sole reliance on FAR, issued Fraud Classification Order against Plaintiff which was challenged in Writ Petition (L) No.29095 of 2025 wherein vide order dated 17.09.2025 Defendant No.1 undertook not to act in furtherance of Fraud Classification Order. He would submit that it is case of Defendant No.1 – Bank of Baroda that SEBI has empanelled Defendant No.2 as Forensic Auditor however he would submit that the same has no bearing on the present Suit as SEBI is a Market Regulator and not a Banking Regulator and appointment of Auditor whether internal or

external by Banks is governed by the relevant statutes and the RBI Master Directions on Fraud.

**5.3.** He would submit that Defendant No. 2 admittedly is not a CA as contemplated by Section 4(2) of the Chartered Accountants Act, 1949. He would submit that Defendant No.1 is not part of the consortium led by State Bank of India since Defendant No.2's Report obtained by State Bank of India is used against Bank of Baroda, therefore a separate and different FAR is required.

**5.4.** He would submit that the FAR is challenged by way of Suit on the ground that the issuing entity i.e. Defendant No.2 is not an entity performing public / government functions hence Writ jurisdiction of this Court cannot be invoked against the Report prepared by Defendant No.2 or Defendant No. 3. He would submit that Defendant No.1 – Bank of Baroda served the impugned FAR on 27.06.2024 for the first time therefore there is no delay in filing the present suit. He would submit that the FAR is the sole basis and foundation for Defendant No.1 to issue the Show Cause Notice in 2024, hence there is no other legal remedy available to Plaintiff besides filing of present suit wherein disputed questions of facts can only be decided.

**5.5.** In support of his submissions he would refer to and rely upon a decision of the Supreme Court in the case of ***S. Shobha Vs.***

***Muthoot Finance Ltd.***[9] to contend that although writ of mandamus is issued to public bodies only, in exceptional cases writ of mandamus may be issued to a private body but only where a public duty is cast upon such private body by a statute or statutory rule and only to compel such body to perform its public duty.

**5.6.** He would therefore urge the Court to consider the challenge to the jurisdictional issue raised by the Plaintiff and allow the Interim Application.

**6.** ***PER CONTRA,*** Mr. Andhyarujina, learned Senior Advocate appearing for Defendant No.1 - Indian Overseas Bank in Suit (L) No. 35953 of 2025 would submit that if the 2016 RBI Master Directions and 2024 RBI Master Directions are juxtaposed with each other then it is derived that under the 2016 RBI Master Directions no qualification is prescribed for the Auditor to be a CA. He would submit that the requirement of the Auditor to be a CA was introduced for the first time by way of a clarificatory Footnote in the 2024 RBI Master Directions. He would vehemently submit that Plaintiff is not entitled to any interim relief since account of RCOM has already been declared as fraud by Defendant No. 1 bank as far back as on 21.12.2020. He would submit that as a consequence thereof Plaintiff was all along aware of the classification of RCOM account as fraud since then and therefore filing of the present suit in the year 2025 is barred by

9 2025 SCC Online 177

limitation on the face of record.

**6.1.** He would submit that Plaintiff filed several judicial proceedings in Court in the year 2024 and 2025 to challenge determination of fraud wherein he failed to secure any relief. He would in his usual fairness submit that though the ground on which interim relief is sought namely qualification and competency of the Auditor it was never challenged, agitated by Plaintiff or dealt with in any previous proceedings in Court, however Plaintiff cannot deny the fact that he was not aware of the competence of Defendant No.2 and qualification of Defendant No.3 since the year 2020 and further this Court has taken cognizance of the FAR and Plaintiff has failed to raise challenge on the aforesaid grounds in these proceedings.

**6.2.** That apart he would submit that Plaintiff fully participated in the enquiry conducted by Defendant No.1 bank which is borne out by extensive correspondence during the years 2024 and 2025 but never objected to the competency and qualification of the Auditor. He would submit that Defendant No. 1 - Indian Overseas Bank accorded Plaintiff opportunity of hearing on 2 occasions but he never raised the issue of qualification of the Auditor. He would submit that cause of action stated in the Suit Plaint is on the basis of a RTI reply dated 24.10.2025 for filing the Suit which was made by a third person called Ms. Siddhi Vora only as a ruse to bring the Suit within limitation when

all along since 2020 Plaintiff was fully aware of the FAR. Rather he would submit that the RTI application was a bogus application and challenge to the FAR if any ought to have been made by Plaintiff in the year 2020 when he gained knowledge about the same. On the basis of the above submissions he would persuade the Court to consider that no balance of convenience whatsoever exists in favour of Plaintiff for seeking interim relief in 2025 albeit being on a completely fresh ground. He would submit that no *prima facie* case is therefore made out for interim relief and if at all any interim relief is granted it will result in irreparable loss to the Defendant - Banks as also all other lender banks who have relied upon the FAR and proceeded further with consequential steps in accordance with law.

**6.3.** The next submission advanced by Mr. Adhyarujina for rejecting interim relief is on merits. At the outset he would place on record meaning of the word "Audit" as per ***Black's Law Dictionary***[10] to mean a formal examination of individuals' or organization's accounting record, financial situation, or compliance with other set of standards. He would submit that Black's Law Dictionary refers to 9 different types of Audit namely Compliance Audit, Correspondence Audit, Desk Audit, Field Audit, Independent Audit, Internal Audit, Office Audit, Post Audit, and Tax Audit. He would submit that the terminology used in the present case pertains to Forensic Audit by

10 Black's Law Dictionary 126 (7th ed.1999)

External Auditor as envisaged under the 2016 and 2024 RBI Master Directions.

**6.4.** He would persuade me to juxtapose and read both the aforesaid Master Directions and would submit that the 2016 Master Directions determine and envisage a holistic architecture for determining fraud supervision and loan fraud as one of the key aspect thereof. He would draw my attention to Clause 8.8.2 of the 2016 Master Directions which refer to the word “may” therein and would argue that it would be the choice of the bank to appoint a Forensic Expert for conducting Forensic Audit. While referring to Clause No. 8.9.5 of the 2016 RBI Master Directions he would fairly submit that a precise timeline has been laid down for not only completion of Forensic Audit but also to determine fraud classification within 6 months of the early detection of one or two EWS. He would submit that 2016 RBI Master Directions refer to Audit in the widest possible sense which can be conducted by several rather a multitude of different types of professionals and does not prescribe qualification of CA for the External Auditor.

**6.5.** Thereafter he would submit that 2014 Directions supersede the 2016 RBI Master Directions but with a caveat that all actions legitimately undertaken under the 2016 RBI Master Directions can be continued. He would submit that the 2024 RBI Master Directions

provide for following the principles of natural justice before determination of fraud which would include personal hearing to be given to the borrower which in the present case has been offered not once but twice. He would submit that 2024 RBI Master Directions have a well laid out regime permitting the Bank to conduct External Audit or Internal Audit and call for report before issuance of Show Cause Notice and examination of responses / submissions and enquiry for classifying the account as fraud which also entails grant of personal hearing. He would submit that action taken against Plaintiff in the instant case is under the 2016 RBI Master Directions wherein no qualification is prescribed for External Auditor and therefore the core issue raised by Plaintiff for seeking interim relief by challenging the qualification and competence of Auditor is impermissible to be taken in law.

**6.6.** He would submit that the 2024 RBI Master Directions are issued pursuant to the decision of the Supreme Court in the case of ***State Bank of India vs Rajesh Agarwal and Ors.***[11] wherein challenge to the said Directions was considered and determined by improving and consolidating the enquiry procedure under the 2016 RBI Master Directions. He would submit that Footnote 14 to Clause 4.1 in the 2024 RBI Master Directions will have to be considered as prospective in application and Plaintiff's reliance on the same to challenge the

11 (2023) 6 SCC 1

Show Cause Notice under the 2016 RBI Master Directions cannot be sustained in law. He would submit that the legal position in this regard is well settled in as much as once there is no specific statutory direction of retrospective applicability any subsequent statutory legislation then it will be prospective in application and character.

**6.7.** He would submit that the Master Directions are issued under the provisions of Section 35A of the Banking Regulation Act, 1949 and are clear in its legislative intent. He would submit that the issue framed by the learned Division Bench of this Court while determining Writ Petition No. 3037 of 2025 filed by Plaintiff against State Bank of India and another and decided on 03.10.2025 to challenge the Show Cause Notice issued by State Bank of India and the resultant order passed by State Bank of India classifying the account of RCOM company as fraud squarely answers the aforesaid question. He would submit that while upholding the impugned action of the Bank and the issue pertaining to grant of personal hearing the learned Division Bench of this Court in paragraph No.25 clearly noted and acknowledged the FAR but because Plaintiff did not press the same on any ground the Division Bench observed that it was not required to go into the same. He would submit that Plaintiff failed to raise challenge to the FAR in several previous proceedings and therefore he is precluded from raising the same in the present proceedings.

**6.8.** He would submit that the Plaint is conspicuously silent on the issue of declaration of fraud. He would submit that Defendant No .1 Bank had as far back as on 21.12.2020 taken the statutory steps to declare and upload the Fraud Monitoring Return qua Plaintiff company RCOM on the Extensible Business Reporting Language platform (for short "**XBRL**") of the RBI after Defendant No. 2 submitted the FAR on 15.10.2020 observing many major irregularities and thus the fraud came to light. He has drawn my attention to the said document appended at page No. 181 Exhibit "F" of the reply of Defendant No. 1 to the Interim Application.

**6.9.** He would submit that Master Directions are a form of delegated legislation and in the present case even though 2024 RBI Master Directions state that the previous RBI Master Directions are repealed, it is not so in the present case.

**6.10.** He would submit that 2016 RBI Master Directions are not expressly repealed by the 2024 RBI Master Directions. He would submit that there is no express repeal of the previous Directions since validity of all pending actions under the previous Directions would have to be continued despite the 2024 RBI Master Directions. He would submit that there is no express omission of 2016 RBI Master Directions in the 2024 RBI Master Directions and statutes speak expressly as also positively and by omissions.

**6.11.** He would submit that since the 2016 RBI Master Directions and all actions taken thereunder continue, the clarification contained in Footnote 14, *inter alia*, of the 2024 RBI Master Directions pertaining to qualification of the Auditor under the relevant statutes does not apply.

**6.12.** He would submit that Footnote 14 in the 2024 RBI Master Directions fixes the qualification of the External Auditor for the first time and by no stretch of imagination it could be said that the same applies retrospectively to the External Auditor appointed by Banks under the 2016 RBI Master Directions.

**6.13.** He would submit that the 2016 RBI Master Directions clearly rule out the External Auditor to have qualification of Chartered Accountant. He would submit that 2024 RBI Master Directions and Footnote 14 contained therein will have to be therefore considered by the Court as a substantive change in delegated legislation for the purpose of fixing qualification of the External Auditor which was otherwise inherently absent in the 2016 RBI Master Directions.

**6.14.** He would submit that a purposeful meaning is to be ascribed to Footnote 14 and it is to be held as a substantive change to operate prospectively and it cannot have any retrospective application.

**6.15.** He would submit that if interim relief is granted to the Plaintiff it would render appointment of Defendant No.2 as illegal due

to competence of Defendant No.2 and qualification of Defendant No.3.

**6.16.** He would submit that some Banks have declared Plaintiff as fraud and it would have an effect on the said declaration since it has been done after following the due process of law.

**6.17.** He would submit that the entire investigation pursuant to issuance of show-cause notice and steps taken by Banks which have been acquiesced by the Plaintiff and Plaintiff having participated in the same would be rendered nugatory. Finally, he would submit that it would seriously affect a vested position which is established pursuant to issuance of show-cause notices by Banks and render all action for effecting recovery null and void. He would submit that in so far as Footnote 14 is concerned, the 2024 RBI Master Directions will have to be considered as explanatory and clarificatory for the purpose of consolidation of the substantive directions contained in the previous 2016 RBI Master Directions and hence it will have to be considered as a substantive change.

**6.18.** Mr. Andhyarujina has referred to and and relied upon the decision of the Supreme Court in the case of ***Zile Singh Vs. State of Maharashtra and Ors.***[12] to contend that unless there are specific words stated in the statute to show the intention of the legislature, the statute will have to be determined as prospective in application only.

12 (2004) 8 Supreme Court Cases 1

He would submit that qualification of the External Auditor rendered vide Footnote 14 in 2024 RBI Master Directions will have to be therefore considered as a substantive change and it cannot be merely considered to be explanatory or clarificatory. Paragraph Nos.13 to 18 of the aforesaid judgment are relevant in this regard according to him and are reproduced below:-

> *"**13.** It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only — "nova constitutio futuris formam imponere debet non praeteritis" — a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).*
>
> ***14.** The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).*
>
> ***15.** Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular*

*section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)*

***16.*** *Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of Attorney General v. Pougett [(1816) 2 Price 381 : 146 ER 130] (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134) "The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;" (Price at p. 392)*

***17.*** *Maxwell states in his work on Interpretation of Statutes (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it" (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).*

***18.*** *In a recent decision of this Court in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India [(2003) 5 SCC 23] it has been held:*

*that there is no fixed formula for the expression of legislative*

> *intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."*

**6.19.** He has also relied upon the decision of Supreme Court in the case of ***Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited***[13] in this regard. The relevant paragraph Nos.27 to 31 therein read by him are reproduced below:-

> "***27.*** *A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-à-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.*
>
> ***28.*** *Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the*

13 (2015) 1 Supreme Court Cases 1 : (2014) 367 ITR 466 : 2014 SCC OnLine SC 712.

*nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

***29.*** *The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. [(1994) 1 AC 486 : (1994) 2 WLR 39 : (1994) 1 All ER 20 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.*

***30.*** *We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396] , the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289] . It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.*

***31.*** *In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section*

> *113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.*"

**7.** Mr. Setalvad, learned Senior Advocate is appearing for Defendant No. 1 - Bank of Baroda ( for short "**BOB**") in Suit (L) No. 37862 of 2025. He would adopt the principal submissions made by Mr. Andhyarujina which are not repeated herein for brevity but stand adopted as traversed by him. He would submit that some facts qua BOB are different as Fraud Classification Order dated 02.09.2025 is passed by BOB which is pending challenge in Writ Jurisdiction before this Court. At the outset he would draw my attention to the prayer clauses in the Suit Plaint and would submit that the only prayer that would survive in the facts and circumstances of Plaintiff's case qua BOB as on date would be the prayer for seeking damages which is prayer Clause (a). He would submit that all other prayer clauses from prayer Clauses (b) to (f), *inter alia*, pertaining to challenge to the FAR, recall of FAR, challenge to the Show Cause Notice, recall of Show Cause Notice and all actions taken in furtherance thereof do not survive since fraud classification Order has already been passed and further consequential steps are contemplated.

**7.1.** He would draw my attention to the order dated 17.04.2025 passed by this Court in Writ Petition (L) No. 9343 of 2025 in respect of the very same show-cause-notice which is the subject matter of challenge in the present Suit proceedings. He would next draw my attention to the proceedings in Writ Petition (L) No. 2905 of 2025 filed by Plaintiff in this Court once again for the very same cause of action i.e. to challenge the same Show Cause Notice and all consequential actions taken in furtherance thereof. He would submit that once such aforesaid multiple challenges for the same cause of action are maintained in the Writ Court, present Suit proceeding for the same reliefs are nothing but an abuse of the due process of law and on this count alone, Plaintiff is disentitled to interim relief. He would submit that there is no delay whatsoever on the part of Defendant No. 1 to issue the Show Cause Notice and a completely false case of urgency has been pleaded by Plaintiff seeking interim relief in paragraph No. 11 of the Suit Plaint by building a false narrative that Plaintiff was not aware of the FAR. He would submit that Plaintiff is not entitled to interim relief concerning the alleged cause of action stated in the Suit Plaint of having obtained the Report and information on qualification of Respondent No. 2 through RTI when Plaintiff was fully aware about the FAR prepared by Defendant No. 2 almost 5 years ago. Hence he would submit that the Plaintiff is not entitled to any interim relief as grant of interim relief would upset

the consequential steps taken by the Bank in furtherance of the Show Cause Notice and personal hearing granted to Plaintiff.

**7.2.** He would adopt the submissions made by Mr. Andhyarujina with respect to acquisition of knowledge of the FAR by Plaintiff through RTI Application filed by a third party stranger and with respect to the date of cause of action having arisen as stated in the Suit plaint to argue the bar of limitation. He would submit that Plaintiff was all along aware of the FAR and its signatory i.e. Defendant No. 3, but did not take any steps whatsoever in the last five years until filing of the present Suit proceedings to challenge the BDO LLP report on the ground of competence and qualification of Defendant Nos.2 and 3. He would submit that multiple proceedings filed by Plaintiff before different Courts including the Supreme Court and despite he not having raised any objection to the FAR on the above grounds during the past five years clearly amount to waiver and estoppel by Plaintiff of the alleged grounds pleaded in the Suit Plaint. He would submit that the conduct and action of Plaintiff clearly amount to giving up the plea to challenge the Auditor's qualification when the Plaintiff is consistently litigating in this Court for the past two years.

**7.3.** In his usual fairness he would submit that Defendant No. 1 Bank was not a party to the consortium led by SBI leading to appointment of the Forensic Auditor namely Defendant No. 2.

However he would submit that BOB is exposed to the account of Plaintiff's Companies and is a member of the JLF and FAR dated 15.10.2020 clearly records potential diversion of funds including transfer of funds to subsidiary group companies and related parties affecting the Defendant No.1 - Bank.

**7.4.** He would submit that as a matter of fact Defendant No. 1 Bank paid Rs. 19.21 Lakhs as fee towards its share for preparation of the FAR to Defendant No.2. He would submit that the ground of challenge to Auditor's qualification is taken by Plaintiff as a complete afterthought and is a *malafide* exercise of the due process of law after he having failed to obtain reliefs for the past two years in a multitude of proceedings filed by him. He would submit that the Suit is hit by the bar of limitation since Plaintiff had knowledge about the FAR as far back as in 2021 and he chose not to challenge the same on the grounds of challenge in the present Suit proceedings and therefore the Interim Application seeking reliefs be dismissed with exemplary costs.

**7.5.** He would submit that SEBI as one of the market regulator does not require the Forensic Auditor to be a Chartered Accountant as Forensic Auditor can be an expert having expertise in the field of investigation and forensic auditing. He would draw my attention to the JLF decision at page No. 102 of the Bank's reply Affidavit wherein Plaintiff has been declared as fraud and substantial investigation is

underway and therefore would vehemently persuade the Court to consider that if any interim relief is granted at this stage to Plaintiff, the entire investigation undertaken by the Law Enforcement Agencies will be derailed and set to naught.

**7.6.** He would submit that the only remedy therefore available to Plaintiff at this stage, considering the present facts and circumstances, is to go for a personal hearing before the Bank as final order declaring Plaintiff's account as fraud has already been passed on 02.09.2025. He would submit that Plaintiff would have to submit his explanation to the findings and conclusions in the FAR rather than challenge the Report on the ground of competency and qualification of Defendant No.2 and 3 which is a complete afterthought. He would draw my attention to the FAR at page No. 130 of the Suit Plaint and would submit that the FAR is prepared and signed by Defendant No. 3, then Partner of Defendant No.2 firm and it is not Plaintiff's case that he did not know as to who was the author and signatory of the said report.

**7.7.** He would submit that as far back as in the year 2020, Plaintiff was fully aware of the fact that FAR was prepared and signed by Defendant No. 3. He would draw my attention to the 2016 RBI Master Directions and would contend that holistically reading the said Directions clearly envisage no requirement of a Chartered Accountant to conduct a Forensic Audit. He would submit that considering the

gamut of proceedings in the last five years and more specifically in the last two years filed by Plaintiff and he being well aware of the FAR which forms an integral part of all his challenges, he cannot now turn around and seek to challenge the qualification and competence of the Forensic Auditor on the specious ground that the 2024 RBI Master Directions require a Chartered Accountant to be a Forensic Auditor.

**7.8.** He would submit that in the present case insofar as BOB is concerned, a complete copy of the FAR was forwarded to Plaintiff on 27.06.2024 which is duly acknowledged by him on 09.07.2024. He would submit that in that view of the matter when Plaintiff was fully aware of the Forensic Audit even otherwise since 2021, which is borne out from the correspondence between the Advocates for the Bank and Plaintiff, a clear case of clever drafting of attempting to bring the Suit proceeding within limitation is made by challenging the competency and qualification of the author of the Report. He would submit that insofar as BOB is concerned, Plaintiff himself by letter dated 15.07.2024 sought eight weeks' time on the ground that he was still analyzing the Report.

**7.9.** He would submit that Plaintiff raised his grievances with respect to the cause of action, *inter alia*, referring to the FAR prepared by BDO LLP before the Reserve Bank of India by his detailed complaint dated 22.03.2025 appended at page No. 710 Exh. "CC" to the Suit

plaint wherein he did not question the competence and qualification of Defendant Nos. 2 and 3 and accepted the Report. He would submit that despite raising several grievances Plaintiff never raised any grievance whatsoever to challenge the competence and qualification of the Auditor in multiple proceedings. He would submit that by order dated 01.08.2025 Reserve Bank of India closed the complaint of Plaintiff and thus pursuant thereto on 02.09.2025 fraud classification Order was passed. He would submit that Writ Petition is filed by Plaintiff to challenge the fraud classification Order and in paragraph No. (f) thereof identical ground of challenge has been taken.

**7.10.** In view of above submissions, he would submit that since all along Plaintiff was fully aware of the External Auditor's qualification and credentials and he having filed multiple proceedings, he is now estopped from launching a fresh challenge in the present Suit proceeding on the same cause of action in law and the Court should not permit the same.

**7.11.** On merits of the matter he would adopt the submissions made by Mr. Andhyarujina and in addition thereto submit that 2016 RBI Master Directions do not refer to External Auditor which will have to be construed as distinct and separate from that of appointment of Internal Auditor of the Company envisaged under Section 141 of the Companies Act. He would submit that 2016 RBI Master Directions do

not refer to any qualification for the Auditor and therefore case of Plaintiff is bad in law since Show Cause Notice has been issued to Plaintiff under the 2016 Master Directions.

**7.12.** He would submit that if this Court gives any interim relief to the Plaintiff it would render the entire investigation undertaken so far by the Law Enforcement Agencies nugatory for all practical purposes and all orders denying relief to the Plaintiff by the Superior Courts shall stand overturned. He would submit that the 2024 RBI Master Directions are issued in supersession of the 2016 RBI Master Directions and they cannot be applied retrospectively to the 2016 Directions. He would refer to and rely upon paragraph No. 66 of the decision in the case of ***State of Orissa v. Titaghur Paper Mills Co. Ltd.***[14] in support of his above submissions.

**7.13.** On the issue of limitation he would submit that he would adopt the submissions made by Mr. Andhyarujina and further submit that in view of consistent action of Plaintiff in approaching the Court of law repeatedly and filing multiple proceedings in the past two years, Plaintiff being fully aware of the author of the FAR as far back as in 2020, this is a fit case for exercise of inherent jurisdiction of the Court under Section 151 of the Civil Procedure Code, 1908 (for short "**CPC**") for dismissing the Suit Plaint at the threshold with exemplary costs.

14 1985 Supp SCC 280

**7.14.** He would refer to and rely upon the decisions of the Supreme Court in the following cases viz; ***Patil Automation (P) Ltd v. Rakheja Engineers (P) Ltd.***[15] , ***Dhanbad Fuels Private Limited Vs. Union of India***[16] and ***Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle***[17] in support of his submissions. He would submit that it has been held by the Supreme Court in the case of *Shri Mukund Bhavan Trust (supra)* at paragraph No. 41 thereof that if it is a case of clever drafting noticed by Court, then such action of Plaintiff has to be nipped in the bud itself.

**7.15.** He would submit that balance of convenience and *prima facie* case has not been made out and hence Plaintiff is disentitled to any interim relief. On the issue of irreparable loss, he would submit that grave consequences would follow if this Court grants interim relief to the Plaintiff since pursuant to the Show Cause Notice and fraud classification Order substantial steps have been taken in that direction and all those actions will stand overturned in the process and not only the Defendant No. 1 Bank but all members of the consortium who are lenders and who have suffered will be affected. Hence, he would submit that Plaintiff is not entitled to any interim relief whatsoever.

---

15 (2022) 10 SCC 1
16 (2025) 9 SCC 424
17 (2024) 15 SCC 675

**8.** Mr. Bharucha, learned Senior Advocate appears for Defendant No.1 – IDBI Bank in Suit (L) No.37573 of 2025. In his usual fairness, at the outset, he would submit that he adopts the submissions and arguments canvassed by both the Learned Senior Advocates Mr. Andhyarujina and Mr. Setalvad. For brevity the same are not repeated and reiterated herein and they stand adopted as traversed. He would submit that in addition thereto and to the extent of additional / differential facts qua IDBI Bank he would like to make the following submissions:-

**8.1.** He would submit that case of Plaintiff qua IDBI Bank stands on a completely different footing to some extent. He would submit that case of Plaintiff is on the premise that IDBI's Fraud Committee proceedings are based on BDO LLP's FAR and that Defendant No.2 is not an Auditor appointed under the 2024 RBI Master Directions. He would submit that the case of Plaintiff is erroneous since IDBI's Fraud Committee proceedings are issued under the 2016 RBI Master Directions.

**8.2.** Next, he would submit that the Defendant No.2 - Auditor - BDO LLP is an empanelled Forensic Auditor with IBA and since IDBI Bank is a Member of this Association it cannot be faulted for relying on BDO LLP's FAR. He would submit that IDBI Bank has followed the entire procedure set out in the 2016 RBI Master Directions on Fraud, it

has complied with Supreme Court's directions on principles of natural justice which the Plaintiff has availed of to defend himself and once that is done it is now not open to Plaintiff to challenge the FAR on the ground that the 2024 RBI Master Directions provide for a different process / qualification of the Auditor.

**8.3.** He would submit that in so far as IDBI Bank is concerned Plaintiff after much delay and several failed Court challenges eventually appeared personally for hearing before IDBI's Fraud Committee on 30.10.2025 and thereafter has submitted a detailed written representation. He would submit that from the date of issuance of Show Cause Notice on 31.05.2024 to the Plaintiff filing detailed written representation after October 2025 and Plaintiff fully being aware of the FAR and status of its author, not even once Plaintiff has raised challenge to the Report on the ground of Auditor's qualification. Hence, he would submit that it is a complete afterthought on the part of Plaintiff to file the present Suit proceeding which is an abuse of the due process of law.

**8.4.** He would submit that in October 2025, Plaintiff filed Writ Petition (L) No.34065 of 2025 before this Court seeking stay of his scheduled personal hearing which he had agreed to attend. However, he withdrew the Writ Petition and agreed to appear before IDBI's Fraud Committee. He would submit that all along for the past several

years Plaintiff has never objected or raised grievance about competency and qualification of the Forensic Auditor and he has filed the present Suit entirely on a new ground of which he was fully aware of during the last 5 years. Hence, he would submit that the Suit cannot maintain a challenge to the FAR either on merits or competency and no equities are created in favour of Plaintiff. He would therefore vehemently urge the Court to dismiss the Suit itself at the threshold with exemplary costs.

**8.5.** On the issue of merits, he would additionally submit that the 2024 RBI Master Directions do not invalidate either the Show Cause Notice or the process (including the Audit Report) initiated under the 2016 RBI Master Directions. He would submit that the Division Bench of this Court in the Plaintiff's own case i.e. ***Anil Ambani Vs. State Bank of India***[18] has settled this issue. He would submit that the said judgment covers IDBI Bank's Show Cause Notice and the fraud proceedings. He would submit that the 2024 RBI Master Directions apply 'prospectively' and do not cover the process initiated and completed under the 2016 RBI Master Directions. He would submit that even otherwise, the Directions in the 2014 RBI Master Directions of appointment of "Auditor" are directory and not mandatory.

**8.6.** He would submit that no statute provides for conducting a Forensic Audit by an 'Auditor' in terms of the Companies Act, 2013. He

18 Writ Petition No.3037 of 2025

would submit that if the interim relief sought by Plaintiff is granted then it will set the clock four years backwards and cause serious prejudice to IDBI Bank and other Lender Banks. He would submit that the alleged fraudulent transactions in the FAR are of approximately to the tune of Rs. 33603 crores and interim relief or any other relief would have an adverse cascading effect on the Indian economy because of the sheer size of the transactions.

**8.7.** Next, he would submit that this Court should take into cognizance the fact that since the year 2019 the lead Bank of the consortium consisting of 20 banks and Lenders of RCOM, RTL and RITL appointed Defendant No.2 BDO LLP to conduct the Forensic Audit of the three (3) Companies of Plaintiff for the period from 2013 to 2017. He would submit that on 15.10.2020 Defendant No.2 submitted its FAR to the JLF alleging that substantial payment received from the Banks were used to pay connected parties and other Bank loans and were used as Investment by the three (3) Companies.

**8.8.** He would submit that since the year 2021, Plaintiff was fully aware of the status of BDO LLP Report. He would fairly submit that though the BDO LLP Report was shared with Plaintiff by other banks in and around 2023-2024, Defendant No.1 – IDBI Bank shared and forwarded it to Plaintiff on 26.06.2025. He would submit that despite the above fact, on 17.10.2025 Plaintiff filed Writ Petition (L)

No.34065 of 2025 against IDBI Bank seeking order for production and disclosure of all documents relied upon in the Show Cause Notice before conducting a personal hearing. He would submit that this Writ Petition was withdrawn on 28.10.205 by Plaintiff and he agreed to appear before IDBI Bank's Fraud Committee for personal hearing and sought liberty to answer all contentions before the Committee.

**8.9.** He would vehemently submit that during the aforesaid proceedings not even once Plaintiff raised the grievance of Auditor's status and qualification under the 2024 RBI Master Directions. Neither he raised challenge for withdrawal of Show Cause Notice on that ground. He would submit that on 29.10.2025 IDBI Bank declared RCOM - the borrower as "fraud account" based on Defendant No.2's FAR and thus action is completed. He would submit that Plaintiff was RCOM's Promoter and thus in control of RCOM. He would submit that declaration as "Fraud" by order dated 29.10.2025 is not challenged rather Plaintiff has appeared before IDBI's Fraud Committee and made oral submissions for almost (two) 2 hours recently.

**8.10.** He would submit that even thereafter correspondence is exchanged with IDBI Bank seeking list of documents but no grievance or complaint is made alleging that the 2024 RBI Master Directions superseded the 2016 Directions or for that matter to challenge qualification of the Auditor. He would submit that it is in this

background that present Suit is filed by Plaintiff now to seek a declaration that Show Cause Notice by IDBI Bank is bad in law after he having appeared at the personal hearing before the Committee, which should not be countenanced by Court.

**8.11.** On the basis of the above critical dates he would submit that Plaintiff's entire argument that IDBI's fraud proceedings rely on Defendant No.2's FAR and that Defendant No.2 is not an "Auditor' under the 2024 RBI Master Directions on Fraud fails because IDBI's proceedings are governed by the old 2016 RBI Master Directions on Fraud and not the new one. He would submit that Defendant No.2 was qualified to conduct the Forensic Audit of RCOM - the borrower and Plaintiff. He would submit that Defendant No.2 is an empanelled Forensic Auditor with the IBA. He would submit that as Member of the consortium, IDBI cannot be blamed for relying on Defendant No.2's Report. He would submit that the list of empanelled Forensic Auditors appended at page No.46 of IDBI's reply show that Defendant No.2's name appears at serial No.96 of the said list.

**8.12.** He would submit that Defendant No.2's Report is now sought to be impugned as being contrary to the new 2024 RBI Master Directions on Fraud which is the basis on which RCOM, i.e. the Borrower was found to be a "fraud account". He would submit that neither RCOM nor Plaintiff has challenged this classification of fraud

on any ground whatsoever and hence it has attained finality.

**8.13.** He would submit that the entire fraud proceeding as mandated by the 2016 RBI Master Directions on Fraud has been concluded in the case of IDBI. He would submit that Plaintiff cannot at this stage now seek to belatedly stay further proceedings or seek any relief, interim or otherwise, from this Court on a wholly misconceived contention that was available to him for over a year.

**8.14.** He would submit that after the conclusion of fraud proceeding under the 2016 RBI Master Directions on Fraud including adherence to the principles of natural justice as mandated by the Supreme Court in *Rajesh Agarwal (supra)* any stay at this stage would irretrievably prejudice and harm the Bank's right and duty to initiate legal action against the mastermind of the fraudulent transactions. He would submit that the Bank is an injured party because its money was wrongly diverted by Plaintiff's Companies by fraudulent transactions. He would submit that Bank's right and duty to act against a party that defrauded it cannot be taken away on wholly misconceived grounds.

**8.15.** He would submit that IDBI's fraud proceedings are distinct from those of other banks. He would submit that IDBI has adhered to the procedure outlined in the 2016 RBI Master Directions on Fraud and has provided multiple opportunities for Plaintiff to defend himself. He would submit that once the process under old 2016 RBI Master

Directions on Fraud has been completed both in respect of the principal borrower i.e., RCOM and Plaintiff no challenge can now be made to it on the ground that the 2024 RBI Master Directions on Fraud provide for a different process.

**8.16.** He would submit that Plaintiff's claim must fail since under both 2024 Master Directions and 2016 Master Directions, FAR need not be prepared by a statutory Auditor and is prepared merely for investigative purposes. He would submit that a statutory Auditor cannot undertake Forensic Audit within the meaning of Section 143 of Companies Act, 2013.

**8.17.** On the issue of Footnote 14 in the 2024 RBI Master Directions, he would submit that the same cannot be used by Plaintiff to qualify the main provision stated in the Directions. He would submit that its plain wording is not limited to the Companies Act, 2013 alone as the relevant statute but other Acts and Laws are also applicable, that the SEBI guidelines and Notification dated 02.09.2015 and more specifically sub Section 17 of Listing Obligations and Disclosure Requirement (for short "**LODR**") would also be applicable. In support of this submission he has referred to and relied upon the decision of the Supreme Court in the case of ***C. Bright Vs. The District Collector and Others.***[19]

19 Civil Appeal No. 3441 of 2020 decided on 05.11.2020

**8.18.** With regard to the contention regarding Footnote he has referred to and relied upon the decision of the Supreme Court in the case of ***V.B. Prasad Vs. Manager, P.M.D.U.P. School and Ors.***[20]**.** He would further refer to and rely upon the recent decision of the Delhi High Court in the case of ***Avantha Holdings Limited and Another Vs. Union of India and Ors.***[21] to contend that a power to declare fraud lies solely with banks not with Forensic Auditors, that FAR is merely a piece of evidence and not amenable to challenge as it is nothing but an opinion of expert and no civil or evil consequences flow directly from such a Report until and unless some prejudicial administrative decision is taken by the Lender – Bank (s) or JLF on the basis of the said Report and FAR by itself will not cause any prejudice since it is merely opinion of an expert.

**8.19.** In furtherance to above, in support of his submissions he has referred to and relied upon the following decisions of the Courts:-

(i) The decision of the Supreme Court in the case of ***Chairman, U. P. Jal Nigam and Another Vs. Jaswant Singh and Another***[22] wherein reliance is placed on paragraph Nos.9 and 12 thereof which are reproduced below for reference:-

> *"**9.** ...similarly in **Jagdish Lal v. State of Haryana** this Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the court, then such*

20 (2007) 10 SCC 269
21 WP (C) 274 of 2023
22 2006 11 SCC 464

> *person cannot stand to benefit. In that case it was observed as follows: (SCC p. 542). "The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had impetus from Virpal Singh Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage" .*
>
> ***10**. xxxxxx*
>
> ***11**. xxxxxx*
>
> *"**12**. ...it is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving his remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards be asserted."*

(ii) The decision of the Supreme Court in the case of ***Chairman, State Bank of India and Anr Vs. M. J. James***[23], wherein reliance is placed on paragraph No.41 relevant excerpt of which reads thus:-

> *"**41**. ...it is, therefore, necessary for the court to consciously examine whether a party chosen to sit over the matter and has woken up to gain any advantage and benefit, which aspects have been noticed in Dehri Rohtas Light Railway Co. v. District Board, Bhojpur and State of Maharashtra v. Digambar. These facets, when proven, must be factored and balanced, even when there is delay and laches on the part of authorities."*

**8.20.** He would submit that the Division Bench of this Court in the case of *Anil Ambani (supra),* specifically in paragraph No.13 has held as under:-

> *"**13**. ...there is no mention in the Master Directions 2024 relating to the validity of a SCN being issued prior to the said Directions. Issuance of a detailed SCN to give an opportunity to*

23 2022 2 SCC 301

> *the borrower of being heard is the only sine qua non as per the Master Directions 2024. As long as the principles of natural justice are complied with and the doctrine of audi alteram partem is ensured, there is no violation of the Master Directions 2024 nor the directions issued by the Supreme Court in Rajesh Agrawal (supra)" (para 12 of the judgment). The High Court further held that, "SBI was entitled to proceed pursuant to the impugned SCN issued prior to the Master Directions 2024, as long as principles of natural justice are complied with. The process initiated by SBI by issuing impugned SCN continues post 2024 Master Directions and the impugned SCN merges with the subsequent process. In this view of the matter, we are not inclined to accept the arguments of Mr. Khambata that actions of the Bank pursuant to the SCN dated 20th December 2023 issued prior to the Master Directions 2024 of RBI are invalid. Thus, the doctrine of supersession of the Master Directions 2016 by issuance of Master Directions 2024 as invoked by Mr. Khambata, fails".*

**8.21.** He would submit that relying on this decision, this Court held that SBI's Show Cause Notice dated 20.12.2023 is valid under the new 2024 RBI Master Direction of Fraud. From the above, he would submit that IDBI's case falls under the same category. Hence, he would submit that Plaintiff has made out no case for interference by Court at this stage.

**8.22.** In addition to above, he would contend that even otherwise, the 2024 RBI Master Directions on Fraud do not invalidate the proceedings initiated (and completed) under the 2016 RBI Master Directions as it is clear from the language of the 2024 RBI Master Directions. He would submit that the 2024 RBI Master Directions on Fraud apply 'prospectively' and do not cover the process initiated and completed under the 2016 RBI Master Directions on Fraud.

**8.23.** In support of his above submission, he has referred to and relied upon the decision of the Supreme Court in the case of ***P. Mahendran and Ors. v. State of Karnataka***[24] wherein on the rule of construction of statute the Court in paragraph No.5 held as under:-

> *"**5.** ...it is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held prospective. If a rule is expressed in a language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in the manner of procedure."*

**8.24.** He would submit that the 2024 RBI Master Directions on Fraud cannot be interpreted to have retrospective effect. He would submit that the process (including the Show Cause Notice) initiated and concluded under the 2016 RBI Master Directions on Fraud cannot be impacted by the new 2024 RBI Master Directions. He would submit that Plaintiff's position that Defendant No.2 must be an 'Auditor' in terms of the new Directions therefore must fail and cannot be countenanced as there is no clear provision in the new 2024 RBI Master Directions on Fraud, giving it retrospective effect.

**8.25.** In support of his above submissions, he has referred to and relied upon the decision of the Supreme Court in the case of ***Chandravathi P.K. and Ors. Vs. C.K. Saji***[25] , more specifically on paragraph No.34 therein which reads thus:-

24 1990 1 SCC 411
25 2004 3 SCC 734

> *" **34**. ...the State in exercise of its power under Article 309 of the Constitution of India may give retrospective effect to a rule but the same must be explicit and clear by making express provision therefor or by necessary implication but such retrospectivity of a rule cannot be inferred only by way of surmises and conjectures."*

**8.26.** In furtherance to above, he has referred to and relied upon the decision of the Supreme Court in the case of ***State of Punjab and Others Vs. Arun Kumar Aggarwal and Others*** [26] wherein the Court has reconfirmed the rule of 'prospectivity' while interpreting a delegated legislation. He would submit that the decision in paragraph No.30 of the above citation records that if there is no quarrel over the proposition of law then normal rule is that the vacancy prior to the new Rules would be governed by the old Rules and not by the new Rules. Hence, he would submit that the new 2024 RBI Master Directions on Fraud is a delegated legislation and the 'rule of prospectivity' applies to it. Therefore, he would urge the Court to reject the Interim Application for interim relief in the interest of justice.

**9.** Mr. Dwarkadas, learned Advocate appears on behalf of Defendant Nos. 2 and 3 – BDO LLP – the Auditor who has prepared and signed the Report. He would draw my attention to 3 separate Affidavits - In - Reply filed in the three Interim Applications in the three suit proceedings. He would submit that all 3 affidavits are absolutely identical and his submissions are common with regard to all

26 2007 10 SCC 402

3 proceedings on behalf of Defendant Nos.2 and 3. At the outset he would submit that in so far as Defendant Nos. 2 and 3' s outlook is concerned as per clause 8.8.2 of 2016 RBI Master Directions Defendant No.2 was appointed as External Auditor on 07.05.2019. He would submit that on 15.10.2020 Defendant No.2 submitted FAR to SBI which was prepared by its then Partner i.e. Defendant No.3 and signed by him. He would submit that it was only in 2023 that Standards and Regulations to govern Audit were issued for the first time by ICAI and by virtue of Footnote 14 in the 2024 RBI Master Directions the relevant statute was referred to for the purpose of qualification of the Auditor whether for Internal Audit or External Audit.

**9.1.** He would submit that since the exercise conducted by Defendant No.2 was duly completed and complied with in the year 2020 itself no challenge whatsoever can now be made to the FAR on the ground of qualification of the author of the Report when no such impediment or requirement existed at the then time and more specifically so under the then prevailing 2016 RBI Master Directions. In the aforesaid background he would draw my attention to the Suit plaint and averments made therein pertaining to the purpose of filing the Suit qua Defendant Nos. 2 and 3 in paragraph nos 6.1 and 9.3 thereof.

**9.2.** He would submit that even according to Plaintiff in all 3 suit proceedings as stated in paragraph No. 9.4(iv) of the Suit plaint, Plaintiff has accepted the 2016 RBI Master Directions governing appointment of Defendant No.2 as Auditor. Therefore he would submit that on the date of signing of the FAR and its submission to State Bank of India i.e. on 15.10.2020 there was no requirement prescribed under the 2016 RBI Master Directions for the author of the Report to be a CA. He would submit that it is only in the 2024 RBI Master Directions that there was a change in regime wherein clarification was issued under Footnote 14 for the first time for the External Auditor to be a CA under the relevant statutes. He would vehemently submit that in 2019 – 2020 there was no such eligibility requirement and therefore FAR filed by Defendant No.2 and authored by Defendant No.3 cannot be faulted.

**9.3.** He would on instructions submit that on the date on which the report was issued i.e. 15.10.2020 Defendant No. 2 - BDO LLP had 40 CA's as partners out of the then 59 partners representing Defendant no.2 - BDO LLP. He would fairly admit that all the CAs of Defendant No. 2 - BDO LLP did not have certification from ICAI under the Chartered Accountants Act, 1949 but according to him this would not be fatal to the answering Defendants' case at all. He would submit that there are two 2 types of CAs' envisaged under the Chartered

Accountants Act,1949 namely CA in practice and CA not in practice He would submit that under Section 4 of the Act, entry of names in the Register is referred to and Section 6 refers to Certificate of Practice.

**9.4.** He would submit that it is only in 2023 that ICAI began regulating Forensic Auditing for the first time and even as per the said regulations which are mandatory in application after 01.07.2023 it is not mandatory for a CA to be the signatory of the Audit Report. He would persuade me to consider the distinction between a certified qualified professional engaged in Forensic Auditing and a member of ICAI who is a CA. He would submit that it is only for the first time that a detailed compendium of Forensic Accounting and Investigating Standards was issued in 2023 by ICAI offering detailed guidance on planning and executing Forensic Investigations which is placed on record by him.

**9.5.** He would persuade me to consider Clause 4.0 and Clause 5.0 therein pertaining to Forensic Accounting and Investigating Standards which would apply to all members of ICAI when conducting FAR Assignments of any entity. He would submit that these standards do not require the professional to be a CA which is clear when definition of Professional under Clause 3.0 of Section 2 thereof is seen. He would submit that forensic accounting is defined in the framework therein as gathering and evaluation of evidence by a professional to

interpret and report findings before a competent authority. He would submit that the Code of Ethics govern a member of ICAI by not only the Chartered Accountants Act, 1949 but even other other relevant pronouncements / statutes as well.

**9.6.** He would vehemently submit that skill and competence of the professional do not necessarily reflect qualification of the professional as a CA only. He would submit that what is stated in the Regulations is that the professional shall have the appropriate qualification to undertake FAR engagements. He would submit that it is stated therein that a CA qualification or post qualification certificate courses are ideal and global qualifications, certifications and such similar credentials carry requisite weight.

**9.7.** In the above background he would draw my attention to paragraph Nos. 33, 34, 37 and 38 in the Defendant No.2's affidavit in reply. In these paragraphs the competency and skills of Defendant Nos. 2 and 3 have been stated. He would submit that Defendant No.2 - BDO LLP is a Forensic Auditor Firm empanelled by the IBA for conducting Forensic Audit. He would submit that the 2016 RBI Master Directions admittedly permit special Forensic Investigations by Forensic Auditors and Defendant Nos.2 and 3 are / were competent to conduct Forensic Audit and prepare FAR. He would submit that Defendant No. 3 was partner of Defendant No.2 - BDO LLP firm at the

then time who led the Audit assignment and authored and signed the FAR on behalf of Defendant No.2 - BDO LLP. He would submit that Defendant No.3 is a highly experienced Forensic and Risk practitioner.

**9.8.** He would submit that Defendant No. 3 was a Senior Partner for more than 2 years and served as leader of the Forensic Services Team of Defendant No.2 - BDO LLP at the then time. He would submit that Defendant No. 3 was a member of the Association of Certified Fraud Examiners, USA; that he was practicing in the area of forensics since 2002 – 2003 and had worked with Hill and Associates Private Limited and held Senior and leadership roles in Risk Consulting and Forensics; that he had worked with KPMG India, KPMG Nigeria and PWC India (all consulting firms) before joining Defendant No. 2 at the then time and is presently partner and leader of Forensic and Risk Advisory Services at Nangia Anderson LLP. He would submit that Defendant No. 3 had experience of 600 Risk Consulting Assignments with specialization in Fraud and Misconduct Investigations, Investigative due diligence, compliance reviews, Computer Forensics and Fraud Risk Assessments at the then time.

**9.9.** He would vehemently submit that Defendant No. 3 is a seasoned Forensic professional meeting competence and expectations for conducting Forensic Audit and preparing FAR. He would submit that equally Defendant No. 2 is a respected firm and member entity of

BDO International Limited, a UK based Company, which is a leading professional services company operating in more than 166 countries and territories globally. He would submit that Defendant No.2 - BDO LLP is a member of BDO International Limited in India and consistently renders professional services of the highest standards and has over the years built a strong reputation and goodwill in the professional services sector. He would submit that by dragging Defendant Nos. 2 and 3 in the present dispute causes harm to their reputation and causes them grievous loss and injury despite they being thoroughly qualified as professionals.

**9.10.** On the issue of merits he would vehemently submit that Plaintiff's reliance on the 2024 RBI Master Directions is a complete after thought since for the past more than 5 years Plaintiff was fully aware about the credentials of the Defendant Nos.2 and 3 despite which Plaintiff did not raise any grievance whatsoever attacking the eligibility, qualification or competency of the answering Defendants. He would submit that Plaintiff's reliance on the 2024 RBI Master Directions is wholly opportunistic due to repeated failure met by Plaintiff in multiple judicial proceedings before filing the present Suits. In support of his submissions he would refer to and rely upon the following judgments apart of the compendium of Forensic Accounting and Investigations standard placed on record:-

(i) In the cases of ***P Mahendran and Others Vs. State of Karnataka***[27], ***A.A Carlton Vs. Director of Education and Another***[28]***;*** he would rely on the well settled proposition of rule of construction that every statue or statutory rule is prospective unless expressly or by necessary implication made to have retrospective effect; (ii) In the case of ***Sri Vijaya Laxmi Rice Mills Vs. State of Andhra Pradesh***[29] also delivered on the same proposition he would submit that it further upholds the principle that statutes cannot be construed to create new disabilities or obligations or impose new duties in respect of transactions that were complete at the time of the amending act coming into force.

**9.11.** By relying on the aforesaid 3 judgments he would contend that only for the first time in 2024 that prescription of qualification under the relevant statues was introduced by way of a clarification in Footnote 14 which was conspicuously absent in the 2016 RBI Master Directions. Hence he would submit that when so such qualification applied at the time of appointment of Defendant No.2, the FAR submitted by Defendant No.2 and authored by Defendant No. 3, its partner, is perfectly valid and cannot be questioned on eligibility and competence.

27 (1990) 1 SCC 411
28 (1983) 3 SCC 33
29 (1976) 3 SCC 37

**9.12.** Next he has drawn my attention to the decision of the Division Bench in the case of ***Anil. Ambani Vs. State Bank of India*** wherein despite the Court acknowledging and taking cognizance of the BDO LLP FAR as stated in paragraph No. 25 therein, the Plaintiff did not press any challenge to the same and thus gave up any challenge whatsoever to the said FAR and therefore now cannot be held to say that the said Report is unqualified and incompetent on the ground that Defendant No. 2 and its partners are not CA. On the basis of the above submissions he would persuade the Court to reject interim relief.

**10.** I have heard the learned Senior Advocates, Advocates / Counsels appearing on behalf of the respective parties and with their able assistance perused the record of the Suit proceedings. Submissions made by them have received due consideration of the Court for hearing on interim relief.

**11.** Plaintiff seeks interim relief in consequence of the Show Cause Notices and coercive action in furtherance thereof on the principal ground that Forensic Audit Report ("**FAR**") dated 15.10.2020 prepared and submitted by Defendant No. 2 firm i.e. BDO LLP was not qualified to conduct the Forensic Audit and its signatory i.e. Defendant No. 3 is not a Chartered Accountant. Reliance is placed on Chapter 4 of the 2024 RBI Master Directions on Fraud Risk Management in

Commercial Banks. Clause 4.1 thereof reads as under:-

> "***4.1*** *In case of a credit facility / loan account classified as red-flagged account, banks shall use an external auditor* [14] *an internal audit as per their Board approved Policy, for further investigation in such accounts."*

**11.1.** Footnote "14" affixed to the word "external auditor" in the aforesaid clause 4.1 reads as follows:-

> "***Footnote 14*** *– Auditors who are qualified to conduct audit under relevant statutes ."*

**12.** According to Plaintiff Show Cause Notices issued by Defendant No. 1 Bank in all three Suit proceedings are issued on the basis of FAR dated 15.10.2020. Show Cause Notice in Bank of Baroda Suit proceeding is issued on 02.01.2024. Show Cause Notice in IDBI Suit proceeding is issued on 31.05.2024 whereas Show Cause Notice in Indian Overseas Bank Suit proceeding is issued on 02.12.2024. For the sake of interim relief, it is argued on behalf of Plaintiff that due to aforestated twin objections the Show Cause Notices and all consequential steps taken in furtherance thereof including declaring Plaintiff as "fraud" by one of the Bank be stayed forthwith.

**13.** Both parties, viz. Plaintiff and Defendants - Banks are *ad idem* on the issue that the reason and ground for maintaining challenge to the Show Cause Notice in the Suit proceedings namely on the basis of incompetency of Defendant No.2 and qualification of Defendant No.3 to prepare and sign the FAR has not been agitated

previously in any proceedings neither decided by any Court in any proceedings *qua* the Plaintiff. Thus the issue of qualification and competency of Defendant Nos.2 and 3 to prepare and submit the FAR is the question for determination for grant of interim relief. Additionally banks have argued doctrine of waiver and estoppel by Plaintiff contending that FAR and its signatory was to the knowledge of Plaintiff since 15.10.2020, that Plaintiff received full copy of FAR in March 2024 in the case of State Bank of India (on 27.06.2024 in the case of Bank of Baroda, on 18.01.2025 in the case of Indian Overseas Bank and on 26.06.2025 in the case of IDBI Bank), the FAR was the same in respect of all Banks, Plaintiff already having being classified as 'fraud', Plaintiff having attended and contested the Show Cause Notices and hearings, Plaintiff having filed Affidavits / Undertakings to attend hearing, and he not having challenged the FAR on the aforestated twin grounds disentitle the Plaintiff to seek interim relief in the present Suit proceedings.

**14.** Present three Suit proceedings are filed on 22.11.2025. It is vehemently argued by Banks that by virtue of Plaintiff's conduct in not having challenged the FAR on the aforestated twin grounds of competency / eligibility of Defendant No.2 and qualification of the signatory i.e. Defendant No.3 not being a Chartered Accountant is a complete afterthought after the Plaintiff having failed in all his

endeavours to resist the inevitable i.e. declaration of Plaintiff as fraud.

**15.** There is a little difference in the facts of the three cases, but otherwise the challenge is identical. In the case of Bank of Baroda, Plaintiff has pursuant to issuance of Show-Cause-Notice dated 02.01.2024 attended personal hearing conducted by the Bank on 18.07.2025, submitted his written submissions dated 22.07.2025 pursuant to which Bank has issued a fraud classification order on 02.09.2025. This order of fraud classification is also challenged by Plaintiff in Writ Petition (L) No. 29095 of 2025 which is pending in this Court. In the case of IDBI pursuant to Show-Cause-Notice dated 31.05.2024 Plaintiff has attended personal hearing conducted by the Bank on 30.10.2025 and submitted his written submissions to the Bank on 28.11.2025. IDBI has not taken any further step to issue fraud classification order as yet. In 2021 fraud classification order was issued by IDBI but was withdrawn since Plaintiff was not given a personal hearing. In the case of Indian Overseas Bank pursuant to issuance of Show-Cause-Notice dated 02.12.2024 Plaintiff has sought complete disclosure of the relied upon documents on 10.03.2025 and thereafter Indian Overseas Bank has repeatedly scheduled personal hearing of Plaintiff which is not yet fructified. Plaintiff has in the present suit proceedings for the first time challenged Show Cause Notices and all consequential actions by Banks on the ground of competency and

eligibility of Defendant No.2 to prepare and submit the FAR and qualification of Defendant No.3 not being a CA who has signed the FAR as partner of Defendant No.2.

**16.** The entire thrust of Plaintiff's case is on Clause 4.1 of 2024 RBI Master Directions and Footnote 14 therein regarding Auditors who are qualified to conduct Audit under relevant statutes as applying to Plaintiff's case. Plaintiff's case is that relevant statutes as applicable would be provisions of Section 141(1), 142(2) and 145 of the Companies Act, 2013 read with Section 2(b), 2(c) and 6 of the Chartered Accountants Act, 1949 and the decision of the ICAI Council dated 01.07.2019 in its 379th Meeting which mandated that all Audit Reports carry the Unique Document Identification Number (UDIN). Provisions of Section 141(1), 141(2) and 145 of the Companies Act, 2013 and definitions under Section 2(b), 2(c) and Section 6 of the Chartered Accountants Act, 1949 are reproduced below for reference:-

> "**Section 141(1), 141(2) and 145 of the Companies Act, 2013**":-
>
> *"**141**. Eligibility, qualifications and disqualifications of auditors. — **(1)** A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:*
>
> *Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.*
>
> ***(2)** Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.*
>
> ***142.** xxxxxx*
> ***143.** xxxxxx*
> ***144.** xxxxxx*

> ***145***. *Auditor to sign audit reports, etc.—The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company."*

**"Section 2(b), 2(c) and Section 6 of the Chartered Accountants Act, 1949"**:-

> *"**2.** Interpretation.— (1) In this Act, unless there is anything repugnant in the subject or context,—*
>
> ***(a)*** *xxxxxx*
> ***(aa)*** *xxxxxx*
> ***(aaa)*** *xxxxxx*
> ***(ab)*** *xxxxxx*
>
> ***(b)*** *"chartered accountant" means a person who is a member of the Institute;*
>
> ***(c)*** *"Council" means the Council of the Institute 7 [constituted under section 9];"*
>
> *"**6.** Certificate of practice.—(1) No member of the Institute shall be entitled to practise 10[whether in India or elsewhere] unless he has obtained from the Council a certificate of practice:*
>
> > *[(2) Every such member shall pay annual fee for the certificate as may be determined, by notification, by the Council, and such fee shall be payable on or before the 1st day of April each year:]*
> >
> > *[(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.]"*

**17.** Reliance is equally placed by Plaintiff on the contents of FAR and the Affidavit-in-Reply filed by Defendant No. 2 on behalf of Defendant Nos. 2 and 3 in reply to the Interim Applications for opposing interim relief. Defendant No. 2 has effectively admitted in the FAR that it is an accounting consulting firm, that FAR does not constitute an engagement to provide Audit, completion, review or

attestation..., that it is not an opinion or testimony of expert witness, that it makes no representation about the suitability of the information in the Report and most importantly that it has not observed any fraud or criminal breach of trust as stated in its letter appended to the Suit plaint. It is not in dispute that Defendant No.2 is not a firm of Chartered Accountants registered with the ICAI despite there being some CA partners at the then time having CA qualification and that the signatory of FAR i.e Defendant No. 3, the then partner of Defendant No.2 not a qualified Chartered Accountant.

**18.** It is seen from the FAR that Defendant No. 2 is described therein as an "Accounting Consultancy Firm" whereas Defendant No. 3 has stated that he has not applied Auditing standards while preparing the Report. FAR admittedly does not bear the UDIN. Plaintiff has placed reliance on RTI response received by a third party which states that Defendant No. 2 is not a member of ICAI which is an admitted position and equally Defendant No. 3 is not a Chartered Accountant by qualification and does not have a certificate of practice as Chartered Accountant and is not a member of ICAI. Defendant No. 3 claims to be an expert in Forensic Auditing having enormous experience and was a partner spearheading the Forensic Audit Team in Defendant No.2 at the then time and is the author and signatory of FAR.

**19.** Case of Plaintiff is sought to be resisted by Banks on the ground that action was invoked against the three Companies of Plaintiff by appointing Defendant No. 2 as External Forensic Auditor to carry out Forensic Audit of their accounts for the period between 01.04.2013 to 31.03.2017 by SBI, the lead Bank in the consortium of 20 Banks by letter of appointment dated 07.05.2019. According to Banks, it is common ground that Footnote 14 regarding qualification would apply prospectively post 2024 and therefore appointment of Defendant No.2 and FAR signed by Defendant No.3 is proper and valid.

**20.** Before I delve to adjudicate the crux of the matter namely the twin objections raised to challenge validity and legality of FAR on the basis of interpretation of the 2016 and 2024 RBI Master Directions, there is a very crucial factor on facts which has acted as a precursor to the FAR. It concerns with the appointment of Defendant No.2 as Forensic Auditor by the Banks leading to the FAR, which will have direct relevance on the FAR and the challenge maintained to the same. This is so because both sides have extensively referred to and dealt with appointment of Defendant No.2 as External Forensic Auditor and scope of Audit in the course of their submissions.

**21.** Unfortunately, I must note that none of the Advocates or Senior Advocates on the Plaintiff's side have pointed out this material

issue of fact. Bank's Advocates may have a good reason to not point out the same as it is to their disadvantage, but Plaintiff's Advocates failed to point it out. Banks may even argue that this issue is not pleaded nor argued, but it is a fundamental issue in my opinion which needs consideration at the outset as it goes to the root of the matter concerning appointment of the Defendant No.2 as External Forensic Auditor. Banks have filed Affidavit-in-Reply annexing copy of appointment letter dated 07.05.2019 of Defendant No.2 as Forensic Auditor to determine fraud angle examination through Forensic Audit of Reliance Communications (RCOM), Reliance Infratel (RITL) and Reliance Telecommunication Limited (RTL). All parties before me have argued that period to be covered for Audit was from 2013 to 2017 (i.e. 01.04.2013 to 31.03.2017). Even in the FAR period of Forensic Audit stated is from 2013 to 2017 (4 years). However a close scrutiny of the letter of appointment would reveal that Defendant No.2 was appointed to conduct the Forensic Audit for the period F.Y. 2014 i.e. 01.04.2013 till date i.e. 07.05.2019. It is so stated in the appointment letter itself. Thus the FAR is not prepared and submitted as per the term and period for which it was to be prepared. Banks have argued before me that Defendant No.2 was paid a staggering professional Audit fee of Rs.65,00,000/- for the assignment plus GST @ 18% and costs of actuals separately. The appointment letter states that the timeline for completing the Audit was two months from the

date of acceptance by Defendant No.2. In the scope for Forensic Audit contained in Annexure I to the appointment letter period to be covered is stated as "Last four (4) years". Acceptance by Defendant No.2 is however by email dated 27.04.2019 even before the appointment letter dated 07.05.2019 is issued by the lead consortium Bank. Be that as it may, since the bids of Forensic Auditors were opened on 24.04.2019, the email for acceptance may have been addressed by Defendant No.2 on intimation. This email is appended at page No.179 of the Bank's reply Affidavit.

**22.** All parties have argued that Defendant No.2 was appointed as External Forensic Auditor which is borne out from the above. Learned Advocates of Banks have also concurred with the Court that such External Forensic Auditor has to be an independent Auditor when asked by the Court but what is seen and gathered from the record placed by the Banks is that even well before its appointment, Defendant No.2 was actively engaged by the Lender Banks and he had already submitted a Report to SBI and all Lender Banks which was circulated by SBI in the Joint Lenders Meeting held on 01.03.2019 and Defendant No.2 made a detailed presentation to all Banks in the said Joint Lenders Meeting and all Lender Banks deliberated on that BDO LLP's Report which was presented. Minutes of this Meeting are appended as Exhibit 'D' to the Bank's Affidavit-in-Reply in all three

proceedings from which it is clearly determinant that Defendant No.2 was invited to the JLF meeting as a Consultant to make a presentation to all Lender Banks and Defendant No.2 was given a further task to accomplish on the discussion and queries raised by the Lender Banks. It is seen that Defendant No.2 itself suggested to the Lender Banks that it should appoint Defendant No.2 as a Forensic Auditor for conducting Forensic Audit of RCOM and its two group companies in this Meeting.

**23.** What is seen from the above Minutes of Meeting is that BDO LLP i.e. Defendant No.2 was already actively involved with all Lender Banks well before his appointment as External Forensic Auditor on 07.05.2019 and it is he who suggested to all Lender Banks to appoint him as a Forensic Auditor to audit the accounts of the three entities. Thus it is seen that it was not an independent decision arrived at by the Banks by following the due procedure prescribed in the 2016 Master Directions for undertaking an External Audit. Neither any procedure or timeline was followed by the Lender Banks. It is clearly derivated that Defendant No.2 was an interested party engaged by the Lender Banks in the consortium in undertaking the External Forensic Audit. The exercise of engaging an External Auditor for conducting Forensic Audit by Banks is to ensure that someone independent, neutral and duly qualified entity is appointed. Rather here is a case that BDO LLP i.e. Defendant No.2 who was a Consultant engaged by

the Lender Banks himself played a vital role in his own appointment which can be seen from the following **excerpts of the Lenders Minutes of Meeting dated 01.03.2019 at Exhibit "D" to the Affidavit-in-Reply of the Banks**:-

> " *XXXXXX*
>
> *1) Shri Padmakumar M. Nair, General Manager (Stressed Assets Resolution Group), SBI welcomed all the Lenders of the Company and the consultants."*
>
> *8) Standard Chartered Bank also sought amendment to para no. 13(vi) of Minutes of the Meeting held on 21.02.2019. During the meeting **BDO** made a presentation of the amount of debt repaid to lenders over a period of May 2017 to March 2018. However, there was no discussion on adjustment of this payment from the share of individual lender at the time of settlement of / recovery from sale of assets / resolution of debt.*
>
> *9) The above points were heard by all the lenders. However, it was brought to the attention of the lenders by **BDO** on 01.03.2019 that an amount of Rs. 5,056 Cr has been paid by the Company during May 2017 – March 2018 to the accounts of following lenders towards Company's debt service obligation:*

| ***Name of the Lender*** | ***Rs. In Cr*** |
|---|---|
| *IndusInd Bank* | *1500.00* |
| *Yes Bank* | *1058.00* |
| *China Development Bank* | *1027.40* |
| *ICBC* | *129.74* |
| *Export Import bank of China* | *129.74* |
| *IDFC Bank* | *550.00* |
| *Standard Chartered Bank* | *293.00* |
| *ICICI Bank* | *133.61* |
| *Axis Bank* | *123.00* |
| *DBS Bank* | *112.00* |
| ***Total*** | *5056.49* |

> *12) SBI informed Lenders that they have called for fresh bidding for Forensic Audit from the interested parties.*
>
> *13) **SBI invited Mr. Sivaraman Parthasarathy, Partner, BDO to deliberate on the presentation circulated by BDO via email dated 25.02.2019 showcasing the key issues on the Fund flow review.***

> *14) **Lenders deliberated on BDO report,** which highlighted possible circular LCs between RCOM group companies. **BDO also proposed lenders to increase their scope to verify and comment on the aforesaid LC transactions,** however Lenders opined that since forensic auditor is already being appointed, it will be more appropriate to include verification of such transactions in the scope of work of forensic Auditors.*
>
> *15) **BDO requested the lenders about their interest in getting appointed as Forensic auditor for RCOM and its 2 group companies, lenders have shown agreement that BDO may take participation in bidding process.***
>
> *16) **It was also decided that based on the BDO report already circulated, Lenders will verify and revert on details of payments received by them post May 2017.***
>
> *17) After due deliberations, it was decided that*
>
> *(a) **BDO will confirm whether Union Bank of India was part** of 5 banks with whom LC circular transaction were performed. Also, **BDO will share details of LC with Union bank which are** pertaining to them.*
>
> *b) In case of preferential payments to the banks, BDO will provide the date of payments to the lenders.*
>
> *c) **BDO will share the fund flow report to the Corporation Bank.**"*

**24.** The active participation of the BDO LLP i.e. Defendant No.2 before an even after the JLF Meeting held on 01.03.2019 can be clearly gauged from the above Minutes. Therefore from the above it is clearly concluded that BDO LLP was actively engaged by the Lender Banks well before his appointment, that he presented Report to the Lender Banks and advised them, that he himself suggested and requested for its own appointment as Forensic Auditor and was even otherwise later appointed as External Auditor. In view of this Defendant No.2's appointment and independentness was undoubtedly compromised because of its association with all Lender Banks as a Consultant well before his appointment as Forensic Auditor.

**25.** From the material on record, it appears that Defendant No.2 was already engaged with the Lender Banks as Consultant all throughout. A Forensic Auditor's independentness is extremely crucial for objectivity, ensuring that he is free from bias and external influence to investigate fraud impartially acting as a credible, unbiased expert for courts, boards, and all stakeholders and most importantly not advocating for any specific party but for the truth and for upholding professional standards. He must be free from obligations, interests, or relationship with the client or else it could impair his objectivity. He cannot support a client's predetermined position. In the present case, association of Defendant No.2 with the Lender Banks as Consultant clearly creates a conflicting position as an independent External Forensic Auditor. In essence, the Forensic Auditor serves as an independent truth seeker providing reliable financial analysis for legal or decision making purposes, making independence the bedrock of his professional role.

**26.** It is seen that the timeline for completing the Forensic Audit stipulated in the Appointment order was 2 months. FAR was submitted to Lead Banks on 15.10.2020 i.e. after 1 year, 5 months and 8 days later. This erosion of the stipulated timeline on the face of record itself proves the above issue and clearly shows how Banks have treated the statutory Master Directions and the timeline of six (6) months

stated therein for completion of the External Audit process with disdain. I am fully conscious of the fact that the above issue is not argued by the Plaintiff, but in my opinion, it paves the way to the issue on merits which is the interplay of the 2016 and 2024 RBI Master directions qua the qualification of the Auditor appointed for External Forensic Audit argued by both parties.

**27.** Both sides have effectively relied upon the RBI Master Directions of 2016 viz-a-viz 2024 and made their submissions. According to Banks under the 2016 RBI Master Directions all that is contemplated in clause 8.8.2 is appointment of external auditor including forensic expert or an internal team for investigation. For immediate reference clause 8.8.2 is reproduced below:-

> "*8.8.2. The bank may use external auditors, including forensic experts or an internal team for investigations before taking a final view on the RFA. At the end of this time line, which cannot be more than six months, banks should either lift the RFA status or classify the account as a fraud."*

**28.** Learned Senior Advocates for the Banks all in tandem have emphasized on the discretionary power of the Bank to appoint External Auditor which would include Forensic Expert or internal team for investigation before taking a final view on the Red Flagged Account (RFA). It is argued by Banks that as per discretion given to the Bank, Defendant No. 2 firm was appointed as External Auditor / Forensic Expert. Banks have vehemently argued that there is no qualification prescribed for the Forensic Expert appointed or that the

Auditor appointed should be a practicing Chartered Accountant under relevant statutes and therefore appointment of Defendant No. 2 was in consonance with the then existing 2016 RBI Master Directions.

**29.** Contrary to the aforesaid submissions case of Plaintiff is that the 2024 RBI Master Directions, *prima facie,* and mandatorily superseded the earlier 2016 directions on the subject and provided a comprehensive and robust framework to the Banks for prevention, early detection and timely reporting of the incidents of fraud to Law Enforcement Agencies, Reserve Bank of India and for dissemination of information by RBI and matters connected therewith or incidental thereto but by preserving the structure for investigation and declaration as it was by consolidating the procedure. Banks have argued that for the first time Chapter 4 of 2024 RBI Master Directions gave a mandate to the Bank to use External Auditor or Internal Auditor as per its board approved policy for further investigation. Clause 4.1 is depicted with a footnote namely Footnote 14 to the word "external audit" which is reproduced hereinabove. This argument of the Bank is not correct at all. It is rather erroneous on the face of record.

**30.** Perusal of the 2024 RBI Master Directions *prima facie* show that insofar as External Audit is concerned the Footnote clarifies that Auditors to be appointed have to be qualified under the relevant

statutes. Relevant statutes undoubtedly in my opinion are provisions of the Companies Act i.e. Sections 141(1), 141(2) read with Section 145 thereof, though it is argued by the Banks vigorously that other statutes like the SEBI Act will also be relevant. This submission cannot be accepted due to the use of the word "relevant".

**31.** In Section 141(1) it is stated that a person shall be eligible for appointment as an Auditor of a company only if he is a Chartered Accountant. Proviso to said Section states that a firm whereof majority of partners practicing in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company. Section 141(2) states that where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm. In the present case Defendant No. 2 is a Limited Liability Partnership (for short "**LLP**") which was appointed as Auditor to conduct the Forensic Audit. These provisions came into effect on 01.04.2014 on the date of enactment of the Companies Act, 2013.

**32.** I am not in agreement with the Banks' submission when they state that there will be two different yardsticks / qualification for Internal statutory Auditor and External Auditor in the 2016 RBI Master Directions and the prescription of CA qualification shall apply

prospectively only after coming into force of the 2024 RBI Master directions. Aforesaid provisions will have to be read as a whole, harmoniously and as applicable to the relevant subsisting statutes at the then time in 2016 even though the 2016 Directions may be silent on the same. Appointment of Auditor, whether internal or external even under the 2016 RBI Master directions has to conform to the applicable / relevant statute namely the Companies Act. It will otherwise lead to a disastrous situation wherein there will be a clear dichotomy for appointment of statutory Internal Auditor and External Forensic Auditor as any unqualified person having vast experience can get appointed in that case at the discretion of the Bank. This is not permissible.

**33.** Section 141(2) of the Companies Act, 2013 envisages that only the Partners of a firm who are Chartered Accountants shall be authorized to act (mandatory to act and complete the audit) and sign on behalf of the firm (signatory of the audit report). Section 145 thereafter further fortifies that the person appointed as Auditor of the Company shall sign the Auditor's Report or sign or certify any other document of the Company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the Company mentioned in the

Auditor's Report shall be read before the Company in the General Meeting and shall be open to inspection by any Member of the Company. If Section 141(2) read with Section 145 has to apply to the present case then it is incumbent upon Defendant No. 2 appointed as Forensic Auditor to do External Audit through any of its Partner who is a Chartered Accountant and prepare the Audit Report and append such CA Partner's signature thereon.

**34.** In the present case, it is an admitted position by Defendant No. 2 in its Affidavit-in-Reply that Defendant No. 2 though being appointed as statutory External Forensic Auditor is not the signatory of the Report whereas FAR is signed by Defendant No. 3 being one of its then Partner. Most crucial fact is that Defendant No. 3 is admittedly not a qualified Chartered Accountant either which is also admitted by him. It is also an admitted fact that none of the Chartered Accountant Partners of Defendant No.2 at the then time were registered with ICAI. This position is undisputed. If that be the case then there is *prima facie* violation of the extant statutory provisions namely the RBI Master Directions which refer to the "relevant statutes" and call upon the signatory of the Audit Report to be a Chartered Accountant appointed under the relevant statutes. The submission of Banks that the 2024 RBI Master Directions would not apply to the present case because appointment of Defendant No. 2 was done under the 2016

RBI Master Directions and its Report was submitted in 2020 well before the 2024 RBI Master Directions came into force cannot also be countenanced. This is for the simple reason that 2024 RBI Master Directions have in fact built upon, improvised and consolidated the 2016 RBI Master Directions by clarifying the same. The 2016 RBI Master Directions clearly provide for appointment of External Auditors including Forensic Experts and such External Auditors will have to conform to the qualification standard and construed as having Chartered Accountant qualification. The RBI Master Directions whether 2016 or 2024 have a statutory force since they are issued under Section 35A of the Banking Regulations Act, 1949.

**35.** It is seen that by virtue of enactment of 2024 RBI Master Directions the earlier Directions stood superseded which effectively means that in place of earlier Directions the new 2024 RBI Master Directions would now apply. It cannot be argued by Banks that it is only in 2024 that Footnote 14 giving effective direction for Auditors who are qualified under relevant statutes to conduct Audit is reflected for the first time and thus it would be applicable prospectively. What is important to be noted is the fact that if Clause 4.1 of Chapter 4 in the 2004 RBI Master Directions is juxtaposed with Clause 8.8.2 it will be seen that Banks were permitted to appoint External Auditor including Forensic expert or its internal team for investigation before taking a

final view of RFA in 2016 itself. It cannot be argued by Banks that appointment of External Auditor would be de-hors the relevant / applicable statutes and any entity merely having expertise in the field of forensic investigation can be considered for appointment. Use of word "External Auditor" itself signifies that the Auditor that the Bank may appoint will have to be in conformity with the relevant statutes because the Auditor will have to be qualified and conduct audit in accordance with law.

**36.** As per the Companies Act 2013 only a practicing Chartered Accountant is eligible to be appointed as statutory auditor of the Company. Needless to state that Chartered Accountants' firm can be appointed as auditor of the Company but such an appointment is possible exclusively when majority of the partners of the Firm are practicing Chartered Accountants and only a qualified CA partner signs the Audit Report. This statutory provision provides that a LLP can also be appointed as Auditor in its name but to qualify for the said appointment all / majority of its partners in the LLP shall be engaged in full time practice as Chartered Accountants, that they shall be registered as CA and have an UDIN. Provisions of Section 141 read with Section 145 leave no room for doubt that person eligible for appointment as Auditor of Company whether internal or external has to be a Chartered Accountant by qualification.

**37.** Specific provisions namely Sections 138 (Internal Auditor for certain Clauses of Companies), 148 (Cost Auditor for Cost Accounting and Cost Records) and Section 204 (Secretarial Audit) of the Companies Act provide appointment of Auditors for specific purposes statutorily. However insofar as appointment of External Auditor by a Company is concerned, there cannot be two different yardsticks for qualification prescribed for an Internal and External Auditor separately. Internal Auditor of the Company which is a statutory Auditor has to satisfy the standards of relevant statute namely the Companies Act. Similarly in the same breath if an External Auditor is appointed, the said Auditor cannot merely be an expert in the field of forensic or investigation without being a qualified Chartered Accountant and he will have to also have the minimum qualification of Chartered Accountant to be eligible to conduct the Audit. Section 141(1) uses the words appointment of Auditor of Company and does not distinguish between Internal and External Auditor. Hence, the provisions of Banking Regulation Act, 1949 under which the RBI Master Directions are issued will have to be harmoniously read with the Companies Act, 2013 provisions. If Bank's case and argument is accepted, there will be two different qualifications for Auditors appointed by a Company. Hence, Footnote 14 is nothing but a clarification issued for an omission to supply explanation and nothing more. In the present case, it is argued by Banks that the Audit

conducted by Defendant No. 2 was a Forensic Audit as a skilled Expert and not a statutory Audit but it is seen that Defendant No. 3 has signed the Forensic Audit Report and he is admittedly not a Chartered Accountant.

**38.** In this regard, it is seen that Forensic Audit involves a detailed examination and evaluation of firms or individuals financial records. In Forensic Audit, the goal is to derive evidence that can be used in Court of Law and other proceedings. A Forensic Audit is a specialized accounting field focused on investigating financial records for fraud, embezzlement or other financial crimes. It is seen that Forensic Audit covers a wide range of investigation activities and is often conducted to prosecute a party for fraud, embezzlement and other financial crimes. It is also seen that in the process of Forensic Audit the Auditor may be called to serve as an expert witness during the trial proceedings. In the present case, in this regard say of Defendant No. 2 in the Audit Report and its Affidavit-in-Reply becomes very relevant for adjudicating grant of interim relief.

**39.** In the Forensic Audit Report, Defendant No.3 has stated as under:-

(i) On internal page No.2 of the FAR reference is made to Management comments / clarifications received by the Auditor uptil June 2020, when admittedly these comments

were not received from the Management of the 3 Companies, but from the Resolution Professional; the Companies have denied being consulted at all;

(ii) On the same page, it states that Defendant Nos.2 and 3 accepts no responsibility or liability to a third party to whom the Report would be shown; If this is to be accepted then assuming that the Report is accepted, Defendant Nos.2/3 have assured no responsibility for the Report; in that case how could the Report be proven in Court proceedings if at all it is required to be proved;

(iii) On internal page No.3 of the Report, it is stated that "the information contained in this Report is not an advice and should not be treated as such". It is further stated that "…… BDO India makes no representation about the suitability of the information contained in this Report";

(iv) On internal page No.3 of the Report, it is stated that RCOM and subsidiaries have been considered as separate economic units for this Report, as all companies are separate legal entities and have their individual assets and liabilities. Any transfer of funds between RCOM/RITL/RTL and other group companies has not been considered as inside a single economic unit. Thus, transfer of funds outside the books of

RCOM/RITL/RTL has been accordingly noted in the Report;

(**v**) On internal page No.37 of the Report, for preparing the FAR out of number of accounts held in 27 Banks, accounts statement of only 283 accounts out of total 594 accounts held were received and audited. Several reasons are given for non-receipt of statement of accounts; In such a case how is Forensic Audit possible?;

(**vi**) On internal page 40 of the Report, it is stated that CA certificates for only 24 disbursements were provided and 341 CA certificates are not available. Thus in such case without CA certificate how is Forensic Audit possible?;

(**vii**) On internal page 67 of the Report, it is stated that "Access to Company's BRS was given on June 2020, however access to view documents (SAP Code FB03) was not provided". It is further stated that "in the absence of supporting bank statements and documents, the veracity of transactions cannot be commented upon;

(**viii**) In the disclaimer statement at internal page Nos.378 to 380 of the Report, Defendant No.3 has *inter alia*, stated and concluded as follows which becomes very relevant for *prima facie* deciding interim relief:-

*"The work carried out and analysis presented in this Report are based on the result of our discussion with representatives of the Banks and are not always supported by written documentation. We make no representation regarding the sufficiency of the procedures performed either for the purpose for which this engagement was sought or for any other. Findings are based on circumstantial evidence and partially concluded in the absence of adequate supporting / documents. Should additional information and documents be subsequently available, observations and change, and it may be necessary to revise our findings accordingly.*

*We have relied on the information provided by the Banks and RCOM, RITL and RTL and our observations are based primarily on the review of such information. In respect of the Bank account statements of RCOM, RITL and RTL received in soft copy form, no statements of RCOM, RITL and RTL were not sufficient to ascertain the payee and nature of transaction.*

*The nature of our work pertaining to conducting desktop search was based on the information available on public domain in India (and to the extent relevant, outside India). Information obtained was not subjected to independent verification by us.*

*This Report does not constitute an engagement to provide audit, compilation, review, or attestation services made in accordance with the generally accepted auditing standards in India and, consequentily, no assurance will be expressed. Our work would not be any expression of an opinion or testimony of expert witness. In any manner, the engagement does not extend to provide advice, analysis and observations relating to legal and regulatory issues.*

*In no circumstances shall we be liable, for any loss or damage, of whatsoever nature, arising from information material to our work being withheld or concealed from us or misrepresented to us by any person of whom we made information requests at the bank or on field.*

*Our findings and reports should not be interpreted as a documentary evidence or as a title search verification report and / or as a valuation report / certification for any of the assets or properties identified in our reports.*

*BDO India is an accounting consulting firm and we have formed our findings basis our understanding of the Master Circular guidelines from the Reserve Bank of India. Our procedures are based on analysis of transactions as presented in the books of account on best effort basis and to the extent of information made available by the Corporate Debtor, the Resolution Professional, and the Lenders till 26 June 2020. We did not obtain a legal view / interpretation from legal counsel to interpret the RBI guidelines or applicability."*

**40.** From the above it is *prima facie* seen that the Auditors namely Defendant Nos.2/3 do not own any responsibility for the alleged Forensic Audit carried out by them thereby defeating the very purpose of Forensic Audit investigation. Perusal of the said Report and above statements *prima facie* shows that said Report is not a Forensic Audit Report even according to Defendant No. 2. It is *prima facie* inconclusive and incomplete. The Report filed by Defendant No. 2 is appended to the Suit plaint and it does not bear the UDIN. Though it may be true and an admitted position that Defendant No. 2 is empanelled with the Indian Bank's Association but Indian Bank Association is a private association of banks with no statutory backing, no regulatory authority or powers derived from any statutory enactment. The Indian Banks' Association is not a government body, a statutory or regulatory authority, nor does it issue directions having the force of law. The Indian Banks' Association is not amenable to the writ jurisdiction neither the Right to Information Act placing it outside the statutory banking supervision regime.

**41.** In the present case, it is seen that the RBI Master Directions are mandatory in nature and they operate within a binding statutory framework requiring banks to engage auditors strictly in accordance with applicable law. The Affidavit-in-Reply filed by Defendant No. 1 and Defendant No. 2 is completely silent on the aforementioned

observations and findings in the FAR. It is seen that the Show Cause Notice issued to Plaintiff has been issued by the Bank after coming into force of the 2024 RBI Master Directions and if the said Show-Cause-Notice is on that basis, then it must comply with the 2024 RBI Master Directions in letter and spirit. In the present case a purposeful interpretation of qualification of Auditor will thereafter have to be made to harmoniously read it into the 2016 RBI Master Directions.

**42.** In so far as the internal statutory audit of the Company is concerned, the same is governed by the statutory provisions and therefore there cannot be a different standard made applicable for conducting the External Audit. The External Audit conducted by the Auditor will have to conform to the same and similar standard of qualification as an Internal Auditor and will have to have a base qualification of being a Chartered Accountant. In the present case, the FAR travels beyond this issue. It is not acted (prepared) and signed by a partner of Defendant No.2 who is a Chartered Accountant, rather by Defendant No.3 who is admittedly not a Chartered Accountant.

**43.** It is seen that relevant statutes in the present case which prescribe qualification for Auditor is the Companies Act, 2013. SEBI Act which is heavily relied upon along with the LODR by Banks does not provide for any qualification of Auditor neither LODR provides for any qualification. Mere empanellment by SEBI cannot be argued as

ground for qualification of Defendant No. 2 or for that matter for Defendant No. 3 as Auditor based merely on credentials. The purpose of SEBI Act being completely different does not apply to the case in hand. SEBI is neither a Banking Regulatory Authority nor an Accounting Regulatory Authority. The statutory mandate, scope of powers, and regulatory objectives of SEBI are entirely distinct from those governing Banking Regulation or accounting standards. The objects and reasons of the SEBI Act, 1992 are confined to Regulation of the Securities Market and protection of interests of investors therein, and do not extend to matters falling within the exclusive domain of Banking Regulation or accounting oversight. Though Section 11(c) would apply to investigation but that investigation cannot apply in the same manner in which it applies under SEBI Act to Plaintiff's Forensic Audit of Accounts of the three (3) Companies in the present case. The argument of Banks that the 2024 RBI Master Directions is to be considered as a regime change from what was prescribed under the 2016 RBI Master Directions cannot be countenanced at all. Once 2016 RBI Master Directions are superseded by 2024 RBI Master Directions all acts done under the earlier Directions will have to be construed to be done under the 2024 RBI Master Directions. The clarificatory Footnote 14 cannot be considered as a piece of prospective legislation.

**44.** Plaintiff has referred to the decision of the Supreme Court in the case of *Kolhapur Canesugar Works Ltd. and Anr (supra)* in this regard. Paragraph Nos.20, 31, 34 and 37 of the said decision are directly relevant and most importantly Section 6 of the General Clauses does not apply to circulars. Paragraph Nos.20, 31, 34 and 37 are reproduced below:-

> *"**20**. At this stage we may also note the definition of "rule" in Section 3(51) of the Act wherein it is provided that the term "rule" shall mean a rule made in exercise of a power conferred by an enactment and shall include a regulation made as a rule under any enactment.*
>
> ***31**. We have carefully considered the decisions in Saurashtra Cement and Chemical Industries [(1993) 42 ECC 126 (Guj) (FB)] and Falcon Tyres case [(1992) 60 ELT 116 (Kant)] . Though the judgments in these cases were rendered after the decision of the Constitution Bench in Rayala Corpn. (P) Ltd. [(1969) 2 SCC 412 : (1970) 1 SCR 639] a different view has been taken by the High Courts for the reasons stated in the judgments. The Full Bench of the Gujarat High Court in Saurashtra Cement and Chemical Industries [(1993) 42 ECC 126 (Guj) (FB)] as it appears from the discussions in the judgment, tried to distinguish the decision of the Constitution Bench in Rayala Corpn. [(1969) 2 SCC 412 : (1970) 1 SCR 639] for reasons, we are constrained to say, not sound in law. The decision of the Constitution Bench is directly on the question of applicability of Section 6 of the General Clauses Act in a case where a rule is deleted or omitted by a notification and the question was answered in the negative. The Constitution Bench said that*
>
> > *"Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or regulation and not of a rule" (p. 424, para 17 of SCC : p. 656 of SCR).*
>
> ***34**. For the reasons set forth above we do not accept the view taken in Saurashtra Cement and Chemical Industries Ltd. [(1993) 42 ECC 126 (Guj) (FB)] in Falcon Tyres Ltd. [(1992) 60 ELT 116 (Kant)] and the other decisions taking similar view. It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted the court is not to look for a provision in the newly-*

> *added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the court is to look to the provision in the rule which has been introduced after omission of the previous rule to determine whether pending proceedings will continue or lapse. If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such proceedings will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari materia provision in the statute under which the rule has been framed, in that case also the pending proceedings will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceedings were initiated being deleted/omitted. It is relevant to note here that in the present case the question of divesting the Revenue of a vested right does not arise since no order directing refund of the amount had been passed on the date when Rule 10 was omitted.*
>
> ***37.*** *The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."*

**45.** Attention is also drawn to paragraph Nos.11 to 13 of the decision of this Court in the case of *Anil Ambani Vs. State Bank of India* wherein this Court has categorically held as under:-

> *"**11.** It is settled law that if a subsequent Government Order or Direction is declared to be in the nature of clarification of the earlier Order/Direction, it may be made applicable*

*retrospectively. It is only if the subsequent Order/Direction is held to be a modification or a substantive amendment of the earlier order, its application shall be prospective as the retrospective application thereof, would result in withdrawal of vested rights which is impermissible in law. In a decision of the Supreme Court in State of Bihar v. Ramesh Prasad Verma[3], it is observed that it is trite that any legislation or instrument having the force of law which is clarificatory or explanatory in nature and purport, and which seeks to clear doubts or correct an obvious omission in a statute, would generally be retrospective in operation. The footnote to the relevant clause in Chapter II clearly states that ensuring compliance of principles of natural justice is included in the Master Directions 2024, pursuant to the decision in Rajesh Agarwal (supra). Directions to issue a detailed SCN is an integral part of adherence to the principles of natural justice. This modification in the Master Directions 2024 is clarificatory, for the purpose of bringing the same in conformity with the decision of the Supreme Court. It is also settled law that the judgment of a Court operates retrospectively unless expressly made prospective. Thus, the principles of audi altrem partem are to be read as already existing, right from the beginning, in the Master Directions 2016. In this view of the matter and in consonance with the settled law, the SCN issued by the SBI, although not mandatory at that point of time, is in consonance with the decision in Rajesh Agarwal (supra) followed by the clarificatory clause in the Master Directions 2024.*

***12.*** *As aforesaid, admittedly the impugned SCN was already given to the Petitioner detailing the basis of declaration of fraud as contemplated by SBI. The Petitioner failed to reply the said notice and continued to seek documents, leading to SBI finally proceeding to pass the impugned order. It was in the intervening period i.e., from the date of issuance of the impugned SCN and the final order impugned herein, that the Master Directions 2024 envisaging a SCN came to be issued. SBI was to now ensure that principles of natural justice were followed before any declaration of fraud was made. Issuance of a detailed SCN was mandated. There is no mention in the Master Directions 2024 relating to validity of a SCN being issued prior to the said Directions. Issuance of a detailed SCN to give an opportunity to the borrower of being heard is the only sine qua non as per the Master Directions 2024. As long as the principles of natural justice are complied with and the doctrine of audi alteram partem is ensured, there is no violation of the Master Directions 2024 nor the directions issued by the Supreme Court in Rajesh Agrawal (supra).*

***13.*** *Furthermore, mere conveying to the Banks, by way of a covering letter, that the Master Directions 2024 supersede the Master Directions 2016 will not render the SCN already issued by the SBI to the Petitioner, invalid. Thus, SBI was entitled to proceed pursuant to the impugned SCN issued prior to the Master Directions 2024, as long as principles of natural justice are complied with. The process initiated by SBI by issuing impugned*

> *SCN continues post 2024 Master Directions and the impugned SCN merges with the subsequent process. In this view of the matter, we are not inclined to accept the arguments of Mr. Khambata that actions of the Bank pursuant to the SCN dated 20th December 2023 issued prior to the Master Directions 2024 of RBI are invalid. Thus, the doctrine of supersession of the Master Directions 2016 by issuance of Master Directions 2024 as invoked by Mr. Khambata, fails."*

**46.** It is seen that the 2016 RBI Master Directions state that from the time when the fraud is detected within the period of six months the Bank has to take appropriate action after Red Flagging the account on the basis of one or more Early Warning Signals (EWS). Clause 8.6 of 2016 RBI Master Directions stipulate role of Auditor which require the Auditor to report possibility of fraudulent transactions to the Management of Bank or to the Audit Committee of the Board for appropriate action. Clause 8.8.2 require Banks to engage External Auditor including Forensic Expert but the timeline provided for either classifying the action as fraud or lifting the RFA is six months. It is also provided that when there are multiple banks involved then the lead bank can take steps to appoint an Auditor on behalf of the consortium. What the regime of 2016 RBI Master Directions specifies is to complete the entire exercise within six months. Exactly the same exercise is prescribed by the 2024 RBI Master Directions with more checks, balances and clarifications but to be completed within the same timeline. 2024 RBI Master Directions, *inter alia*, supersede 2016 directions and therefore any action taken under 2016 RBI Master Directions will now have to comply with the provisions and standards

prescribed under the 2024 RBI Master Directions.

**47.** In the present case, if the timeline is seen, it is shocking to the core that Banks, instead of adhering to the EWS and Red Flagging of the account have not adhered to the regime of the Master Directions at all. I am once again aware and conscious of the fact that though this issue is not directly germane for the purpose of considering the Interim Application, it is an issue which in my opinion once again goes to the root of the matter. There are 41 types of EWS prescribed in the 2016 RBI Master Directions and the said directions clearly contemplate that even if one or two EWS are detected, the account has to be red flagged and immediate consequential steps have to be taken by the Bank as detailed therein while adhering to the stipulated timeline of completing the declaration within six (6) months.

**48.** In the present case in 2019 the External Auditor is appointed to investigate the accounts pertaining to the period between 2013 and 2017. The RBI Master Directions are rendered completely redundant if this timeline is seen. It is seen that under the 2016 RBI Master Directions or even the 2024 RBI Master Directions once the Auditor is appointed he has to submit his Report within three months but in the present case it has taken an invariably long time of 17 months for submitting the FAR. It is seen that after the date of appointment despite two months having been granted to the Forensic Auditor to

submit the Report, it has given a complete go by to the timeline stipulated or even prescribed in the Master Directions and submitted the FAR after more than 17 months. The Master Directions of RBI are not a mere paper tiger to enable the Banks to wake up from their deep slumber and initiate action according to their convenience. Had the concerned accounts of Plaintiff being Red Flagged on account of one or two EWS in the year 2013 itself or even thereafter and had the Banks acted strictly in consonance with the prevailing Master Directions, the present situation would not have arisen. The Banks are equally accountable and answerable. I say this so because in the present case, the figures are humongous. They rattle a common man who places his hard earned savings with Public Sector Banks with the hope that they shall remain in safe custody and grow.

**49.** In the present case, it is seen that SBI the lead Bank with a consortium of 20 banks are Lenders of RCOM, RTL & RITL. Their total exposure as stated in the FAR *qua* RCOM, RTL & RITL is Rs.31580 Crores through lending. There has been a restructuring of the Loan Account in 2017 which is seen from the record. It is argued by Plaintiff that properties and assets worth thousands of crores of the said Companies have been attached. It is seen that out of this Rs. 12692 Crores (41%) was used to pay connected / related parties; Rs. 6265.85 Crore were used to pay other bank loans, Rs. 18883.08 Crore

was used for investment which was liquidated subsequently to pay related parties. It is alleged in the FAR that loans were used for sanction purpose and were siphoned of. The aforesaid figures ring a bell and alarm. Monies with Banks is public money and therefore accounting and/or Audit standards are to be applied strictly as per relevant statutes. Though this issue may not be directly relevant or important to decide the interim relief, the question that begs an answer in this situation is the answerability of the banking system and concerned Banks and to whom. In my opinion in such a situation the Banks are answerable to the common man who reposes faith in the Banks by making investments and deposits. Banks are custodian of public money. Bank deposists consist of money placed into banking institutions for safe keeping. Banks pool the funds from many depositors and lend this money to borrowers (individual and businesses) who need capital. This process allows money to circulate in the economy. This is the reason why the RBI Master Directions are required to be followed to the hilt so that money borrowed should not be lost. A Bank Audit is a systematic, unbiased examination of a Bank's financial records, internal controls and operational processes. It ensures compliance with statutory regulations (like the RBI guidelines in India), verifies the accuracy of financial statements, and assesses the effectiveness of risk management systems. Because Banks handled large-scale transactions and rely heavily on technology, a Bank Audit

places special emphasis on IT security, fraud detection and money laundering safeguards. By identifying potential weaknesses and recommending improvements, a Bank Audit upholds the institution's financial integrity and strengthens public confidence in the banking sector. If Banks themselves do not follow the Rule of Law and timelines as prescribed under the RBI Master Directions which is *prima facie* observed in the present case and take action at the right time it will affect the broader economy of the country. This is a classic case where the Banks have woken up from their deep slumber seeking to conduct Forensic Audit for the period from Audit 2013 and 2017 in the year 2019 without adhering to any of the timelines prescribed under the 2016 RBI Master Directions.

**50.** The clauses of Master Directions on Fraud must be interpreted in light of their purpose and objective i.e. timely indication and dissemination of information and repository about fraud. The Supreme Court in the case of *Rajesh Agarwal (supra)* holds that provisions of Master Directions on fraud must be construed keeping in mind the following thresholds:-

(i) Justness;
(ii) Fairness towards parties who are aggrieved;
(iii) Reasonability;
(iv) Proportionality between mischief and corrective measures.

**51.** It holds that banks already have in place a structured organization set up to identify and investigate fraudulent activity in Bank Accounts and specific timelines are mentioned. However in the present case the Banks have behaved in a manner by throwing caution to the wind which is clearly seen from the timeline in the present case.

**52.** In the decision of the Supreme Curt in the case of *Rajesh Agarwal (supra)* in paragraph No. 75, it is held as under:-

> "*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."*

**53.** Reason for referring to the aforesaid is only to point out that EWS i.e. Early Warning Signals and timelines act as checks and balances and the 2016 as well as 2024 RBI Master Directions strictly adhere to the said timelines for declaring an account as fraud. They have to be scrupulously followed. In paragraph No. 81 of the same decision, Supreme Court has held as under:-

> "***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 fulfill 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."*

**54.** The decision in the case of *State Bank of India (supra)* rendered by the Division Bench of this Court on 03.10.2025 in the Plaintiff's case relied upon the decision in the case of *Rajesh Agarwal (supra)* and mandated that personal hearing contemplated following principles of natural justice and also opportunity to make representation be followed. The result with respect to declaring Plaintiff as fraud or classification of the loan account of the Company as fraud would have very serious consequences. It would inevitably mean that the Promoters / Directors who are in control of the Company would be liable to penal measures and to be reported as fraud and most importantly debarred from raising funds or seeking credit facilities in future for their acts / omissions. However opportunity of hearing as envisaged by the Supreme Court is to be read into the Master Directions issued by RBI.

**55.** However in this regard before classification of the account as fraud it is also incumbent to provide details on the basis of which the SCN is issued and the supporting material thereof to take such action.

Principles of natural justice as held by the Supreme Court being of universal application constitute an important facet of procedure envisaged under Article 14 of the Constitution of India. In this regard attention is invited to paragraph No. 87 of the decision in the case of *State Bank of India Vs. Rajesh Agarwal (supra)* which summarizes this position by referring to the decision of the Constitution Bench in the case of ***Union of India Vs. Tulsiram Patel and Ors.***[30] so as to ensure that there is no violation of the principles of natural justice and the proceedings do not result in arbitrariness and discrimination is not practiced as a result of the said action. It is therefore imperative on the part of banks to give copies of the entire material forming part of the foundation of the Show-Cause-Notice for indictment of the borrower so that borrower can meet the Bank's case during the course of personal hearing. Supreme Court in paragraph No. 87 in the decision of *Rajesh Agarwal (supra)* has held as under:-

> "*87. Administrative proceedings which entail significant civil consequences must be read consistent with the principles of natural justice to meet the requirement of Article 14. Where possible, the rule of audi alteram partem ought to be read into a statutory rule to render it compliant with the principles of equality and non-arbitrariness envisaged under Article 14. The Master Directions on Frauds do not expressly provide the borrowers an opportunity of being heard before classifying the borrower's account as fraud. Audi alteram partem must then be read into the provisions of the Master Directions on Frauds.*"

**56.** In the present case it is seen that though the FAR was received by the lead bank in the year 2020, the same was never given

30 1985 3 SCC 398

to the Plaintiff along with its annexures and exhibits. Admittedly it was given to Plaintiff only in the year 2024, the earliest being in January 2024. There is substantial correspondence placed on record to this effect. Therefore, argument on limitation pleaded by banks cannot be *prima facie* countenanced. Once the Plaintiff had the complete report he has filed multiple proceedings in this Court but it is an admitted position which is not denied by the Banks that the issue regarding validity and legality of the FAR and qualification of the author and signatory of the Report was never challenged by Plaintiff in any of those proceedings. This issue as discussed above goes to the root of the matter. Once it is an admitted position that Defendant No. 3 is the sole author and signatory of the report and he is not a qualified Chartered Accountant though he may possess vast experience and hold certificates and citations from various Institutes around the world in the field forensic investigation, but he still does not qualify to be an Auditor within the requisite qualification under the relevant statutes to sign the FAR in India. Once this is the *prima facie* admitted position, there is absolutely no room for doubt and no matter whatsoever be concluded in the FAR, the FAR cannot be relied upon by the Banks before me to issue the Show Cause Notices and take steps in furtherance thereof. Hence the FAR and all consequential action based thereupon with which Plaintiff is aggrieved will have to be interfered with by this Court as the FAR forms the foundation of the

Show Cause Notices and all consequential steps adopted by the Banks. In Clause 4 of the FAR at internal page No.3 it categorically stated that information contained in the Report is not an advise and should not be treated as such.

**57.** It is seen that FAR is the sole basis and foundation for issuance of the Show Cause Notices dated 02.01.2024 (Bank of Baroda), 31.05.2024 (IDBI Bank) and 02.12.2024 (Indian Overseas Bank) issued by Defendant No.1 Banks and all consequential actions thereafter. Once it is confirmed that full copy of the Report was given to the Plaintiff only in the year 2024 for the first time, the cause of action can only arise thereupon to challenge the Report and in turn the Show Cause Notices which rely on the said Report and therefore under Article 58 of the Limitation Act, the Suit is clearly within limitation and therefore maintainable. It is seen that because the Plaintiff has filed a multitude of proceedings in the last one (1) year it cannot be argued that Plaintiff has waived his right to challenge the FAR on the ground of its validity and competency to which challenge is maintained in the present Suit proceedings for the first time. Admittedly, when the Plaintiff has not taken the said grounds in any of the previous proceedings, certainly it entitles the Plaintiff to challenge the same in accordance with law, otherwise the Plaintiff would be rendered remediless for all practical purposes.

**58.** Attention is invited to page No. 989, Exhibit "H" appended to the Suit plaint in the case of Bank of Baroda. Exhibit “H” is a letter dated 28.05.2024 written by Defendant No.2 to the Bank. It states that if the FAR is shared by the Bank then the Bank will accept the condition that Defendant No.2 (BDO LLP) will neither own nor accept any duty or responsibility to the Bank in connection with the Report. There is a paragraph namely (paragraph No.4) therein devoted to acknowledgment of no duty or responsibility by Defendant No.2 regarding the FAR if it is shared by the Bank to any third party without its prior written consent.

**59.** In the case of IDBI, attention is invited to a letter dated 03.02.2021 addressed by the Advocates of Defendant No.2 to the erstwhile Advocates for Plaintiff. This letter is appended at page No.650 of the Suit plaint by Plaintiff. It is a very significant letter wherein in paragraph ‘I’ and ‘J’, it is stated as under:-

> “***I.*** *Our clients report deals with flow of funds and their designated end use and the responses received from management / relevant group of companies in respect thereof. It reports on whether or not such funds have been diverted / used / appropriated for purposes other than those stated.* ***Our clients have not concluded / commented on any legal issues such as criminal breach of trust or commission of any offences.***
>
> ***J.*** *In order to ascertain where such funds ultimately landed,* ***our client would have to undertake a forensic audit of such parties to whom the Relevant Group of Companies have transmitted such funds in the first instance which clearly was nos within the scope of work for our client. We would like to again make it clear that our client's report deals with the flow of funds and their designated end use.*** *It reports on whether or not such funds have been diverted / used L appropriated for*

> *purposes other than those staled.* ***Our client has not commented in its report on any issues such as criminal breach of trust or commission of any offences or unlawful gains. Our client's report does not contain any conclusion as to fraud as defined in the RBI Circular."***

**60.** From the above, it is clearly seen that Defendant No.2 has accepted that the FAR relied upon by the Bank for indicting Plaintiff deals with mere flow of funds and their designated end use and the responses received from Management / relevant group of Companies in respect thereof (which is denied by the Plaintiff since only the RP was consulted). Shockingly Defendant No.2 in this letter owns up the fact that in order to ascertain where such funds ultimately landed, it would have to undertake a Forensic Audit of such parties to whom the relevant group of companies have transmitted such funds in the first instance (which clearly was the actual scope of work of Defendant No.2). Rather this actual scope of work is denied by Defendant No. 2. It is reiterated further by Defendant No.2 that the FAR deals with the flow of funds and their designated end use. It further asserts that Defendant No.2 has not commented in its report on any issues such as criminal breach of trust or commission of any offences or unlawful gains. Most crucially the letter signs of by stating that the FAR does not contain any conclusion as to fraud as defined in the RBI Circular (to be read as 2016 and 2024 Master Directions). The concerned Bank has not denied this letter neither referred to or responded to it during their submissions / arguments.

**61.** With such overwhelming *prima facie* evidence emanating from Defendant No.2's own letter and correspondence there is no reason as to how the FAR becomes sustainable for issuance of the Show Cause Notices by the concerned Banks. The FAR is the same for all Banks as confirmed by the parties. In the Affidavit-in-Reply filed in the present proceedings by Defendant No.2 the above letter at Exhibit "H" to the Plaint is not replied to or commented at all but a complete contrary stand is adopted by Defendant No.2 *qua* the aforesaid assertions made by its Advocates in the year 2021. Hence *prima facie*, Defendant No.1 - Banks cannot justify their action in the wake of such irrefutable *prima facie* documentary evidence admitted by Defendant No.2 *qua* the FAR.

**62.** In the case ***Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited*** *(supra)* in paragraph No.29, the Supreme Court has held that legislation which modify accrued rights or which impose qualifications or impose new duties or attach new disabilities have to be treated as prospective unless the legislative intent is clear to give enactment a retrospective effect. However, the Supreme Court has further clarified therein that this can only be unless the legislation is for the purpose of supplying an obvious omission in a former legislation or to explain a former legislation. These words of the Supreme Court clearly echo and give answer to the

Banks' case before me. The 2024 RBI Master directions is a legislation for the purpose of supplying an obvious omission / clarification in a former legislation and to explain the former legislation. I say this because the entire regime and framework of determining an account as fraud has been retained in the 2024 RBI Master directions with the added directions being explanatory and clarificatory in nature.

**63.** On irreparable injury I would like to quote the decision of Supreme Court in the case of ***Best Sellers Retail (India) Private Limited Vs. Aditya Birla Nuvo Limited and Others***[31] **,** wherein the words of Alderson B. in ***Attorney General Vs. Hallett***[32] are quoted:-

> *"...I take the meaning of irreparable injury to be that which, if not prevented by injunction, cannot be afterwards compensated by any decree which the court can pronounce in the result of the cause."*

**64.** In the decision of Supreme Court in the case of ***Gujarat Bottling Ltd and Others Vs. Coco Cola Co. and Others*** [33] in paragraph No.47, the Court has held thus:-

> *"**47.** In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at*

31 (2012) 6 Supreme Court Cases 792.
32 (1857) 16M & W 569 : 153 ER 1316
33 (1995) 5 Supreme Court Cases 545.

> *fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.*"

**65.** In the above case, Court has introduced a fourth parameter namely conduct of the party apart from consideration of the triple test of *prima facie* case, balance of convenience and irreparable loss for considering injunctive reliefs. Court has held that Court may refuse to interfere unless the conduct of the party was free from blame because the relief of injunction is only equitable in nature and the party invoking jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing all state of things complained of and that he was not unfair or inequitable in his dealings with the parties against whom he was seeking relief.

**66.** It is seen that the legal character of explanatory notes and footnotes appended to statutory instruments stands settled by the Supreme Court in the case of ***Tara Singh Vs. State of Rajasthan*** (1975) 4 SCC 86 wherein paragraph No. 20 states that notes appended to rules are promulgated contemporaneously, they form part of the legislative framework and are intended to guide application, control discretion and fill gaps where the rule is silent, without creating

independent or substantive rights. It is stated in paragraph No. 22 that such notes “make explicit what is implicit” in the substantive provision and that the absence or deletion of express language in the rule does not alter the legal position where the note clarifies the underlying intent and paragraph No. 25 further reiterates that notes appended to rules operate as aids to interpretation not as sources of fresh power and merely restate or clarify the scope of authority already conferred by the parent provision.

**67.** It is seen that the SEBI regime applies to listed companies and intermediaries in the securities market; its empanellment mechanisms are therefore confined to listed entities and securities-related investigations. The present subject matter concerns loan transactions, lending decisions, fraud classification, and willful default areas exclusively mandated and regulated by the RBI under the Banking Regulation Act, 1949, and not by SEBI.

**68.** It is seen that SEBI is concerned with investor protection, not lender protection. RBI Master Directions issued under Section 35A operate within the banking domain and, when they require audits, such audits necessarily fall within the statutory audit framework under Section 141 of the Companies Act, 2013 (and the corresponding provisions of the erstwhile Companies Act).

**69.** It is seen that Classification of an account as fraud or initiation of adverse proceedings founded merely on a forensic audit, without fulfillment of the governing statutory and procedural framework, is legally unsustainable. In *Prashant Bothra (supra)* in paragraphs 23-24, 39-44, the Court held that fraud classification and investigative processes are distinct from criminal culpability and cannot be equated with proof of a cognizable offence.

**70.** In *Ankit Bhuwalka Vs. IDBI Bank Ltd. (Supra)*, the Court reiterated that serious civil and economic consequences flowing from fraud classification require strict adherence to statutory procedure and natural justice, and that a forensic audit report, cannot be treated as determinative or decisive in isolation. The cumulative jurisprudence thus establishes that proceedings predicated solely or predominantly on a forensic audit report, without independent statutory compliance, are jurisdictionally infirm and liable to be set aside.

**71.** In the present case, it is seen that even though Forensic Audit Report was prepared and given to the lead Bank on 15.10.2020 by Defendant No.2, atleast until 2024 the Banks did not share the said Report with the Plaintiff or the 3 Companies.

**72.** It is seen that it is only when repeated proceedings were filed by Plaintiff in this Court that the Forensic Audit Report was shared with the Plaintiff and the Companies in the year 2024.

**73.** Though it is true that Plaintiff has filed several proceedings to challenge the show-cause notice and the consequential actions taken thereafter but it is equally true and an admitted position by all parties before me that the validity of the Report on the basis of qualification of the author of the report is not challenged by Plaintiff in any proceedings after he received the Report and this is the first instance of maintaining the challenge. Banks are required to follow and adhere strictly to the "Rule of Law" and principles of due process of law in all operations, including Audits. This obligation stems from the comprehensive legal and regulatory framework governing the Banking Sector. Banks have to operate for all purposes within a clear, established legal framework, and not by arbitrary power. Banks cannot appoint an ineligible and unqualified Auditor, whether Internal or External for Audit contrary to provisions of eligibility prescribed under the provisions of Section 141(1) and 141(2) of the Companies Act, 2013 if the Auditor is not a practicing Chartered Accountant registered with the ICAI.

**74.** In this regard attention is invited to following Master Directions / letters issued by RBI and the Government of India, Ministry of Finance to Banks which are all in the public domain and which are relevant to the issue at hand:-

(i) In the Master Circulars on Inspection and Audit Systems in

Primary (Urban) Co-operative Banks issued by RBI on 01.07.2009 and 01.07.2011 in the "Note" appended thereto in Clause 5.1 under "Appointment and Remuneration of Auditor" it is stated that the option to consider whether the concurrent Audit should be done by the External Auditors (**professionally qualified Chartered Accountants**) or its own staff may be left to the individual Banks. In Clause 5.2 it further states that this is so because in case of omissions or commissions responsibility of the Audit Firms if observed in the **concurrent (External) Audit** can be fixed and Banks can terminate their appointment and Report may be made to ICAI for such action as Banks deem fit under intimation to RBI / RCS. Certainly the standard for audit in Public Sector/Commercial Banks cannot be lower than for Primary (Urban) Co-operative Banks.

(ii) In the letter dated 26.09.2012 addressed by the Government of India, Ministry of Finance, Department of Financial Services to Chief Executives of all Public Sector Banks on the subject - Master Circular on Audit Systems concerning Guidelines to be followed for Internal Audit, Information System Audit and Concurrent Audit Systems, the guidelines categorically state that for Concurrent Audit, **Chartered Accountant Firms should be appointed from the RBI panel** as per the gradation based on the size of the Branch.

(iii) In the letter dated 16.07.2015 issued by RBI to CMD/MD/CEO of

all scheduled Commercial Banks regarding "Concurrent Audit System in Commercial Banks – Revision of RBI's Guidelines" it is stated that terms of appointment of the External Firms of Chartered Accountants for Concurrent Audit and their remuneration may be fixed by Banks at their discretion.

(iv) In the letter dated 18.09.2019 issued by RBI to all Scheduled Commercial Banks (other than Regional Rural Banks), Small Finance Banks, Payments Banks and Local Area Banks regarding Concurrent Audit System it is stated under Clause B - "Appointment of Auditors" and under Clause B (ii) that the head of Internal Audit in the Bank should participate in selection of Concurrent Auditors where such function is outsourced and should be responsible for the quality review (including skills of the staff employed) of the work of the Concurrent Auditors reporting to her/him. It further states that It may, however, be ensured that if any Partner of a Chartered Accountant Firm is a Director on the Board of a Bank, no Partner of the same firm should be appointed as Concurrent Auditor in the same Bank. It is stated under Clause C - "Accountability" that if External firms are appointed and any serious acts of omission or commission are noticed in their working, their appointments may be cancelled after giving them reasonable opportunity to be heard and the fact shall be reported to ACB / LMC of the Bank, RBI and ICAI.

**75.** Therefore in view of the above it is preposterous to accept the argument of Banks that an External Auditor not having Chartered Accountant qualifications could be validly appointed under the 2016 RBI Master Directions for External Audit.

**76.** The consequences of allowing the Banks to proceed further and declaring the Plaintiff and Directors of the three Companies as fraud are already discussed hereinabove. They are virtually drastic and lead to disastrous consequences like being black listed, barred from new Bank loans / credit for years, criminal FIR filing, reputation damage, impacting fundamental rights to financial access and civil death. However, in view of all the above observations and findings, the Forensic Audit Report being a highly contentious document, qualification of the author of the Report being inadequate and it not having been authored by a qualified Chartered Accountant as External Auditor, role of the External Auditor in the present case when he being actively engaged before his appointment with the Lender Banks as Consultant and he himself suggesting and canvassing for his own appointment as Forensic Auditor before the Banks in the JLM, his participation in the JLM on 01.03.2019 and acting as Consultant to Lender Banks well before his appointment as External Auditor and most importantly he stating in writing through his Advocates that no fraud or criminal breach of trust has been observed by him in the FAR,

the Plaintiff has made out a reasonably strong case for trial.

**77.** The balance of convenience therefore is in favour of Plaintiff.

**78.** For grant of interim relief *prima facie* case and balance of convenience clearly shifts in favour of Plaintiff due to the frailty of the FAR and qualification of the Auditor as discussed above in fact and in law. Needless to state that this is my *prima facie* opinion for which I have returned the above reasons on the basis of the *prima facie* material placed before the Court.

**79.** Banks' case that interfering with the Show Cause Notices and further consequential action will derail investigation cannot be countenanced if the edifice on which it is based is itself palpably dubitable. Allowing the impugned action to proceed will lead to disastrous consequences in such cases where it leads to a certain civil death without trial. Hence on the parameter of grave and irreparable harm / loss, Plaintiff's case deserves to be accepted for grant of interim relief for all the above reasons, legal and factual, and in accordance with the principles of natural justice. Principles of natural justice is based on the maxim – "Justice should not only be done but should manifestly be seen to be done". It provides for a fair hearing, unbiased decision-making and presenting proper evidence before taking any action.

**80.** Having *prima facie* being satisfied for grant of interim relief on the basis of the above observations and findings, the FAR i.e. Forensic Audit Report dated 15.10.2020 appended at Exhibit 'A' to the 3 Suit plaints not being in consonance with the RBI Master Directions and for the aforementioned reasons, interim relief is granted to Plaintiff in terms of prayer clause (i) in Suit (L) No.35923 of 2025 and Suit (L) No.37573 of 2025 and in terms of prayer clause (j) in Suit (L) No.37862 of 2025 which read thus:-

(**i**) In Suit (L) No.35923 of 2025:-

> *"i. That pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to*
>
> *(i) stay all actions already taken by Defendants under or in reliance upon the Report dated 15 October 2020 (Exhibit "A" hereto) or the Show Cause Notice dated 2 December 2024 (Exhibit "B" hereto); and*
>
> *(ii) restrain the Defendants from taking any further action or proceedings under or in reliance upon the said Report dated 15 October 2020 or the said Show Cause Notice dated 2 December 2024."*

(**ii**) In Suit (L) No.37573 of 2025:-

> *"i. That pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to*
>
> *(i) stay all actions already taken by Defendants under or in reliance upon the Report dated 15 October 2020 (Exhibit "A" hereto) or the Show Cause Notice dated 31 May 2024 (Exhibit "B" hereto); and*

*(ii) restrain the Defendants from taking any further action or proceedings under or in reliance upon the said Report dated 15 October 2020 or the said Show Cause Notice dated 31 May 2024."*

(**iii**) In Suit (L) No.37862 of 2025:-

*"j. That pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to*

*(i) stay all actions already taken by Defendants under or in reliance upon the Report dated 15 October 2020 (Exhibit "A" hereto) or the Show Cause Notice dated 2 January 2024 (Exhibit "B" hereto) and Fraud Declaration Order dated 2 September 2025 (Exhibit "C" hereto); and*

*(ii) restrain the Defendants from taking any further action or proceedings under or in reliance upon the said Report dated 15 October 2020 or the said Show Cause Notice dated 2 January 2024."*

**81.** Interim Application (L) Nos.35925 of 2025, 37575 of 2025 and 37865 of 2025 in all three (3) Suits stand allowed and disposed in the above terms.

**[ MILIND N. JADHAV, J. ]**

**82.** After this Judgment is pronounced in open Court, Mr. Setalvad, Mr. Bharucha and Mr. Andhyarujina, learned Senior Advocates appearing on behalf of Bank of Baroda, IDBI Bank and Indian Overseas Bank would persuade the Court to stay the effect of this judgment for a period of six weeks.

**83.** Mr. Dwarkadas, learned Senior Advocate appearing on behalf of Defendant Nos.2 and 3 would also persuade the Court to consider the stay of judgment.

**84.** Mr. Joshi, learned Senior Advocate and Mr. Naik, learned Advocate appearing on behalf of Plaintiff oppose the stay.

**85.** I have considered the request made by learned Senior Advocates appearing for Banks and Mr. Dwarkadas, however in view of my *prima facie* observations and findings and reasons given in the order, I decline to accede to their request for stay. Request for stay is therefore declined.

**[ MILIND N. JADHAV, J. ]**

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
Date: 2025.12.24 12:00:32 +0530