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

WRIT PETITION NO. 886 OF 2026

Anil Khemani and Another .. Petitioners

Versus

Axis Bank Ltd. and Another .. Respondents

Mr. Nishant Chotani i/b. Ms. Neha Shah, for the Petitioners.

Mr. Satchit Bhogle a/w. Mr. Rajendra Shinde, Mr. Anet Johnson i/b. Svarniti and Associates, for Respondent No.1.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

RESERVED ON : JULY 24, 2026

PRONOUNCED ON : AUGUST 06, 2026

JUDGEMENT (per FIRDOSH P. POONIWALLA, J.)

1. This Writ Petition challenges the Show Cause Notice dated 6th September 2025 issued by Respondent No.1 and the Order dated 16th October 2025 passed by Respondent No.1 declaring Respondent No.2 as fraud. The Petitioners are the erstwhile Directors of Respondent No.2. At the outset, we must note that though the above Show Cause Notice was addressed to the

Petitioners, the impugned Order does not declare the Petitioners as fraud and only declares Respondent No.2 Company as fraud. We, therefore, seriously doubt whether the Petitioners can maintain the present Petition in their name when Respondent No.1 Bank has declared the account of Respondent No.2 Company as fraud and when it has already undergone a successful Corporate Insolvency Resolution Process and a Resolution Plan has already been approved for it by the NCLT vide its Order dated 10th September 2025. Notwithstanding the aforesaid, and so that the Petitioners do not raise any grievance regarding being non-suited in the present Writ Petition, we have heard them on merits.

FACTS :

2. On 22nd June 2020, Respondent No.1 took over from SBI credit facilities aggregating to Rs.23.01 Crores granted to Respondent No.2.

3. On 17th November 2022, Respondent No.2 clandestinely opened a Bank account with Nashik Merchant Co-operative Bank Limited ("**NMCB**") without informing Respondent No.1. This is admitted by Petitioner No.1.

Mamta Kale

4. Respondent No.2 defaulted in servicing the loans and therefore Respondent No.1 declared the account of Respondent No.2 as a Non Performing Asset ("**NPA**") in accordance with the RBI guidelines.

5. On 5th May 2023, Respondent No.1 recalled the loan. On 19th May 2023, Respondent No.1 issued a fresh recall Notice.

6. On 3rd March 2024, Respondent No.2 was admitted into the Corporate Insolvency Resolution Process ("**CIRP**") under the provisions of the Insolvency and Bankruptcy Code, 2016. Respondent No.1 was a part of the Committee of Creditors ("**CoC**").

7. On 18th May 2024, Respondent No.1 appointed M/s. JKJS & Company LLP as Auditors to audit the accounts of Respondent No.2. On 10th September 2024, the Auditors submitted a draft Transaction Audit Report dated 7th September 2024, which was provided to the Petitioners.

8. On 16th September 2024, the 7th Meeting of the CoC of Respondent No.2 was held. Petitioner No.1 was present at the Meeting. At the said Meeting, the following observations were made with respect to the draft Transaction Audit Report.

a. Respondent No.2 had opened an undisclosed account with NMCB and used it to collect outstandings and pay related parties. It had received significant funds in its NMCB account and had transferred it to related parties, including Petitioner No.1 and his partnership firm, Mobile N More.

b. <u>Petitioner No.1 admitted opening the NMCB account and stated that it was used to circumvent a freezing order passed by a Bangalore Court.</u> He claimed that the payments to himself were refunds of payments made through his personal account and other payments were made to entities who maintained credit balances with Respondent No.2.

c. Petitioner No.1 claimed that the TAR was based on incomplete information, but he could not provide the relevant documents as the RP had taken over Respondent No.2's office and he could not provide Tally data because the RP had not given his email address.

d. <u>Petitioner No.1 requested 21 days access to the office premises in order to submit the required information, and it was agreed that access would be granted between 01.10.2024-10.10.2024.</u>

e. There were discrepancies in the provisional annual accounts for the year ended 31.03.2022 (showing a profit) and the data submitted with Income Tax Department for the year ended 31.03.2022 (showing a loss of Rs.22 crores) and a decline *in inventory from Rs. 19.95 crores to Rs.5.93 crores along with a significant decrease in trade receivables.*

f. Respondent No.2 purchased vehicles in the name of promoters and family members.

g. Petitioner No.1 undertook to provide Tally data for 01.04.2021 to 31.03.2022 by 22.09.2024 and Tally data up to 31.03.2023 by 10.10.2024 and claimed that this would clarify all the discrepancies.

(*emphasis supplied)*

9. On 1st October 2024 and 2nd October 2024, Respondent No.2's office was kept open for the Petitioners to access the same in order to submit the required information but neither the Petitioners nor their Authorised Representatives visited the office.

10. On 11th October 2024, the 8th Meeting of the CoC of Respondent No.2 was held. In this meeting, it was recorded as follows:

1. While members from the RP's team and the Transaction Auditor's team visited Respondent No.2's office on 01.10.2024 and 02.10.2024, none from the Suspended Board of Directors ("SBoD") was present.

Mamta Kale

2. *<u>At the SBoD's request, the RP had granted 1 TB of cloud space for them to upload documents and information. However, the RP did not receive any documents.</u>*

(*emphasis supplied)*

11. On 30th October 2024, the final draft of the Transaction Audit Report was prepared by the Auditors.

12. On 6th November 2024, the 9th Meeting of the CoC of Respondent No.2 was held. Petitioner No.1 was present at the said Meeting. The findings of the draft Transaction Audit Report were discussed with Petitioner No.1. Petitioner No.1 admitted that he did not confirm the office visit when asked over the email. Petitioner No. 1 tried to justify the delay in providing information on the ground of his and his father's health. Petitioner No.1 submitted that the Tally data was on a Antraweb server, and the backup had been deleted. He stated that he had hired an accountant who could provide the data by 20th November 2024. Petitioner No. 1 undertook to provide a detailed response to the draft Transaction Audit Report by 20th November 2024.

13. Petitioner No.1 failed to provide the Tally data by 20th November 2024. In these circumstances, on 26th November 2024, the final Transaction

Audit Report was submitted by the Auditors. The Transaction Audit Report observed as under :

> *a. The Auditors had sought information from the SBoD, but had not received any response. The RP had received limited responses.*
>
> *b. Respondent No.2 had opened and failed to disclose an account with NMCB. It received and diverted over Rs.6 crores, including to Petitioner No. 1 and his partnership firm, M/s. Mobile N More.*
>
> *c. It allegedly received supplies of Rs.1.67 crores worth of electronics from Mobile N More just a few days before it went into CIRP, and despite Respondent No.2 itself being a dealer in electronics.*
>
> *d. It extended huge loans and made transfers to third parties who may be related to Petitioner No.2's family for no apparent reason and did not charge interest.*

14. On 28th April 2025, Respondent No.2's account was tagged as a Red Flagged Account based on the Transaction Audit Report.

15. Thereafter, Respondent No.1 issued a Show Cause Notice dated 6th September 2025 to the Petitioners and Respondent No.2 asking to show cause as to why the account should not be declared as "fraud". The said

Show Cause Notice stated that Respondent No.2 had opened an undisclosed account with NMCB. The said Show Cause Notice also provided the final Transaction Audit Report dated 26th November 2024. Further, as per Clause 2.1.1.2 of *RBI Master Directions on Fraud Risk Management in Commercial Banks (including Regional Rural Banks) and All India Financial Institutions* dated 15th July 2024 ("**Fraud Master Circular**"), 21 days' time was given to respond to the Show Cause Notice.

16. On 10th September 2025, the National Company Law Tribunal (NCLT) approved a Resolution Plan for Respondent No.2.

17. By an email dated 24th September 2025, Petitioner No.1 sought a further four weeks time till 22nd October 2025 to respond to the Show Cause Notice citing unspecified "family issues and medical emergency". By an email dated 14th October 2025, Respondent No.1 refused Petitioner No.1's request for extension.

18. By an Order dated 16th October 2025, Respondent No.1's Fraud Identification Council classified Respondent No.2's account as fraud. The said Order was sent to the Petitioners on the same day.

19. On 23rd October 2025, Petitioner No.1 sent an email to Respondent No.1 stating that he was sharing the same documents as were previously shared with the Auditor and the Resolution Professional.

20. On 27th October 2025, Respondent No.1 filed a complaint against Respondent No.2 and the Petitioners with the Economic Offences Wing, Nashik Police, for misappropriation of funds and criminal breach of trust.

21. It is in these circumstances that the present Petition was filed on 17th November 2025.

SUBMISSIONS OF THE PETITIONERS.

22. Mr. Nishant Chotani, the learned Counsel appearing on behalf of the Petitioners, submitted that the impugned Order dated 16th October 2025 ought to be set aside on the ground that it is an unreasoned Order and that it has been passed in violation of the principles of natural justice.

23. In this context, Mr. Chotani submitted that the Show Cause Notice was issued at a time when Respondent No.2 was under CIRP and had no access to its records, books and documents. Mr. Chotani further

submitted that the Show Cause Notice pertains to transactions between 2021 and 2024. Hence, Respondent No.1 itself had not shown alacrity in proceeding with classification of the account of the Petitioners / Respondent No.2 as fraud.

24. Mr. Chotani submitted that the Show Cause Notice itself was based on various documents as the basis to classify the account as fraud, which were not provided to the Petitioners.

25. Further, Mr. Chotani submitted that, whilst Respondent No.1 itself did not show alacrity by issuing the Show Cause Notice in 2025 for transactions dating back to 2021 to 2024, Respondent No.1 arbitrarily rejected the Petitioners' request for extension of time to reply to the Show Cause Notice which was in complete violation of the principles of natural justice.

26. Further, Mr. Chotani submitted that the Order dated 16th October 2025 is issued on a presumption that the Petitioners had nothing to say since they had not responded to the Show Cause Notice. He submitted that this was completely erroneous. Further, Mr. Chotani submitted that the reason to classify Respondent No.2 as a Red Flagged Account is the Report of

the Transaction Auditor in the CIRP of Respondent No.2. This was done during the CIRP of Respondent No.2. Further, Mr. Chotani submitted that the impugned Order dated 16th October 2025 is an unreasoned Order. The said Order is passed only on the basis of the Transaction Audit Report dated 26th November 2024.

SUBMISSIONS OF RESPONDENT NO.1.:

27. Mr. Satchit Bhogle, the learned Counsel appearing on behalf of Respondent No.1, refuted the contentions raised by the Petitioners, supported the Order dated 16th October 2025, and submitted that the present Writ Petition be dismissed with costs.

28. Mr. Bhogle submitted that Respondent No.1's refusal to grant extension of time did not violate the principles of natural justice. In this context, he submitted that Petitioner No.1 knew the case he had to answer even one year before issuance of the Show Cause Notice. The same grounds, including opening of undisclosed NMCB account, diversion of funds, discrepancies in accounts, were in the draft Transaction Audit Report discussed with Petitioner No.1 at the 7th CoC Meeting. Mr. Bhogle submitted that Petitioner No.1 provided limited information to the Resolution Professional and no information to the Auditors. Petitioner No.1 was first

given an opportunity to access the documents in Respondent No.2's office on 1st October 2024 and 2nd October 2024 but wilfully remained absent. Mr. Bhogle submitted that this is admitted in the 8th and 9th Meetings of the CoC. Further, Mr. Bhogle submitted that Petitioner No.1's excuse of his and his father's health issues were completely vague and without any details.

29. Further, Mr. Bhogle submitted that the Petitioners had admitted to the main issue i.e. opening the undisclosed NMCB account and also had no answer to the other issues. Mr. Bhogle submitted that the failure to disclose the NMCB account and routing transactions from there amounts to fraud under Clause 6.1 (iv) of the Fraud Master Circular and is also per se fraudulent.

30. Finally, Mr. Bhogle submitted that the Order dated 16th October 2025 is not an unreasoned Order. It is based on the adverse observations in the Transaction Audit Report, which are unrebutted. For all these reasons, Mr. Bhogle submitted that the Writ Petition be dismissed with costs.

ANALYSIS AND FINDINGS:

31. The first submission of the Petitioners is that the Order dated 16th October 2025 is an unreasoned Order i.e. it contains no reasons. In ***State***

Bank of India Vs. Rajesh Agarwal (2023) 6 SCC 1, the Hon'ble Supreme Court has held that, although the Order declaring a person as fraud must be reasoned, the reasons to be recorded need not be placed on the same pedestal as a Judgment of a Court. The reasons may be brief but they must comport with fairness by indicating a due application of mind.

32. Keeping these observations of the Hon'ble Supreme Court in mind, in our view, the Order dated 16th October 2025 is a reasoned Order. The said Order held that Respondent No.2 should be classified as fraud under the Fraud Master Circular for the reasons as specified in Schedule III thereto. Schedule III states that the reasons for declaring Respondent No.2 as fraud are the adverse observations in the Transaction Audit Report dated 26th November 2024.

33. Schedule I, Part B, of the Order sets out the key findings of the Transaction Audit Report dated 26th November 2024. Amongst other things, it mentions diversion of funds through the account maintained with NMCB. It also mentions transactions with related parties / loans to related parties. Further, it refers to unjustified fund transfers to multiple entities and extending interest free loans and advances to promoters / others. On a reading of Schedule I, Part B, of the Order, which contains the key findings of

the Transaction Audit Report, it is very clear that the Order dated 16th October 2025 contains detailed reasons as to why Respondent No.2 should be declared as fraud. Hence, we are clearly of the view that the impugned Order cannot, by any stretch of the imagination, be termed as unreasoned. Hence, this grievance of the Petitioners is wholly unfounded, and therefore rejected.

34. As far as the submission of the Petitioners that the said Order dated 16th October 2025 has been passed in violation of the principles of natural justice is concerned, we are afraid that we are unable to agree with the same. In this connection, it should be noted that, on 18th May 2024, Respondent No.1 appointed M/s. JKJS & Company LLP as Auditors to audit the accounts of Respondent No.2. On 10th September 2024, the Auditors submitted a draft Transaction Audit Report dated 7th September 2024 which was provided to the Petitioners.

35. On 16th September 2024, at the 7th Meeting of the CoC of Respondent No.2, Petitioner No.1 requested for access to the office premises of Respondent No.2 in order to submit the required information in response to the draft Transaction Audit Report. For that purpose, Respondent No.2's office was kept open on 1st October 2024 and 2nd October 2024. However,

neither the Petitioners nor their Authorised Representatives visited the office premises.

36. Thereafter, on 30th October 2024, a final draft of the Transaction Audit Report was prepared by the Auditors. At the 9th Meeting of the CoC of Respondent No.2 held on 6th November 2024, the findings of the draft Transaction Audit Report were discussed with Petitioner No.1. At that time, Petitioner No.1 submitted that the Tally data was on a Antraweb server and the backup had been deleted. He further submitted that he had hired an accountant and that he could provide the data by 20th November 2024. However, Petitioner No. 1 failed to provide the Tally data by 20th November 2024. In these circumstances, the final Transaction Audit Report was submitted by the Auditors on 26th November 2024. Respondent No.2's account was tagged as Red Flagged Account based on the Transaction Audit Report.

37. It is in this background and in these circumstances that Respondent No.1 issued a Show Cause Notice to the Petitioners and provided 21 days' time to respond to the same. Along with the Show Cause Notice the final Transaction Audit Report dated 26th November 2024 was also furnished to the Petitioners. Petitioner No.1 had full knowledge of the case that he had

to answer much before the Show Cause Notice was issued as the grounds on which the Show Cause Notice was issued were in the draft Transaction Audit Report discussed with Petitioner No.1 at the 7th CoC Meeting of Respondent No.2. Despite the same, and despite the Show Cause Notice having been issued on 6th September 2025, giving 21 days time to respond, Petitioner No.1, by an email dated 24th September 2025, sought time till 22nd October 2025 to respond to the Show Cause Notice citing unspecified family issues and medical emergency.

38. In our view, in this background and in these circumstances, Respondent No.1 was justified in refusing the Petitioners' request for extension of time and passing the said Order dated 16th October 2025.

39. In our view, in the light of the aforesaid facts, there was no violation of the principles of natural justice in passing the said Order dated 16th October 2025, as alleged by the Petitioners.

ORDER

40. In the light of the aforesaid discussion, and for the aforesaid reasons, the following Orders are passed:

a) The Writ Petition is dismissed.

b) In the facts and circumstances of the case, there shall be no order as to costs.

41. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**