CNR No : HCBM020130862026



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

## WRIT PETITION NO. 3094 OF 2026

Prasanth Narayanan ..Petitioner
Versus
1. Canara Bank
2. Bhavesh Mansukhbhai Rathod ..Respondents

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Mr. Gaurav Joshi, Sr. Advocate a/w. Nidhi Singh, Nidhi Faganiya and Arav Dass i/b. Vidhii Partners for Petitioner.

Mr. Prakash Shinde, Niyati Merchant and Shanmukh Puranik i/b. MDP Legal for Respondent No.1.

Ms. Uma Chatterjee (through V.C.) for Respondent No.2.

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CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.

RESERVED ON : 29 OCTOBER 2026
PRONOUNCED ON : 04 NOVEMBER 2026

JUDGMENT: (PER SARANG V. KOTWAL, J.)

1. Rule. Rule is made returnable forthwith with consent of the parties.

2. The Petitioner is a Director of the suspended Board of Directors of Carnival Technopark Private Limited (hereinafter referred to as 'the company') which is presently undergoing the

VINOD BHASKAR GOKHALE Digitally signed by VINOD BHASKAR GOKHALE Date: 2026.11.04 17:45:45 +0530

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Corporate Insolvency Resolution Process under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC). The Respondent No.1 Canara Bank is the contesting party. The Canara Bank had merged with the erstwhile Syndicate Bank in the year 2020. The subject matter arises from the loan given by the Syndicate Bank to the company in the year 2017 through the Lease Rental Discounting facility (LRD) on the company's property in a technology park at Thiruvananthapuram. The second Respondent is the Resolution Professional appointed in the Corporate Insolvency Resolution process.

3. The Petitioner has challenged the proceedings initiated vide the show-cause notice dated 23.06.2025 culminating into Declaration dated 01.04.2026 whereby the company's account and the transactions were classified as 'fraud' by the Respondent No.1 bank.

4. Heard Mr. Gaurav Joshi, learned senior counsel for the Petitioner, Mr. Prakash Shinde, learned counsel for the Respondent No.1-Canara Bank and Ms. Uma Chatterjee, learned counsel

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(through video conferencing) for the Respondent No.2.

BACKGROUND AS MENTIONED IN THE PETITION

5. The Company's account was declared as 'fraud' under the Reserve Bank of India Master Directions on Fraud Risk Management in Commercial Banks and All India Financial Institutions dated 15.07.2024 (RBI Master Directions).

6. In the year 2017, the company was in need of financial assistance and hence, approached the Syndicate Bank for sanction of a term loan through LRD facility to the tune of Rs.130 crores. It was granted by the Syndicate Bank on the terms and conditions as set out in the sanction letter dated 17.03.2017. The loan was disbursed on 31.03.2017 by the Syndicate Bank. The purpose of the said loan was to repay the existing loan granted through the LRD facility by the IndusInd Bank of Rs.115 crores and the balance amount was for other business purposes of the company. At the time of taking loan from the RCL, the loan taken from IndusInd Bank was already operational; which was subsequently closed by using the loan sanctioned by the Syndicate bank. It is the

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contention of the company that the company at all times used the said money for the purpose agreed in the sanction letter and the company repaid the existing loan of IndusInd Bank of Rs.115 crores by April 2017.

7. The said term loan given by Syndicate Bank was secured by giving first and exclusive assignment charge with future rental income from the phase/building I & II of Carnival Technopark Pvt. Ltd. at Thiruvananthapuram, collateral by way of charge on the company's property, pledged shares of the company and by way of personal guarantee from the shareholders of the company i.e. Mr. Shrikant Bhasi and Corporate guarantee from the Holding company i.e. Asian Business Connections Pvt. Ltd. The main source of repayment of the said term loan was the lease rental, out of which, the repayments of the loan were made to the Syndicate Bank. As per the sanction letter, the company submitted yearly audited financial statements of the company showing the true picture of the financial position of the company.

8. It is further the case of the Petitioner that, from the year

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2017, the company was regular in making the payments under the said term loan and its account was not declared as NPA till 01.02.2024. It shows that, there was no intention to defraud the Respondent No.1 bank. It is further the contention of the Petitioner that, after the sanction of the amount of Rs.130 crores, the Petitioner repaid Rs.14.86 crores within a stipulated time. However, because of unprecedented disruption caused by the outbreak of Covid-19, the company faced significant operational and financial constraints. There were substantial vacancies in the IT park premises during that period. This led to a material reduction and shortfall in rental collections, thereby adversely impacting the company's cash flows and its ability to service the loan in a timely manner.

9. On 01.04.2020, the Syndicate Bank merged with the Canara Bank i.e. the Respondent No.1 herein. By virtue of the said amalgamation, all assets, liabilities, rights, claims, obligations and undertakings of Syndicate Bank stood transferred to and vested with the Canara Bank. The company made bonafide and diligent efforts to repay the loan obligations, but there was no meaningful

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relief or resolution extended by the Respondent Bank. At one point of time, the company tried to bring a purchaser but the deal had to be cancelled. The Respondent No.1 failed to approve or reject the proposed transaction within reasonable time.

10. After referring to the company's transactions with the Respondent No.1 and its predecessor in the petition, the Petitioner referred to the transactions with the Reliance Capital Ltd. (RCL). On 16.01.2017 RCL issued sanction letter in favour of the company along with Advantage Overseas Private Limited (AOPL) and Carnival Soft Private Limited (CSPL) as co-borrowers to provide financial assistance by way of term loan facility to the extent of Rs.75 crores for working capital required by the co-borrowers. On 20.01.2017, a facility agreement was entered into between RCL, the company and the co-borrowers, wherein, as per the terms of the agreement, loan facility of Rs.75 crores was granted to the borrower for a tenure of 84 months with interest at the rate of 15%p.a. The loan was secured applying charge on Inter Corporate Deposit (ICD) of Rs.175 crores between AOPL and the company, pledge of shares of Carnival Company equivalent to

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Rs.75 crores and corporate guarantee of Asian Business Connections Pvt. Ltd. (ABCPL).

11. According to the Petitioner, the servicing of RCL loan was independent and had no bearing whatsoever on the loan availed from the Syndicate Bank, as the source and mechanism of repayment for both facilities were distinct and segregated. In 2016, the entire commercial finance business undertaking of RCL was transferred to Reliance Commercial Finance Limited (RCFL). On 23.01.2019, the account of the company was classified as NPA by RCFL and on 22.10.2019 the RCFL issued the first recall notice to pay the entire outstanding sum of more than Rs.79 crores.

12. Importantly, on 16.04.2021, the Respondent No.1 Bank addressed an e-mail to the company stating that after reviewing the audited financial statements of the company, the Respondent No.1 bank was concerned over the defaults made in RCL loan and asked the company to take steps to regularize the same. This clearly indicates that the Respondent No.1 bank was aware about the RCL loan. On 23.05.2022, the RCFL issued a demand notice

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seeking payment of an outstanding amount more than Rs.138 crores. On 24.01.2023, the RCFL filed Company Petition U/s.7 of IBC.

13. The Petitioner then has described the proceedings before the National Company Law Tribunal (NCLT). The Respondent No.1 Bank also participated in those proceedings by filing different applications. However, those parallel proceedings are not the subject matter of the present petition. It is the contention of the Respondent No.1 bank that the said proceedings were initiated by RCFL against the company in collusion with the company. However, the impugned show-cause notice and the impugned order do not make any such allegation. The Petitioner has filed Additional Affidavit annexing a copy of the term loan agreement dated 28.03.2017 between the company and the Syndicate Bank.

REPLY BY THE RESPONDENT NO.1-BANK

14. The Respondent No.1 Canara Bank filed a reply to the petition. It is mentioned that, the Petitioner was a Director of the company as on 30.09.2015 and accordingly was in charge of the

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affairs and decision making on behalf of the borrower company. The company approached the Syndicate Bank on 21.01.2017 without disclosing the RCL loan. The company requested for sanction of term loan (LRD facility) to the tune of Rs.135 crores. The company had concealed from the Syndicate Bank that prior to sanction of the facility, the company had already availed credit facility from RCL amounting to Rs.75 crores. That loan was disbursed by the RCL to the company on 27.01.2017. This fact was not disclosed by the company.

15. On 09.03.2017, the Company Secretary Mr. Kuldeep Jain submitted a due diligence report disclosing the financial position of the company as on 31.12.2016. In that report, the loan availed from the RCL could not have been disclosed as it was sanctioned after 31.12.2016.

16. On 17.03.2017, the Syndicate Bank sanctioned the term loan of Rs.130 crores to the borrower. It was secured by way of First and Exclusive Assignment charge on future rental income, as mentioned earlier, and by exclusive charge by way of mortgage of

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lease hold land/right owned by the borrower situated at Technopark Road, Technopark Campus, Thiruvananthapuram, Kerala of area 3.55 acres with building standing thereon. In March 2019, the borrower company defaulted the repayment of RCL loan. The borrower failed and neglected to communicate the existence of credit facility or the subsequent defaults to Canara Bank. Such deliberate concealment deprived the Canara Bank of material information that could have assisted the Bank in the credit assessment and sanction decision. According to the Respondent No.1, the Petitioner's reliance on the e-mail dated 16.04.2021 does not absolve the Petitioner from the responsibility of primary disclosure at the time of sanctioning the credit facilities. On 13.02.2024, the NCLT admitted the borrower company into Corporate Insolvency Resolution Process (CIRP). The cash flows of the borrower, which were charged in favour of secured creditor Canara Bank were diverted to the Resolution Professional due to the concealment of material facts by the Directors. Owing to the non availability of these cash flows the loan account of the company could not be regularized and was eventually classified as

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NPA from 30.05.2024 w.e.f. 01.02.2024. Upon admission of the borrower company into CIRP, the Respondent No.1 filed a claim of more than Rs.116 crores. The reply then refers to the proceedings before the NCLT and NCLAT. The reply thereafter goes on to mention issuance of show-cause notice and passing of impugned order. The Respondent No.1 through their affidavit supported their action.

**SUBMISSIONS OF LEARNED SENIOR COUNSEL SHRI. JOSHI ON BEHALF OF THE PETITIONER**

17. Shri. Joshi, learned senior counsel for the Petitioner made the following submissions:

The impugned show-cause notice is based on a false allegation of non disclosure of term loan facility of Rs.75 crores issued by RCL, and on false assertion that the same came to the knowledge of the Respondent No.1 bank only when the company was admitted into CIRP vide the order dated 13.02.2024. The bank's e-mail dated 16.04.2021 itself shows that the bank was aware of the RCL loan; in fact, the audited financial statements furnished by the company right from the financial year 2016-2017

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to financial year 2022-2023 reflected the RCL loan and these statements were regularly submitted to the Respondent No.1 bank.

18. In spite of being aware of the RCL loan, the Respondent No.1 bank neither treated the alleged non-disclosure as an event of default nor recalled the loan, but continued the contractual relationship. There was no allegation of any diversion and misutilization of the money disbursed under the term loan of Rs.130 crores sanctioned by the Respondent No.1 bank.

19. The loan sanctioned by the Respondent No.1 bank and the loan sanctioned by the RCL had different security and repayment arrangements.

20. Mere non disclosure would not amount to deliberate concealment amounting to fraud. The essential ingredients of ‘fraud’ included concealment of the facts, intention to deceive or defraud and the consequent injury or loss. Mere non disclosure in the absence of other ingredients cannot justify the classification as ‘fraud’.

21. The RCL loan was backed by a separate security and

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independent cash flows, had no bearing on the Respondent No.1's bank's credit risk or security cover. In support of this contention, Shri. Joshi relied on the observations of Madhya Pradesh High Court in the case of ***Bhagwani Bai Versus Life Insurance Corporation of India, Jabalpur***[1]. He also relied on the observations of the Hon'ble Supreme Court in the case of ***Harjas Rai Makhija Versus Pushparani Jain and another***[2].

22. Shri. Joshi submitted that the alleged non disclosure of RCL loan caused no wrongful loss to the Respondent No.1 as there was no allegation of diversion, intermingling or misuse of disbursed funds – the two loans being distinct with separate security and repayment arrangements.

23. Shri. Joshi further submitted that, Section 19 of the Contract Act provides that an agreement induced by fraud or misrepresentation is viodable at the option of the party whose consent was obtained. In the present case, even after acquiring the knowledge of the RCL loan, the Respondent No.1 Bank did not invoke the relevant clause from the Term Loan Agreement. The

1 1983 SCC OnLine MP 10
2 (2017) 2 Supreme Court Cases 797

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agreement was not terminated.

24. There were sufficiently effective clauses in the agreement between the company and the Respondent No.1 Bank safeguarding the Respondent No.1's interest, but none of these clauses were invoked by the Respondent No.1-Bank.

25. The issuance of show-cause notice and passing of the impugned order indicates that the impugned proceedings were malafide and afterthought, issued after the Respondent No.1 Bank had already litigated and failed to secure a favourable outcome before the NCLT and NCLAT.

26. Shri. Joshi also submitted that there was violation of principles of natural justice in the present proceedings.

**SUBMISSIONS OF SHRI. SHINDE, LEARNED COUNSEL FOR THE RESPONDENT NO.1-BANK**

27. Shri. Shinde submitted that the proceedings initiated by the Respondent No.1 before NCLT and NCLAT are independent proceedings in law and unrelated to the declaration of the borrower's account as 'fraud' under RBI Master Directions 2024.

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Under the law and banking regulations, a borrower is under a strict legal obligation to provide full, true and complete disclosure to the bank. If a borrower deliberately holds back, misrepresents or hides material financial facts to obtain loan or benefit, it is treated as fraudulent concealment of information.

28. He submitted that, for seeking credit facilities or loan, a person must provide accurate and complete information, and material facts regarding their financial health, existing liabilities etc. The concealment of material facts has effect of influencing the bank's decision to sanction credit and it leads to criminal or civil liability, and also results in the account being declared as 'fraud' under RBI Master Directions.

29. The order declaring the account as 'fraud' under RBI Master Directions, is an internal/regulatory administrative order. The administrative proceedings is distinct from the criminal proceedings. Therefore, the principles applicable to the criminal proceedings regarding criminal intent are not applicable to the administrative proceedings. The result of 'fraud' classification is

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that the person associated with such entities shall be debarred from raising of funds or seeking credit facilities from the financial entities regulated by RBI.

30. The knowledge of RCL loan to the Respondent No.1 in the year 2021 or on a later date is not relevant. The said information regarding RCL loan was important at the time of taking decision of sanction of the loan, as the bank was required to assess the overall risk profile, credit worthiness of the borrower etc. If the company had informed the Respondent No.1 regarding RCL liability, the Respondent No.1 would have taken precautionary measures by stipulating various conditions to safeguard and to ring fence their asset and security. While taking the decision of sanction of any loan, the Bank usually analizes the total borrowing of the company, its repayment capacity and its overall risk profile; which could not be done in the present case, because of concealment of the RCL loan.

31. Shri. Shinde submitted that the company and its official facilitated RCL to bring the company into CIRP so that the secured

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assets and mortgaged property of the Canara Bank would go out of the control of Canara Bank. This has caused great loss to the bank. Under the Resolution Plan, the bank is to get very small portion of their claim. This has caused big financial loss to the bank. Shri. Shinde submitted that the Petitioner was a Director of the borrower company when the credit facilities were availed from the Syndicate Bank by deliberately suppressing the fact that the loan was availed from RCL. Shri. Shinde submitted that the Respondent No.1 has rightly declared the Petitioner's account as 'fraud' under RBI Master Directions 2024. Shri. Shinde relied on the observations of the Hon'ble Supreme Court in the case of ***State Bank of India Vs. Amit Iron Private Limited & Ors.***[3]. It was observed that, in the case of 'fraud' there is an element of criminality. In the case of a wilful default, though it may involve financial default, there is not as yet an element of criminality; this, in any event, is the perception of the regulator.

REASONS AND CONCLUSION

32. We have considered these submissions. The RBI had

3 2026 SCC OnLine SC 538

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issued master directions on fraud risk management in commercial banks including the Regional Rural banks and All India Financial Institutions dated 15.07.2024. Paragraph-6.1 of Chapter VI mentions 'Reporting of Incidents of Fraud to Reserve Bank of India (RBI)'. It is provided that to ensure uniformity and consistency while reporting incidents of fraud to RBI through Fraud Monitoring Returns (FMRs) using online portal, banks shall choose the most appropriate category from any one of the categories provided under that paragraph. Category (iv) refers to 'cheating by concealment of facts with the intention to deceive any person and cheating by impersonation'.

The present case revolves around this clause and, therefore, it has to be seen whether in this case the non concealment of RCL loan by the company to the Syndicate Bank amounted to cheating by concealment of fact with the intention to deceive the Syndicate Bank. Thus, requirement of this particular category is not mere concealment of facts, but it is coupled with the intention to deceive any person. Thus, in this case, it has to be decided whether concealment of RCL loan to the Syndicate Bank

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was made by the company with the intention to deceive Syndicate Bank.

33. The show-cause notice refers as to why it was issued for declaring the Petitioner's account as 'fraud'. The exact statement in the show-cause notice is as follows:

> "The borrower and its directors Sh. Prashanth Narayanan and Sh. Sony Ravindranath have actively concealed the fact that they have availed an unsecured loan from M/s. Reliance Capital Limited at the time of sanction of loan from our bank. The matter came to light only after the admission of the company petition bearing No.383/2023 before Hon'ble NCLT, Mumbai."

The contention, that matter came to light only after the admission of the company petition in the year 2023 before NCLT, Mumbai is not correct as can be seen from the record.

The e-mail dated 16.04.2021 issued by the Respondent No.1-Bank to the company mentioned in paragraph-4 as follows:

> "4. there are defaults with reliance for unsecured loan, company to provide full details of the loan and also regularise the same."

This shows that the Respondent No.1-Bank was aware of the loan from RCL, at least, in the year 2021 itself.

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34. The impugned order dated 01.04.2026 specifically records the company's contention that, at the time of availing the term loan, the company had provided the financial details to the bank as per the requirement of the bank and the same was provided on yearly basis. On 16.04.2021, in an e-mail addressed to the company, the bank conveyed the observations of the Central Auditor in which one of the observations was regarding the unsecured loans availed by the company and the company was instructed to regularize the same.

Having considered the company's contentions, it was held that, at the time of availing the facilities from the bank, the company and its Directors did not disclose the existence of previously sanctioned loan from RCL as disclosure of such information had a direct bearing on company's financial position and repayment capacity. Omitting such information amounted to suppression of material fact and vitiated the genuineness of loan application. Such non-disclosure amounted to false and misleading reporting. The company's reference to the e-mail dated 16.04.2021 did not absolve it from primary failure of disclosure at the time of loan sanction.

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35. The sanction letter dated 17.03.2017 issued by the Syndicate Bank to the company has a special paragraph titled as "OTHER TERMS & CONDITIONS". Clause 13 of that paragraph reads as follows:

> "13. Audited Financial Statement along with Audit report of the company as well as Due Diligence Certificate to be provided within seven months from the closure of the financial year. Penal interest shall be charged @1%p.a.

Thus, it was the duty cast on the company to furnish audited financial statement within seven months from the closure of the financial year. It is not the case of the Respondent No.1-Bank that such audited reports were never supplied by the company to the Respondent No.1-Bank. It is not the case that the loan given by RCL was not mentioned in the audited report of the company throughout the years from 2017 onwards.

Shri. Shinde, learned counsel for the Respondent No.1 submitted that the subsequent disclosure would not make any difference as the disclosure before sanction of loan was important, as it could have impacted the decision to grant loan and the bank could have imposed certain other security measures.

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36. In this case, we are testing whether said non disclosure was with intent to cheat the bank. If the company had never disclosed this fact and if the Bank was never aware of the fact of sanction of RCL loan, it would have been a different matter. But as stipulated in the sanction letter of the bank itself it was compulsory for the company to have furnished the audited report. There are no allegations that there was concealment in the audited report regarding the RCL loan. The bank never raised the issue of non disclosure of RCL loan at the time of sanctioning there own loan for a long period from the year 2017. In that context, we find force in the reliance of Mr. Joshi on the observations of the Hon'ble Supreme Court in the case of **Harjas Rai Makhija.** Paragraph-20 of the said judgment is important; which reads thus:

> **"20.** We agree that when there is an allegation of fraud by non-disclosure of necessary and relevant facts or concealment of material facts, it must be inquired into. It is only after evidence is led coupled with intent to deceive that a conclusion of fraud could be arrived at. A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent. To conclude in a blanket manner that in every case where relevant facts are not disclosed, the decree obtained would be fraudulent, is stretching the principle to a vanishing point."
>
> *(emphasis was on "intent to deceive")*

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37. As we have discussed, the company was bound to disclose the RCL loan immediately, at least, within seven months from the transaction with the Syndicate Bank, and hence, from the record it does not appear that there was any intent to conceal this fact. We are unable to agree with the submission of Shri. Shinde that concealment at the time of sanctioning the loan only mattered and subsequent disclosure made soon after was inconsequential, in this particular case. In the case of **Bhagwani Bai**, Madhya Pradesh High Court, in paragraph-11 has observed that, mere non-disclosure of fact, material or not, does not ordinarily amount to misrepresentation unless it was fraudulent.

38. Shri. Joshi relied on the observations of the Hon'ble Supreme Court in the case of ***Union of India and others Versus N. Murugesan and others***[4]**.** Paragraph-25 of the said judgment is important; which reads thus:

> **"25.** Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal

4 (2022) 2 Supreme Court Cases 25

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> to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."

39. The clauses in the original agreement between the Syndicate Bank and the company are important. Clause-10 of the said agreement dated 28.03.2017 has a heading "OTHER TERMS AND CONDITIONS". Sub-clause 10 of Clause-10 reads thus:

> "10. The Borrower shall submit Due Diligence Report from Company Secretary or Chartered Accountant or Cost Accountant of the borrower Company, on an annual basis."

Sub-clause 13 of Clause-10 reads thus:

> "13. The Lender reserves the right to periodically inspect their records and books of accounts to ensure the correctness of information furnished by them. Further, the Lender shall have a right to appoint any other independent consultants / agencies / auditors etc. as desired by them at any time during the tenor of the loan, the cost of which shall be borne by the Borrower."

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Sub clause 15 of Clause-10 reads thus:

> "15. Audited Financial Statement along with Audit report of the Borrower as well as Due Diligence Certificate to be provided within seven months from the closure of the financial year. In case of failure to do, penal interest shall be charged @1%p.a."

All these clauses give sufficient control to the lender bank to verify the documents and financial status of the borrower company. It is neither the case in the show-cause notice nor in the final order that such audit reports were never supplied by the company to the bank periodically or that the company prevented the bank from inspecting their reports. Therefore, it is not possible to accept that there was willful concealment with the intent to deceive the bank. Before sanctioning the loan, the bank on its own independently had to show due diligence. 'Defaults' are listed in Clause-23 of the said agreement. Sub-clause 10 of Clause-23 is about 'supply of misleading information'; which reads thus:

> "10. If any information given by the Borrower in its application for financial assistance or any representation/declaration/warranty under this Term Loan Agreement to the Lender or otherwise is false or misleading in any material respect."

40. If according to the bank, non disclosure of RCL loan was

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default under this sub-clause, the consequences of default were provided under sub-clause 18 (23.18.1); which reads as follows:

> "23.18.1. On the occurrence of an Event of Default and in the event the same is not cured within the cure period of 30 (thirty) days, any amount outstanding towards the Lender shall be immediately due and the Lender may through a written notice to the Borrower exercise all rights and remedies available to it by law, contract or in equity including without limitation, the following;
>
> 23.18.1.a. xxxxx
>
> 23.18.1.b. The Lender may suspend or terminate all or any undrawn commitments.
>
> 23.18.1.c. xxxxx
>
> 23.18.1.d. xxxxx
>
> 23.18.1.e. The Lender shall be entitled to recall any sums advanced to the Borrower and take recovery action against the Borrower including but not limited to action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
>
> 23.18.1.f. Exercise any and all powers which a receiver could exercise (under the Indenture of Mortgage) or by law.
>
> 23.18.1.g. Enter into and upon and take possession of the Leased Units and any future assets comprised in the Indenture of Mortgage and after the taking of such action, the Mortgagor (under the Indenture of Mortgage) shall take no action inconsistent with or prejudicial to the right of the Lender quietly to possess, use and enjoy the same and to receive the income, profits and

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> benefits thereof without interruption or hindrance by the Mortgagor (under the Indenture of Mortgage) or by any person or persons whomsoever, and upon the taking of such action, the Lender shall be freed and discharged from or otherwise by the Mortgagor (under the Indenture or Mortgage) well and sufficiently saved and kept harmless and indemnified of, from and against all former and other estates, titles, claims, demands and encumbrances whatsoever."

41. The important question is whether such non-disclosure would amount to 'fraud' and whether it was made with the intent to deceive the bank, as we have set out in our discussion.

42. From the above discussion, it is clear that the company had to disclose this RCL loan within a short period and not later than seven months from the closure of financial year 2017. Thus, at the cost of repetition, it has to be noted that, it is not the case that they had concealed the said loan even in their financial status or audited report for the financial year on 31.03.2017 onwards. The Lender bank had sufficient powers and safeguards under the said agreement to terminate the agreement immediately and to recover the amount forwarded to the company and to take over the property. In the year 2021, the Respondent No.1-Bank had sent

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an e-mail indicating that they were aware of the RCL loan. Thus, in spite of the knowledge, the bank chose not to terminate the agreement or take any action.

43. Section 25 of the IPC which was then applicable, defines 'Fraudulently' as follows:

> "25. "Fraudulently" – A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

In this definition also, 'intent' is an important ingredient. It has to be independently established.

44. Section 17 of the Contract Act, 1872 defines 'Fraud' as follows:

> "17. "Fraud" defined - "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :
>
> (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
>
> (2) the active concealment of a fact by one having knowledge or belief of the fact;
>
> (3) a promise made without any intention of performing it;
>
> (4) any other act fitted to deceive;
>
> (5) any such act or omission as the law specially declares to be fraudulent.
>
> Explanation.-Mere silence as to facts likely to affect

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> the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."

Under this provision also, 'intent' is an important consideration. Intent can be gathered from the attending circumstances.

45. The loan taken from RCL was not a secret document. The bank had means of discovering the said contract with ordinary due diligence. In the present case, the bank had all the means to examine the financial status of the borrower company before sanctioning the loan to the company. The bank was required to be given Financial Report of the company every year. The default and its consequences clauses referred to herein above gave sufficient power to the bank to take steps to even takeover the property of the company. The company stood to lose heavily by deliberate concealment of any relevant fact. Therefore, we do not find that there was intent on the part of the company to commit fraud on the bank.

46. As a result of the above discussion, we find merit in the

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submissions and the contentions raised on behalf of the Petitioner. Hence, we are inclined to allow the petition.

47. Hence, the following order:

O R D E R

i) Rule is made absolute in terms of prayer clause (a); which reads as follows:

> "a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction for quashing and setting aside the entire proceedings initiated vide the Show Cause Notice Ex C dated 23.06.2025 culminating into the Impugned Declaration Ex A dated 01.04.2026."

ii) The Petition is disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)

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