Yes Bank Ltd vs Wardha Nagari Sahakari Adhikosh (Bank) ... on 29 May, 2026

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Reserved on: 23.03.2026

Pronounced on: __.05.2026

CYBER APPEAL NO. 03 OF 2025

YES BANK Limited ...APPELLANT

Versus

Wardha Nagari Sahakari Adhikosh (Bank) & Ors ...RESPONDENTS

BEFORE:

HON'BLE MR. JUSTICE DHIRUBHAI NARANBHAI PATEL (CHAIRPERSON)

HON'BLE MR. SANJEEV BANZAL (MEMBER)

FOR APPELLANT	FOR RESPONDENT
Mr Kunal Tandon, Sr. Adv Ms Swikriti Singhania Mr Ranjeet Singh Sidhu Mr Gyanendra Rathor Ms Natasha Singh Mr. Kanishk Sachdeva	Mr Mahendra B Limaye For R-1 Ms Aditi Dixit for R 2-7 Mr Mohit Raj For R11 And R12; Ms Aprajita Kumar For Dr. Nityanand Singh For R13 And R14; Mr. Vijay Kumar for R-15 Mr. Ashish K Singh, Ms. Muskan Malhotra, Mr. Sidhant Malik for R-18 Mr. G K Mishra, Ms. Navika Malik, Mr. Manas Rai for R-21

JUDGEMENT

Per Justice D.N. PATEL, Chairperson

1. The present Appeal is preferred under Section 57(1) of the Information Technology Act, 2000 (hereinafter, "the IT Act") read with Rule 3(1) of the Cyber Appellate (Procedure) Rules, 2000. The Appellant assails the Impugned Order dated 11.02.2025 (hereinafter, the "Impugned Order") passed by the Learned Adjudicating Officer, Mumbai, in Complaint Case No. 01 of 2024.

2. By the Impugned Order, the Adjudicating Officer allowed the Complaint filed by the Respondent No. 1, herein, and directed the Appellant, YES Bank Limited, to refund a sum of 1,21,16,004/- (Rupees One Crore Twenty-One Lakhs Sixteen Thousand and Four only) together with compound interest at the rate of 18% per annum from the date of alleged contravention until full payment, and further directed payment of compensation amounting to 29,83,996/- (Rupees Twenty-Nine Lakhs Eighty-Three Thousand Nine Hundred and Ninety-Six only) towards loss of reputation, public trust, mental distress, and litigation expenses.

3. The Appellant challenges the Impugned Order primarily on the ground that it was passed in gross violation of the Principles of Natural Justice, specifically the doctrine of audi alteram partem. The Appellant contends that it was condemned unheard; that no notice of the final hearing was served upon it or its counsel at the correct email addresses duly communicated to the office of the Learned Adjudicating Officer.

4. Further, that the Appellant's applications seeking to summon material witnesses remained undisposed of; and that, consequently, it was deprived of any reasonable opportunity to present its case, lead evidence, or advance oral submissions before the adverse order came to be passed.

5. The factual matrix germane to the procedural challenge is culled out from the pleadings and the documentary evidence on record and is as follows:

> A. The Respondent No. 1, Wardha Nagari Sahakari Adhikosh (Bank) Maryadit (hereinafter, "the Complainant Bank"), is an urban cooperative bank operating in Wardha district, Maharashtra. The Appellant, YES Bank Limited, is a full-

service commercial bank with a pan-India presence. Pursuant to an agreement executed in the year 2013, the Complainant Bank availed sub-membership arrangements with the Appellant for RTGS and NEFT services and maintained a Current Account bearing No. xxxxxxxxxxxx0581 at the Appellant's Nagpur branch. B. The account was linked to the mobile number of an authorized officer of the Complainant Bank for the purpose of receiving transaction alerts.

C. It is from this banking relationship that the present controversy arises as on 24.05.2023, twenty-four electronic transactions aggregating to Rs. 1,21,16,004/- came to be processed from the aforesaid current account of Respondent No. 1 and were transferred to twenty-four separate beneficiary accounts maintained with various banks, who now stand arrayed as Respondent Nos. 2 to 24 in the present appeal.

D. The Complainant Bank alleged that these transactions were unauthorized and fraudulent. Upon being informed, the Appellant initiated recall requests with the beneficiary banks on the same day.

The Complainant Bank lodged a First Information Report with the Wardha Cyber Crime Cell on 25.05.2023, and an investigation ensued. E. The Appellant also engaged M/s Ernst & Young LLP, an independent forensic audit firm, to conduct an analysis of the incident, and two reports being an Interim Report was submitted in June 2023, followed by a Final Forensic Report in September 2023.

F. Thereafter, on 01.11.2023, Respondent No. 1 instituted Complaint Case No. 01 of 2024 before the Ld. Adjudicating Officer, Maharashtra, under Sections 43(a), 43(g), and 43A of the Information Technology Act, 2000, seeking refund of the aforesaid sum of Rs. 1,21,16,004/-, together with compensation quantified at Rs. 29,83,996/- under various heads including loss of reputation, public confidence, mental harassment, and litigation expenses. G. The record discloses that the complaint remained pending for some time, subsequently, a writ petition was moved before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, and by order dated 01.08.2024, the Adjudicating Officer was directed to decide the complaint expeditiously and, in any event, within a period of four months from production of the order.

H. Consequent to the Hon'ble High Court's directive, on 22.10.2024, the Ld. Adjudicating Officer issued a notice, by email as well as speed post, fixing the matter for hearing on 29.10.2024. The Appellant states that the speed post notice was received by it on 24.10.2024 and that, upon verification, it was found that the email addresses reflected in the notice did not correctly mention the Appellant's service coordinates. On 29.10.2024, the Appellant appeared before the Adjudicating Officer and time was granted for filing reply.

I. As indicated from the record that on the same date, the Appellant addressed a formal email communication to the official email ID of the Adjudicating Officer's office (Annexure A-10), specifically furnishing the correct email addresses of the Appellant and its legal representatives for all future service and communication, the aforesaid communication contained following Email addresses:

> • external.communication@yesbank.in • yesbank.learesponse@yesbank.in • mumbai@saikrishnaassociates.com • navankur@saikrishnaassociates.com J. The Appellant on 12.11.2024, sought a short extension of time to file its reply, and on 14.11.2024, it filed its reply/written statement to the complaint. Thereafter, on 18.11.2024, Respondent No. 1 filed its rejoinder, and on 27.11.2024, the Appellant filed its sur-rejoinder.

K. The record further shows that on 05.02.2025, the Appellant filed two applications before the Adjudicating Officer, one seeking summoning of the Investigating Officer concerned with the FIR and investigation; and the other seeking summoning of the concerned officials of Ernst & Young, the forensic auditors.

L. The grievance of the Appellant is that these applications were neither meaningfully taken up nor disposed of by any reasoned order prior to pronouncement of the impugned order.

M. A further notice dated 06.02.2025 came to be issued by the office of the Adjudicating Officer for the final hearing fixed on 11.02.2025. The Appellant asserts that this notice was not served at the corrected email addresses furnished by the authorized individual of the Appellant on 29.10.2024, with the consequence that neither the Appellant nor its legal representatives had any knowledge of the final hearing.

N. It is further the Appellant's case that, on account of such defective service, neither it nor its counsel was present on 11.02.2025 when the complaint was taken up and decided. O. The Ld. Adjudicating Officer proceeded to take up the matter on 11.02.2025 in the absence of the Appellant and its counsel and passed the impugned order, allowing the complaint in favour of Respondent No. 1 and directing the Appellant to refund Rs. 1,21,16,004/- together with compound interest @ 18% from the date of contravention till payment, and additionally to pay Rs. 29,83,996/- towards compensation.

P. The Appellant's further grievance is that a copy of the impugned order was not supplied to it by the office of the Adjudicating Officer in the ordinary course, but was received only on 20.02.2025 through the counsel for Respondent No. 1.

Q. Thereafter, on 21.02.2025, the Appellant's counsel addressed an email to the Adjudicating Officer specifically pointing out that no notice of the final hearing had been received and asserting that the hearing notice had not been sent to the correct addresses earlier furnished by the Appellant.

R. The Appellant thereafter preferred a review/recall application before the Ld. Adjudicating Officer on 20.03.2025, seeking the recall of the impugned order on the grounds of procedural infirmity and denial of natural justice.

S. According to the Appellant, the said review application has remained unattended and has not been listed for consideration till the date of the present appeal. In the interregnum, the Complainant Bank filed an execution application on 21.03.2025, seeking enforcement of the impugned order.

6. That being aggrieved thereby, the Appellant instituted the present appeal before this Tribunal on 02.04.2025 and vide Order Dated 08.04.2025, this Tribunal admitted the appeal, directed issuance of notice by dasti and email and in view of the peculiar facts of the present case, stayed the operation, implementation and execution of the impugned order till the next date of hearing.

7. Thereafter, on 25.07.2025, this Tribunal heard learned counsel for the parties at some length and recorded the submissions of the appellant that, before the Adjudicating Officer, reply, rejoinder and sur-rejoinder had been filed; that the two applications dated 05.02.2025 for summoning the Investigating Officer and the forensic auditor were not acted upon; that the matter was taken up for final hearing on 11.02.2025 without notice to the appellant; and that even the recall application filed after the impugned order had not been decided.

8. That vide order dated 25.07.2025, this Tribunal also recorded the submission of Respondent No. 1 that the procedure followed by Adjudicating Officers under Section 46 of the Information

Technology Act varied from State to State and required uniformity.

9. ISSUES INVOLVED The following issues are involved in the present Cyber Appeal, which need due consideration of this Hon'ble Tribunal are as follows:

> I. Whether the procedure adopted by the Learned Adjudicating Officer in passing the Impugned Order dated 11.02.2025 satisfies the mandatory requirement of a reasonable and effective opportunity of hearing under Section 46 (2) of the Information Technology Act, 2000 read with Rules 4 (c), 4 (d), 4 (h), 4 (j) and 7 of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003?

II. Whether the said order is liable to be set aside on the ground of violation of the Principles of Natural Justice, particularly the doctrine of audi alteram partem?

ARGUMENTS CANVASSED BY THE APPELLANT

10. It is submitted by Learned Senior Counsel for the Appellant that the impugned order dated 11.02.2025 stands vitiated by a fundamental breach of the principles of natural justice and the mandatory statutory requirement of a reasonable opportunity of hearing under Section 46(2) of the Information Technology Act, 2000 read with Rules 4 and 7 of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003.

11. Learned Senior Counsel for the Appellant, submitted that if the Impugned Order is found to have been passed in violation of the Principles of Natural Justice, it must be set aside irrespective of the merits, and the matter must be remanded for a fresh adjudication in accordance with law.

12. Learned Senior Counsel submits that the Adjudicating Officer proceeded to pass the Impugned Order without ensuring that the Appellant had been served with a valid notice of the final hearing date. He draws our attention to a clear and uncontroverted documentary trail:

> A. The initial notice dated 22.10.2024, fixing the hearing on 29.10. 2024. On the face of this notice, it is recorded that the email addresses used were "provided by complainant." The Appellant, upon receiving the speed post notice on 24.10.2024, discovered that its correct email address was not reflected. The aforesaid notice is contained at Annexure A-9 of the memo of this appeal.

B. A formal email communication sent by the Appellant's Counsel to the official email ID of the Adjudicating Officer's office on 29.10.2024 at 4:26 PM. This communication expressly stated that the Appellant's email address was not mentioned in the previous notice and provided four specific email addresses for all future correspondence. The aforesaid communication is contained at Annexure A-10 of the memo of this appeal. C. The notice for the final hearing, purportedly dated 06.02. 2025, fixing the hearing on 11.02.2025, this notice did not contain any of the four email

addresses provided in Annexure A-10. Consequently, neither the Appellant nor its Counsel received any intimation whatsoever of the final hearing date.

13. Learned Senior Counsel contends that an email dated 21.02.2025, sent by the Appellant's Counsel to the Adjudicating Officer's office after physically inspecting the case papers. The email confirms that the Notice dated 06.02.2025, was not sent to the correct email addresses and draws attention to the factual inaccuracy in the Impugned Order regarding service of notice.

14. Learned Senior Counsel contends that this documentary evidence stands unrebutted. Respondent No. 1, in its Reply Affidavit, has neither denied the existence of Annexure A-10 nor produced the Notice dated 06.02.2025 to demonstrate that it was, in fact, sent to the correct addresses. In the face of this silence, the Appellant's version must be accepted.

15. Learned Senior Counsel further submitted that the finding recorded by the Adjudicating Officer in paragraph IV.1 of the Impugned Order that "despite due notice, the learned counsel for Respondent No. 1 failed to appear" is factually incorrect and legally unsustainable. The Appellant did not "fail to appear"; it was never informed of the hearing. The right to a fair hearing, which is the very essence of the audi alteram partem rule, was thus completely denied.

16. Learned Senior Counsel submits that the Appellant had, from the very inception of the proceedings, consistently requested an opportunity for oral hearing. The Impugned Order itself acknowledges, at paragraph IV.1, that the Appellant's Counsel "appeared only once and duly submitted the Written Statement... wherein a request for a hearing was made."

17. Having acknowledged the request, and having scheduled a final hearing in response to it, the Adjudicating Officer was duty- bound to ensure that the Appellant was actually informed of that hearing date. The failure to serve the notice at the correct address rendered the scheduling of the hearing an empty formality and deprived the Appellant of the very opportunity it had sought.

18. Learned Senior Counsel submitted that the matter involved complex questions of fact and law cyber forensic evidence, competing expert reports, regulatory compliance, and multi- party liability and such a matter could not be justly determined merely on the basis of written pleadings, without affording the parties an opportunity to address arguments, clarify submissions, and respond to queries from the adjudicator. The denial of an oral hearing has caused grave and irreparable prejudice to the Appellant.

19. Learned Senior Counsel submitted that the two applications were filed by the Appellant on 05.02.2025 (Annexures A-14 and A-15). These applications were filed under Section 46 (5) of the IT Act, which confers on the Adjudicating Officer the powers of a civil court, including the power to summon witnesses, and sought to summon:

> A. The Investigating Officer of the Wardha Cyber Crime Cell, who had investigated the FIR and filed a charge-sheet; and B. The officials of M/s Ernst & Young LLP, the independent forensic auditor, to provide testimony on their findings.

20. Learned Senior Counsel submitted that the Impugned Order is entirely silent on these applications. They were neither listed for hearing, nor were they allowed or rejected by a reasoned order. The Adjudicating Officer proceeded to pronounce a final judgment without even acknowledging, let alone disposing of, pending interlocutory applications that went to the very heart of the Appellant's defense.

21. Learned Senior Counsel submitted that, this is a fundamental procedural lapse that further vitiates the proceedings. A party has a right to have its applications for leading evidence considered and decided before the main matter is adjudicated upon.

22. Learned Senior Counsel also drew our attention to the observations made by this Tribunal in its order dated 25.07.2025, wherein it was noted that the procedure before Adjudicating Officers lacks consistency and that the practice of issuing fresh notices for every hearing, without assigning a fixed next date in the presence of the parties, is prone to failure and leads to precisely the kind of denial of natural justice witnessed in the present case.

23. The Appellant, in its Written Submissions, has offered constructive suggestions for streamlining the procedure, including the mandatory assignment of next hearing dates in the presence of parties and the maintenance of a cause list. These suggestions, it is submitted, may be considered by this Tribunal for issuance of general guidelines.

ARGUMENTS CANVASSED BY RESPONDENTS

24. Mr. Mahendra Limaye, Learned Counsel appearing for Respondent No. 1, has mounted a vigorous opposition to the present Appeal and has endeavoured to sustain the validity of the Impugned Order dated 11.02.2025.

25. The principal contention advanced on behalf of Respondent No. 1 is that the Appellant was afforded ample and adequate opportunity to present its case before the Learned Adjudicating Officer.

26. Learned Counsel points to the fact that the Appellant filed a comprehensive Reply (Written Statement) on 14.11.2024, followed by a Sur-Rejoinder on 27.11.2024, and further moved two substantive interlocutory applications on 05.02.2025 seeking the summoning of witnesses.

27. It is submitted that these pleadings and applications were duly received, placed on record, and considered by the Adjudicating Officer prior to the pronouncement of the Impugned Order. In this factual setting, it is argued that the Appellant cannot legitimately complain of a denial of opportunity to be heard.

28. Learned Counsel has placed reliance upon the statutory provisions contained in Section 46(2) of the Information Technology Act, 2000, read with Rule 4 of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003.

29. It is submitted that these provisions envisage a summary adjudicatory procedure founded upon the complaint, any attendant investigation reports, and the written submissions exchanged between the parties. The Adjudicating Officer, having arrived at a considered opinion on the basis of the material available on the record, was fully competent to pronounce the Impugned Order.

30. Learned counsel for the Respondent No. 1 made specific reference to Rule 4 (h), which empowers the Adjudicating Officer to proceed ex parte in the event of non-appearance by a party after due notice, and it is contended that this power was legitimately exercised in the facts of the present case.

31. Learned Counsel for the Respondent No. 1 has placed on record the order dated 01.08.2024 rendered by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, in Writ Petition No. 4474 of 2024 (Annexure P-3). Wherein the Hon'ble High Court directed the Ld. Adjudicating Officer to decide the matter with expedition and, in any event, within a period of four calendar months from the date of production of the said order.

32. Learned Counsel submits that the Adjudicating Officer acted in strict compliance with this judicial mandate and concluded the proceedings within the timeframe stipulated by the High Court. It is urged that the Appellant's grievance regarding the alleged want of adequate time or opportunity must be evaluated against this backdrop; the Adjudicating Officer was duty-bound to adhere to the timeline prescribed by the superior court. In summation, Respondent No. 1 prays that the present Cyber Appeal be dismissed with exemplary costs and that the Impugned Order dated 11.02.2025 be upheld in its entirety.

33. At the later stage of hearing before this Tribunal, Respondent No. 1 also placed on record a suggestion note concerning the procedure to be followed by Adjudicating Officers under Section 46 of the Information Technology Act.

34. In the said note, Respondent No. 1 proposed a structured and time-bound adjudicatory schedule beginning from filing of the complaint and extending up to pronouncement, with provision for hybrid hearings, an additional hearing in the event of non- appearance, specific communication of the next date of hearing on the hearing date itself, and recording of virtual proceedings.

35. In so far as Respondent Nos. 13 and 14, namely the concerned branches of Federal Bank, being the Kolkata (C.R. Avenue) and Bangalore (Gandhi Nagar) branches of Federal Bank, respectively, have filed a Short Reply before this Tribunal.

36. It is submitted that the facts of their case are that upon receipt of the recall communication from the Appellant on 24.05.2023, they acted promptly by placing a debit freeze and marking lien on the concerned beneficiary accounts.

37. It is submitted by learned Counsel appearing for Respondent No. 13 & 14, that two accounts that had received the disputed credits, one is in the name of Arabindu Barman at the Kolkata branch and the other in the name of Sharath J at the Bengaluru branch. However, by the time action could be

taken, the funds had already been withdrawn or transferred onward, leaving insufficient balance for reversal and that no actionable deficiency lies on their part and that the appeal, in so far as it concerns them, deserves to be dismissed.

38. Further, Respondent No. 15 has filed a short reply stating that two disputed credits, amounting to Rs. 4,90,800/- and Rs. 4,79,080/-, were received on 24.05.2023 in the account of one Jagadish Reang maintained at its Malleshwaram Branch, but that the said amounts had already been withdrawn by the customer on the same day.

39. It further stated that, upon receipt of the Appellant's recall email dated 24.05.2023, it marked lien on the account and informed the Appellant that reversal was not possible because the funds had already been withdrawn. On that foundation, Respondent No. 15 contends, that it had no role in the fraud, that there was no deficiency on its part, that no cause of action arises against it, and that the appeal, as against it, is liable to be dismissed with costs.

40. Thus, broadly stated, Respondent No. 1 has sought to sustain the impugned order by asserting that adequate opportunity was granted to the appellant, that the Appellant was substantively liable under the Information Technology Act, and that no equitable relief should be granted to a party which, according to it, has not approached the Tribunal with clean hands and Respondent Nos. 13, 14, and 15 have confine themselves to their respective transactional roles as beneficiary-bank respondents.

REASONS AND ANALYSIS

-ISSUE No. I -

41. Whether the procedure adopted by the Ld. Adjudicating Officer in passing the Impugned Order dated 11.02.2025 satisfied the mandatory requirement of a reasonable and effective opportunity of hearing under Section 46 (2) of the Information Technology Act, 2000 read with Rules 4 (c), 4

(d), 4 (h), 4 (j) and 7 of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003 ?

42. It is in the backdrop of the aforesaid factual and procedural developments and argument canvassed by the counsel for both the parties that the present appeal falls for consideration. Since the appeal, as pressed, principally raises a challenge to the legality and fairness of the adjudicatory process culminating in the impugned order dated 11.02.2025.

43. That it has become necessary to first examine whether the Adjudicating Officer proceeded in accordance with the mandate of Section 46 of the Information Technology Act, 2000, read with the applicable Rules governing notice, inquiry, hearing, and exercise of procedural powers, before considering the consequence that ought to follow.

44. The contours of the Adjudicating Officer's jurisdiction, powers, and most significantly procedural obligations are defined by Section 46 of the Act, read with the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003 (hereinafter, "the 2003 Rules").

45. It is pertinent to denote that Section 46 of the Information Technology Act, 2000 provides the foundational statutory mandate, which lies at the heart of the present controversy and reads as follows:

"46. Power to adjudicate.--

(1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, direction or order made thereunder which renders him liable to pay penalty or compensation, the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

(1A) The adjudicating officer appointed under sub-

section (1) shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore:

> Provided that the jurisdiction in respect of the claim for injury or damage exceeding rupees five crores shall vest with the competent court.
>
> (2) The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.
>
> (3) No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.
>
> (4) Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.
>
> (5) Every adjudicating officer shall have the powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 58, and

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) shall be deemed to be a civil court for purposes of Order XXI of the Civil Procedure Code, 1908 (5 of 1908)."

46. The bare reading of Section 46 of the IT Act, 2000 would indicate that the statutory requirements enshrined under Section 46 is threefold. First, sub-section (2) is couched in mandatory language and requires the Adjudicating Officer to give the person proceeded against a "reasonable opportunity for making representation in the matter." Second, the inquiry contemplated by the provision is not an empty ritual or formality; it is the very jurisdictional foundation upon which satisfaction as to contravention and consequential award of compensation must rest. Third, sub-section (5) recognises that the Adjudicating Officer is not a mere administrative functionary but a quasi-judicial authority vested with powers analogous, to the extent specified, to those of a civil court.

47. Having regard to the above, it would be expedient and prudent to visit Rule 3 of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003, which reads as follows:

"3. Eligibility for Adjudicating Officer:--

Whereas the purpose and intent of Section 46(3) of IT Act is that the Adjudicating Officer should be a person so qualified and experienced to take decisions with a view in relation to Information Technology aspects as well as in a position to determine the complaints keeping in view the legal or judicial mannerism on the principle of compensation of damages of IT Act.

A person shall not be qualified for appointment as Adjudicating Officer unless the person--

(a) Possesses a University graduate Bachelor degree or equivalent, recognized by Central Government / State Government for the purpose of recruitment to grade I Service in a Government Department through Union / State Public Service Commission;

(b) Possesses Information Technology experience in the areas of relevance to public interface with Central / State Government functioning and experience obtained through the in-service training imparting competence to operate computer system to send and receive e-mails or other information through the computer network, exposure and awareness about the method of carrying information, data, sound,

images or other electronic records through the medium of network including Internet;

(c) Possesses legal or judicial experience to discharge responsibilities connected with the role of Central / State Government in respect of making decisions or orders in relation to administration of laws as a District Magistrate, or Additional District Magistrate or Sub-Divisional Magistrate or an Executive Magistrate or in other administrative or quasi-judicial capacity for a cumulative period of 5 years;

(d) Is working and holding a post in Grade I in Government Department either in State Government/Union Territories to perform functional duty and discharge job responsibility in the field of Information Technology;

(e) Is an in-service officer not below the rank of Director to the Government of India or an equivalent officer of State Government."

48. The perusal of Rule 3 leaves no manner of doubt that the Adjudicating Officer is expected to possess a dual competence one in Information Technology and the other in legal or quasi- judicial decision-making. This statutory design is of some importance to the present issue, for it militates against any suggestion that proceedings before the Adjudicating Officer may be conducted in an informal or unstructured fashion which is unconstrained by the discipline of fair procedure.

49. The manner in which the inquiry is to be held is then prescribed by Rule 4. Since the present issue directly turns on the content of that rule, it is appropriate to reproduce the relevant rule in extenso and therefore, Rule 4 of the 2003 Rules reads as under:

"4. Scope and Manner of holding inquiry: -

(a) The Adjudicating Officers shall exercise jurisdiction in respect of the contraventions in relation to Chapter IX of IT Act 2000 and the matter or matters or places or area or areas in a State or Union Territory of the posting of the person.

(b) The complaint shall be made to the Adjudicating Officer of the State or Union Territory on the basis of location of Computer System, Computer Network as defined in sub-Section 2 of Section 75 of IT Act on a plain paper on the Proforma attached to these Rules together with the fee payable calculated on the basis of damages claimed by way of compensation.

(c) The Adjudicating Officer, shall issue a notice together with all the documents to all the necessary parties to the proceedings, fixing a date and time for further proceedings. The notice shall contain such particulars as far as may be as to the time and place of the alleged contravention, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed.

(d) On the date so fixed, the Adjudicating Officer shall explain to such person or persons to whom notice is issued about the contravention alleged to have been committed in relation to any of the provisions of the Act or of any rule, regulation, direction or order made there under.

(e) If the person in respect of whom notice is issued pleads guilty, the Adjudicating Officer shall record the plea, and may impose penalty or award such compensation as he thinks fit in accordance with the provisions of the Act, rules, regulations, order or directions made there under.

(f) Alternatively on the date fixed the person or persons against whom a matter is filed may show cause why an enquiry should not be held in the alleged contravention or that why the report alleging the contravention should be dismissed.

(g) The Adjudicating Officer on the basis of the report of the matter, investigation report (if any), other documents and on the basis of submissions shall form an opinion that there is sufficient cause for holding an enquiry or that the report into the matter should be dismissed and on that basis shall either by order dismiss the report of the matter, or shall determine to hear the matter.

(h) If any person or persons fails, neglects or refuses to appear, or present himself as required by sub-

rule (d), before the Adjudicating Officer, the Adjudicating Officer shall proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

(i) At any time or on receipt of a report of contravention from an aggrieved person, or by a Government agency or suo-moto, the Adjudicating Officer, may get the matter or the report investigated from an officer in the Office of Controller or CERT-IND or from the concerned Deputy Superintendent of Police, to ascertain more facts and whether prima facie there is a case for adjudicating on the matter or not.

(j) The Adjudicating Officer, shall fix a date and time for production of documents or evidence and for this purpose may also rely on electronic records or communications and as far as may be, shall use or make available the infrastructure for promoting on-line settlement of enquiry or disputes or for taking evidence including the services of an adjudicating officer and infrastructure in another State.

(k) As far as possible, every application shall be heard and decided in four months and the whole matter in six months.

(l) Adjudicating Officer, when convinced that the scope of the case extends to the Offence(s) (under Chapter Xl of IT Act) instead of Contravention, needing appropriate punishment instead of mere financial penalty, should transfer the case to the Magistrate having jurisdiction to try the case,

through Presiding Officer."

50. Having perused the above, it appears that Rule 4 makes the procedural sequence abundantly clear. A notice with all documents must first be issued, fixing the date and time of further proceedings. On the date so fixed, the Adjudicating Officer must explain the allegation. If the party does not admit guilt, the Officer must consider whether inquiry should proceed.

51. It is apparent that only thereafter may the matter be heard and adjudicated. Crucially, the ex parte route provided under Rule 4 (h) is not an independent power existing in the abstract; it is expressly conditional upon the person failing, neglecting, or refusing to appear "as required by sub-rule (d)". In other words, due notice of the date fixed is a condition precedent to lawful exercise of the ex parte power.

52. The office of Adjudicating Officer under section 46 of the IT Act, 2000 was formalized by appointment framework issued by the Central Government's order dated 25.03.2003, issued and notified in Gazette Notification as Order No. G.S.R. 240 (E). The said order states as follows:

> "G.S.R. 240(E).-- In exercise of the powers conferred by sub-section (1) of section 46 of the Information Technology Act, 2000, the Central Government hereby makes the following order/appointments, viz.--
>
> 1. Whereas Sub-section (1) of the Section 46 makes provision for appointment of one or more Adjudicating Officers not below the rank of Director to the Central Government and Sub-section (3) requires that such an officer should possess experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government and whereas such experience necessary for appointment as Adjudicating Officer has been notified by the Central Government as per the Gazette Notification for Information Technology Rules, 2003 under the short title Qualification and Experience of Adjudicating Officer and Manner of Holding Enquiry vide Gazette Notification G.S.R. 220(E) dated 17th March, 2003.
>
> 2. Further, whereas the Secretary of the Department of Information Technology of each of the States or Union Territories are normally not below the rank of Director and possess the requisite experience in the field of Information Technology and also possess legal/judicial experience as required, therefore the Secretary of Department of Information Technology of each of the States or of Union Territories is hereby appointed as Adjudicating Officer for the purpose of the Information Technology Act, 2000.
>
> 3. The Department of Information Technology of each of the States or of Union Territories shall provide the infrastructure and maintain the records of the matters handled by Adjudicating Officer functioning in the States/Union Territories."

53. Since service of notice is itself the central dispute in the peculiar facts of the present case, it is incumbent upon us that Rule 7 must also be reproduced in full and it reads as under:

> "7. Service of notices and orders: -A notice or an order issued under these rules shall be served on the person in any of the following manners, that is to say: -
>
> (a) by delivering or tendering it to that person or the person's authorized agent in an electronic form provided that there is sufficient evidence of actual delivery of the electronic record to the concerned person; or
>
> (b) by sending it to the person by registered post with acknowledgement due to the address of his place of residence or the last known place of residence or business place;
>
> (c) if it cannot be served under clause (a) or (b) above then by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain."

54. Upon careful examination, two facets of Rule 7 are immediately apparent. First, where electronic service is relied upon, the rule requires not merely dispatch but "sufficient evidence of actual delivery." Second, the rule sets out a hierarchy in manner service ought to be effectuated the said being electronic service; failing that, service by registered post with acknowledgment due; and only if both fail, service by affixation in the presence of witnesses.

55. The rule, therefore, does not treat service as a matter of convenience; rather the language employed in Rule 7, treats it as a matter of procedural legitimacy as quasi-judicial proceeding are being undertaken by adjudicating officer.

56. Thus, the legal position is clear. The statutory and delegated framework contemplates that adjudication under Section 46 is to be carried out by a properly qualified quasi-judicial authority, equipped with both technological and legal competence, and operating under a defined procedure of notice, inquiry, hearing, and service. The existence of such a carefully structured framework itself militates against any attempt to reduce the requirement of hearing to a mere formality.

57. The first issue goes to the root of the adjudicatory process.

At this stage, this Tribunal is not adjudicating the correctness or otherwise of the rival contentions on the merits of the alleged cyber fraud. The anterior and determinative question is whether the Impugned Order dated 11.02.2025 came to be passed in a manner consistent with the minimum statutory safeguards that the Information Technology Act, 2000 and the 2003 Rules insist upon before civil liability by way of compensation is imposed upon any person.

58. If the procedural foundation is found to be infirm, the merits cannot be permitted to cure the defect; for the right to be heard is anterior to, and independent of, the question whether the person proceeded against has a meritorious defence. The record, as it has unfolded before this Tribunal, discloses the following sequence of procedural events which are either admitted or uncontroverted.

59. The Complaint was filed by the Respondent Bank on 01.11.2023. For a period of nearly one year thereafter, no effective steps appear to have been taken by the office of the Learned Adjudicating Officer to advance the proceedings. It was only upon the Respondent Bank approaching the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, in Writ Petition Number 4474 of 2024, that the Hon'ble High Court, by an Order dated 01.08.2024, directed the Learned Adjudicating Officer to decide the complaint expeditiously and in any event within four months.

60. The first notice was issued on 22.10.2024, fixing the hearing on 29.10.2024. The record shows and indeed the face of the notice itself (Annexure A-9) discloses that the email addresses contained therein were "provided by complainant," that is to say, furnished by the Respondent Bank and not independently verified by the office of the Learned Adjudicating Officer. The Appellant received this notice at its Nagpur Branch by speed post on 24.10.2024, giving it effectively five days' notice of the first hearing.

61. On 29.10.2024, the Counsel for the Appellant appeared before the Learned Adjudicating Officer for the first time. On the same date, at 4:26 PM, the Counsel addressed a formal email to the office of the Learned Adjudicating Officer (Annexure A-10), expressly drawing attention to the fact that the Appellant's correct email address was not mentioned in the notice dated 22.10.2024, and furnishing four correct email addresses for all future communications, being:

(i) external.communication@yesbank.in;

(ii) yesbank.learesponse@yesbank.in;

(iii) mumbai@saikrishnaassociates.com;

(iv) navankur@saikrishnaassociates.com.

62. Thereafter, the Appellant actively and continuously participated in the proceedings before the Learned Adjudicating Officer. On 14.11.2024, the Appellant filed its Reply to the Complaint. On 18.11.2024, the Respondent Bank filed its Rejoinder.

63. Furthermore, on 27.11.2024, the Appellant filed its Sur- Rejoinder, annexing therewith SMS delivery logs and on 05.02.2025, the Appellant filed two substantive Applications one seeking the summoning of the Investigating Officer of the Wardha Cyber Crime Cell, and the other seeking the summoning of officials of Ernst and Young LLP, the forensic auditor both invoking the powers of the Learned Adjudicating Officer under Section 46(5) of the IT Act. The decisive question for our consideration as formulated in Issue No.1, then, is whether the notice dated 06.02.2025 fixing the final hearing on 11.02.2025 was effectively served upon the Appellant in the manner required by

Rule 7 of the 2003 Rules.

64. It is the case of the Appellant that the Notice dated 06.02.2025 did not contain any of the four email addresses furnished by the Appellant's Counsel on 29.10.2024. This assertion is supported by the email dated 21.02.2025 (Annexure A-16) wherein the Appellant's Counsel records that upon visiting the office of the Learned Adjudicating Officer on 21.02.2025 and physically inspecting the case papers, it was confirmed that the Notice dated 06.02.2025 did not mention the email addresses communicated on 29.10.2024.

65. The relevant wording of the said email dated 21.02.2025 reads as "it is clear that Yes Bank and/or Saikrishna & Associates did not receive any prior intimation of the date of Final Arguments, which if intimated, we would have been present to justify Yes Bank's positions and to press our pending Applications."

66. The Respondent No.1, in its Reply Affidavit filed before this Tribunal, has not produced any material to demonstrate that the Notice dated 06.02.2025 was in fact transmitted to the corrected email addresses, or that there existed, within the meaning of Rule 7 (a) of the 2003 Rules, "sufficient evidence of actual delivery of the electronic record" to the Appellant or its authorised representatives.

67. The Respondent Bank has not produced a copy of the Notice dated 06.02.2025 to show, on the face of the document, that it bore the correct addresses. The Respondent Bank has not placed on record any email dispatch log, read receipt, delivery confirmation, or any other form of proof establishing that the notice reached the intended recipients.

68. Once the position as that has been reached as in the facts of the present case, the resort to Rule 4 (h) of the 2003 Rules becomes legally untenable. The power to proceed in the absence of a party, as conferred by Rule 4(h), is not a free- standing or self-executing power. It is expressly conditional upon the person having failed, neglected, or refused to appear "as required by sub-rule (d)."

69. In other words, the rule contemplates a sequence, being, first, a valid notice under Rule 4(c) fixing a date and time; second, the person so notified is required, on the date so fixed, to appear as contemplated by Rule 4(d); and only thereafter, if the person fails, neglects, or refuses to appear despite such valid notice, may the Adjudicating Officer proceed in the person's absence, and that too only "after recording the reasons for doing so." Each of these conditions is a jurisdictional prerequisite to the valid exercise of the ex parte power.

70. Needless to state that a party that deliberately stays away after effective service stands on a wholly different footing from a party that had no knowledge of the hearing because the notice itself was not effectively served at the correct address.

71. In the present case, since the notice of the final hearing has not been shown to have been served at the corrected addresses furnished by the Appellant, the very premise upon which the Learned Adjudicating Officer proceeded to pass the Impugned Order in the absence of the Appellant namely,

that the Appellant had failed to appear "despite due notice"

cannot be accepted as established.

72. The above infirmity is compounded by the treatment, or more accurately, the complete non-treatment, of the two Applications dated 05.02.2025. Those Applications sought the summoning of the Investigating Officer and the officials of Ernst and Young LLP to provide testimony regarding the forensic reports and the findings of the police investigation.

73. Whether those Applications were liable to be allowed or rejected is not the point presently in issue; what is material is that they were pending before the Learned Adjudicating Officer when the matter was taken up for final disposal, and the Impugned Order does not disclose any consideration of them indeed no reference of any kind.

74. The text of Section 46 (5) of the IT Act recognises that the Adjudicating Officer carries certain powers akin to those of a civil court, including the power to summon and examine witnesses and Rule 4 (j) of the 2003 Rules, specifically contemplates the fixation of a date and time for production of documents or evidence.

75. In a technically contested matter such as the present one, where the dispute involved rival contentions regarding the origin and cause of a cyber fraud, the adequacy of security measures, the interpretation of forensic reports, and the significance of investigative findings, applications seeking expert and investigative testimony are not trivial procedural incidents.

76. The complete disregard of such substantive application before final adjudication constitutes a material procedural omission on the part of Adjudicating Officer. Having conspectus of the above sequence of event this Tribunal is unable to treat such omission as merely inconsequential in nature, particularly, when the final hearing itself is shown to have been held in the absence of the Appellant and without effective notice.

77. The Ld. Counsel for Respondent No.1, has vigorously argued that the filing and consideration of written pleadings, being, the Reply, the Rejoinder, the Sur-Rejoinder, and the Applications constituted sufficient compliance with the requirement of reasonable opportunity under Section 46(2) of the IT Act. This Tribunal is unable to accept this submission.

78. Mere act of the filing of a written statement, rejoinder, or sur-

rejoinder represents a component of participation in the proceedings; it is not the equivalent of a "reasonable opportunity for making representation" when the statute requires such representation to be made after notice and upon inquiry, and when the party has specifically requested an oral hearing and has further sought the summoning of expert witnesses to adduce testimony.

79. To hold that the exchange of written pleadings alone satisfied the statutory requirement would be to collapse the distinction between filing a defence on the one hand and being heard upon it on

the other and perusal of the text of Section 46 (2) of the IT Act read with the 2003 Rules, does not permit such a reduction. The statute contemplates inquiry and representation; it does not contemplate unilateral disposal upon the record without affording the party sufficient and reasonable opportunity to present his case.

80. Whether the Appellant's defence on the merits is strong or weak, or whether it has suppressed anything germane to the substantive banking dispute, are questions which fall for determination on an appropriate record after a fair hearing. The right to notice and hearing under Section 46 (2) of the IT Act and Rules 4 and 7 of the 2003 Rules is a statutory entitlement anterior to the merits controversy.

81. Much has been argued by learned counsel for Respondent No. 1, relying on the order dated 01.08.2024 of the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, directing expeditious disposal of the complaint within four months. We are sanguine of the order dated 01.08.2024 of the Hon'ble Bombay High Court.

82. However, a direction for speedy disposal cannot be construed as dispensing with notice, hearing, or service requirements expressly embedded in the Act and Rules. Speed may shorten time; it cannot abrogate fairness and due process. Expedition and fairness are not competing or opposing values; the former must operate within the discipline imposed by the latter.

83. The Hon'ble High Court's directive presupposed, and indeed mandated, that the adjudicatory process would be conducted in strict conformity with the principles of natural justice, albeit within an accelerated timeline. It did not and in our respectful consideration could not authorise the Learned Adjudicating Officer to truncate the principle of audi alteram partem or to pronounce a final order without first ensuring that valid and effective notice of the final hearing had been served upon all concerned parties at their designated and duly communicated addresses.

84. Indeed, to read the High Court's direction as permitting curtailment of notice or effective hearing would be to attribute to that order a consequence wholly inconsistent with settled principles governing quasi-judicial process. It ought to be noted that when a court directs expeditious disposal does not sanction procedural abbreviation at the cost of fairness; it merely requires that fairness be administered without avoidable delay.

85. If the statutory requirement under Section 46 (2) is that the person proceeded against must be given a reasonable opportunity for making representation, and if the Rules insist upon proper service and hearing before ex parte progression can lawfully occur, those safeguards cannot be neutralised by invoking administrative urgency or by misconstruing the order of the Hon'ble High Court. Any contrarian construction of the aforesaid would not only erode the statutory command and legislative intent, but would also render the entire process vulnerable to arbitrariness and non-application of mind.

86. Further Section 47 of the Act, which requires the adjudicating officer, while adjudging the quantum of compensation, to have due regard to (a) the amount of gain of unfair advantage,

wherever quantifiable, made as a result of the default; (b) the amount of loss caused to any person as a result of the default; and (c) the repetitive nature of the default. These parameters indicate that the statute itself contemplates a reasoned and calibrated adjudicatory exercise founded on proper appreciation of material and circumstances.

87. For all the aforesaid reasons, considered cumulatively and in their proper perspective, this Tribunal holds that the procedure adopted by the Learned Adjudicating Officer in passing the Impugned Order dated 11.02.2025 did not satisfy the mandatory requirement of a reasonable and effective opportunity of hearing under Section 46 (2) of the Information Technology Act, 2000 read with Rules 4 (c), 4

(d), 4 (h), 4 (j) and 7 of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003. Hence, Issue No. I is, accordingly, answered in the negative, and in favour of the Appellant.

-ISSUE No. II -

88. Whether the said order is liable to be set aside on the ground of violation of the Principles of Natural Justice, particularly the doctrine of audi alteram partem?

89. We believe that the second issue is closely allied to the first, yet it operates at a broader and deeper plane. In our analysis and examination of Issue No. I, we limited our examination to compliance with the specific statutory and procedural requirements contained in Section 46 of the Information Technology Act, 2000 and the 2003 Rules.

90. However, Issue No. II requires this Tribunal to determine whether the manner in which the impugned order came to be passed offends the more fundamental requirement of natural justice, particularly the rule of audi alteram partem, which is now firmly embedded in Indian public law as an incident of fairness, non-arbitrariness, and lawful decision-making in administrative and quasi-judicial proceedings.

91. The principles of natural justice represent one of the most ancient, enduring, and humanising doctrines known to the civilised legal order. They are not the creation of any one statute or any one legal system; they are the universal minimum that every system of law, which claims to be just, fair and reasonable must observe.

92. The expression 'natural justice' conveys the notion of a duty to act fairly. In the words of Byles, J. in Cooper v. Wandsworth Board of Works [(1863) 14 CB (NS) 180], 'even God himself did not pass sentence upon Adam before he was called upon to make his defence.' This is one of the most fundamental principles of law and of justice.

93. The principles of natural justice comprise two foundational pillars, first, nemo judex in causa sua that no man shall be a judge in his own cause; and second, audi alteram partem that no man shall be condemned unheard. These twin principles, which predate the modern State and find

expression in every mature legal system, constitute the procedural minimum below which the exercise of adjudicatory power becomes constitutionally impermissible.

94. The doctrine of audi alteram partem, which is the principle directly engaged in the present case, expresses the elementary requirement that before an adverse order is passed against any person, that person must be afforded a fair and reasonable opportunity to present his case, to know the allegations against him, and to meet those allegations. It encompasses the right to notice, the right to be heard, and the right to have one's submissions considered by the decision-maker.

95. The legal maxim Qui aliquid statuerit parte inaudita altera aequum licet dixerit, haud aequum fecerit, which translate to "he who shall decide anything without the other side having been heard, although he may have said what is right will not have done what is right" or as is now expressed "justice should not only be done but should manifestly be seen to be done". This principle applies not only to courts of law but equally, and with full force, to all bodies and authorities exercising adjudicatory, quasi- judicial, or administrative functions that entail civil consequences.

96. Before we proceed to examine the specific facts of the present case in the light of the principles of natural justice, it would be apposite and prudent on our part to first collate and examine the rich and well-established jurisprudence prevailing in India on the requirements of complying with the principles of natural justice in administrative and quasi-judicial proceedings.

97. The Hon'ble Supreme Court in the case of 'Mahipal Singh Tomar v. State of U.P., (2013) 16 SCC 771', while deliberating upon the content and significance of the principles of natural justice in administrative and quasi-judicial proceedings, under paras 15, 16, 31 and 32 held as follows:

> "15. In administrative law, the "rules of natural justice" have traditionally been regarded as comprising audi alteram partem and nemo judex in sua causa. The first of these rules requires the maker of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation. The second rule disqualifies a person from judging a cause if he has direct pecuniary or proprietary interest or might otherwise be biased. The first principle is of great importance because it embraces the rule of fair procedure or due process. Generally speaking, the notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and the right to argue. This has been used by the courts for nullifying administrative actions. The premise on which the courts extended their jurisdiction against the administrative action was that the duty to give every victim a fair hearing was as much a principle of good administration as of good legal procedure.
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> 16. Under the European Convention on Human Rights and Fundamental Freedoms of 1950, it is provided that:
>
> "6.Right to a fair trial.--(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing

> within a reasonable time by an independent and impartial tribunal established by law."

31. In A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150] , this Court declared that the dividing line between administrative power and quasi-judicial power is quite thin and is being gradually obliterated. Speaking for the Bench, K.S. Hegde, J., observed: (SCC pp. 268-69, para 13) "13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate, if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power."

32. In State of Orissa v. Binapani Dei [AIR 1967 SC 1269] , this Court observed: (AIR p. 1272, para 12) "12. ... We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State...."

98. The Hon'ble Supreme Court in 'Maneka Gandhi v. Union of India, (1978) 1 SCC 248', the seven-Judge Bench, in what is now universally recognised as the decision that transformed the landscape of fundamental rights jurisprudence in India, established three propositions of enduring constitutional significance. First, that Articles 14, 19, and 21 of the Constitution are not mutually exclusive compartments but are interconnected facets of a single constitutional vision of the "golden triangle" of fundamental rights.

99. Second, that the "procedure established by law" under Article 21 must be "right and just and fair and not arbitrary, fanciful or oppressive." Third, and most pertinently for the present case, that the principles of natural justice are an essential ingredient of every procedure by which a person is deprived of any right, and that any procedure that fails to satisfy the requirements of natural justice offends Article 14 and the relevant paras of the aforesaid judgement reads as under:

> "7. Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is

> indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.
>
> How far natural justice is an essential element of "procedure established by law"

8. The question immediately arises : does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the test of this requirement? Is it "right or fair or just"? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in Cooper v. Wandswort Board of Works [(1863) 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] :

> "A long course of decisions, beginning with Dr Bentley case and ending with some very recent cases, establish that, although there are no positive works in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, nemo judex in causa sua and audi alteram partem. We are not concerned here with the former, since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport?

10. Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi- judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of "fair-play in action" is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences. There was, however, a time in the early stages of the development of the doctrine of natural justice when the view prevailed that the rules of natural justice have application only to a quasi- judicial proceeding as distinguished from an administrative proceeding and the distinguishing feature of a quasi-judicial proceeding is that the authority concerned is required by the law under which it is functioning to act judicially. This requirement of a duty to act judicially in order to invest the function with a quasi-judicial character was spelt out from the following observation of Atkin, L.J. in Rex v. Electricity Commissioners [(1924) 1 KB 171 : (1923) All ER Rep 150] , "wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King Bench Division . . .". Lord Hewart, C.J., in Rex v. Legislative Committee of the Church Assembly [(1928) 1 KB 411] read this observation to mean that the duty to act judicially should be an additional requirement existing independently of the "authority to determine questions affecting the rights of subjects"-- something super- added to it. This gloss placed by Lord Hewart, C.J., on the dictum of Lord Atkin, LJ., bedevilled the law for a considerable time and stultified the growth of the doctrine of natural justice. The Court was constrained in every case that came before it, to make a search for the duty to act judicially sometimes from tenuous material and sometimes in the services of the statute and this led to oversubtlety and over-refinement resulting in confusion and uncertainty in the law. But this was plainly contrary to the earlier authorities and in the epoch-making decision of the House of Lords in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66] which marks a turning point in the history of the development of the doctrine of natural justice, Lord Reid pointed out how the gloss of Lord Hewart, C.J., was based on a misunderstanding of the observations of Atkin, L.J., and it went counter to the law laid down in the earlier decisions of the Court. Lord Reid observed: "If Lord Hewart meant that it is never enough that a body has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially, then that appears to me impossible to reconcile with the earlier authorities". The learned Law Lord held that the duty to act judicially may arise from the very nature of the function intended to be performed and it need

not be shown to be super- added. This decision broadened the area of application of the rules of natural justice and to borrow the words of Prof. clark in his article on "Natural Justice, Substance and Shadow" in Public Law Journal, 1975, restored light to an area "benighted by the narrow conceptualism of the previous decade". This development in the law had its parallel in India in the Associated Cement Companies Ltd. v. P.N. Sharma [AIR 1965 SC 1595 : (1965) 2 SCR 366 : (1965) 1 LLJ 433 : 27 FJR 204] where this Court approvingly referred to the decision in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66] and, later in State of Orissa v. Dr Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625 :

> (1967) 2 LLJ 266] observed that: "If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power". This Court also pointed out in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] another historic decision in this branch of the law, that in recent years the concept of quasi-judicial power has been undergoing radical change and said:
>
> "The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised."

The net effect of these and other decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted."

100. The Hon'ble Supreme Court in the case of Sahara India (Firm) v. Commissioner of Income Tax, (2008) 14 SCC 151 : (2008) 300 ITR 403, while deliberating on the scope, content and applicability of the principles of natural justice in statutory proceedings entailing adverse civil consequences, under paragraphs 15, 18, 19 and 29, held as follows:

> "15. Rules of 'natural justice' are not embodied rules. The phrase 'natural justice' is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. As observed by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see ITO v. Madnani Engg. Works Ltd. [(1979) 2 SCC 455 : 1979 SCC (Tax) 140].)

> 18. Recently, in Canara Bank v. V.K. Awasthy [(2005) 6 SCC 321 : 2005 SCC (L&S) 833] the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights, the Court said: (SCC pp. 331-32, para 14) '14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its content should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life'
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> 19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.
>
> "29. ... it is the civil consequence which obliterates the distinction between quasi-judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. (Also see Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] and S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379].)"

101. The Hon'ble Supreme Court in the case of 'State Bank of India and Others v. Rajesh Agarwal and Others, (2023) 6 SCC 1', after an exhaustive survey of the entire body of natural justice jurisprudence, has held as follows:

> "36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as

a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence : (i) nemo judex in causa sua, which means that no person should be a Judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power. [Union of India v. J.N. Sinha, (1970) 2 SCC 458]

80. Audi alteram partem has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected. In Tulsiram Patel [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672] , this Court explained the wide amplitude of audi alteram partem :

(SCC p. 476, para 96) "96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry."

(emphasis supplied)

81. Audi alteram partem, therefore, entails that an entity against whom evidence is collected must : (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either

individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds.

84. In E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] , this Court held that an arbitrary State action is violative of Article 14 of the Constitution. Again, in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] this Court reiterated that the principle of non-arbitrariness pervades Article 14. An administrative action can be tested for constitutional infirmities under Article 14 on four grounds : (i) unreasonableness or irrationality; (ii) illegality; (iii) procedural impropriety; [State of A.P. v. McDowell & Co., (1996) 3 SCC 709; Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039] and (iv) proportionality. However, the scope of such judicial review is limited to ascertaining the deficiency in the decision-making process, and not the correctness of the choice made by the administrator. [United Commercial Bank v. P.C. Kakkar, (2003) 4 SCC 364 : 2003 SCC (L&S) 468]

89. In Union of India v. J.N. Sinha [Union of India v. J.N. Sinha, (1970) 2 SCC 458] , a two-Judge Bench of this Court held that an endeavour must be made to interpret a statutory provision consistent with the principles of natural justice : (SCC p. 461, para 8)

8. ... It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the provision concerned the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

(emphasis supplied)"

> 102. The cumulative effect of this line of authority is that natural justice in India is no longer confined to traditional adjudication in the narrow sense. It is now inseparably linked to Article 14 and the constitutional insistence that State action, whether administrative or quasi-judicial, must not be arbitrary. Where a statutory authority determines rights, imposes financial liability, or visits a party with serious civil consequences, the authority must act fairly, transparently, and in a manner that demonstrates real not ritualistic consideration of the affected party's defence.
>
> 103. A quasi-judicial body cannot proceed in a manner that reeks of arbitrariness and then seek shelter behind the form of the proceeding. Arbitrariness is the antithesis of

equality; and absence of fair hearing, where hearing is due, is one of the clearest manifestations of arbitrary exercise of power.

104. When these principles are applied to the facts of the present case, the breach becomes manifest. The record shows that the appellant had entered appearance, corrected its service particulars by communication dated 29.10.2024, filed its reply, filed its sur-rejoinder, and thereafter filed two applications dated 05.02.2025 seeking summoning of the Investigating Officer and the E&Y officials.

105. Yet the final hearing dated 11.02.2025 proceeded in the absence of the appellant, and the material before this Tribunal does not establish that the final-hearing notice dated 06.02.2025 was actually delivered to the corrected email addresses in the manner required by the Rules. Nor does the impugned order disclose any reasoned treatment of the pending applications. Indeed, the order proceeds on the footing that all parties were afforded reasonable opportunity and that the matter was heard at length, even though the appellant's case is that it was neither aware of the final hearing nor heard on that date.

106. In the considered view of this Tribunal, this is not a case of a mere technical irregularity. It is a case where the final adjudicatory act was performed without demonstrable compliance with the hearing and while material interlocutory application remained unattended. The right of hearing does not mean only the filing of papers. It includes effective knowledge of the hearing that will culminate in decision, reasonable opportunity to appear and address, and fair consideration of procedural requests which bear upon the defence. To hold otherwise would be to reduce audi alteram partem to an empty incantation, which is not permissible in law.

107. These requirements are not mere procedural niceties; they are the essential constituents of a fair hearing. A failure to comply with any of these core requirements, where such compliance is mandated by the governing statute or by the principles of natural justice, renders the resultant order vulnerable to being quashed on the ground of procedural impropriety.

108. The most glaring and inexcusable infraction of natural justice in the present case is the complete failure to serve a valid and effective notice of the final hearing upon the Appellant. The documentary record, which we have analysed in considerable detail in the preceding section of this judgment, establishes beyond any shadow of doubt that the Notice dated 06.02.2025, which fixed the final hearing for 11.02.2025, was not dispatched to any of the four corrected electronic mail addresses that the Appellant's Counsel had specifically and formally furnished to the secretariat of the Learned Adjudicating Officer in the communication dated 29.10.2024 (Annexure A-10).

> 109. The Learned Adjudicating Officer's office was thus placed on clear and unequivocal notice of the correct addresses, yet, the consequence of this defective service was both direct and devastating as neither the Appellant nor its legal representatives acquired any knowledge whatsoever of the scheduled final hearing. The absence of the Appellant on 11.02.2025 was not a voluntary act of "failure to appear"

stemming from negligence or indifference.

110. For all these reasons, we have no hesitation in holding that the impugned order is liable to be set aside on the ground of violation of the principles of natural justice, particularly the doctrine of audi alteram partem. The manner in which the final hearing was held, especially in the absence of proven effective notice to the corrected addresses furnished by the appellant and the non-consideration of the applications dated 05.02.2025, the same cannot be countenanced in a constitutional order governed by Article 14 and the rule of law. Thus, Issue No. II is answered in affirmative and accordingly in favour of the appellant.

THE ROLE OF THE ADJUDICATING OFFICER UNDER INFORMATION TECHNOLOGY ACT, 2000

111. Before proceeding to the operative directions, this Tribunal considers it both necessary and appropriate to place on record certain observations regarding the role, institutional position, and consequential obligations of the Adjudicating Officer under the Information Technology Act, 2000. These observations arise organically from the systemic concerns that both parties have candidly acknowledged before this Tribunal.

112. Section 46 of the Information Technology Act, 2000 establishes the office of the Adjudicating Officer and clothes the incumbent with significant adjudicatory powers. Sub- section (1A) of Section 46, confers upon the Adjudicating Officer the jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore.

113. This pecuniary jurisdiction is quite significant; it demarcates the Adjudicating Officer as the primary, and indeed the exclusive, quasi-judicial forum for a substantial class of civil claims arising under Chapter IX of the Act. The adjudicatory powers vested in the Adjudicating Officer are not merely administrative or recommendatory in character. Sub-section (5) of Section 46 provides, in unmistakable terms, that every Adjudicating Officer "shall have the powers of a civil court" which are conferred on the Appellate Tribunal under sub-section (2) of Section 58.

114. These powers include, inter alia, the power to summon and enforce the attendance of any person and examine him on oath, to require the discovery and production of documents or other electronic records, to receive evidence on affidavits, to issue commissions for the examination of witnesses or documents, to review decisions, and to dismiss an application for default or decide it ex parte. Furthermore, clause (a) of sub-section (5) expressly declares that "all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian

Penal Code, 1860"

115. The Adjudicating Officer is, therefore, in every meaningful sense, a court of first instance. The proceedings before him are not a mere prelude to litigation elsewhere; they constitute the primary, and statutorily ordained, forum for the adjudication of civil disputes arising from contraventions of the provisions of the IT Act. It is therefore, Adjudicating Officer who must afford the parties a full and fair opportunity to present their respective cases, to adduce evidence, to examine and cross-examine witnesses, and to make oral submissions.

116. The record compiled before the Adjudicating Officer comprising of the pleadings, the documentary evidence, the oral testimony, and the exhibits forms the foundational substratum upon which all subsequent appellate scrutiny must rest. It is before the Adjudicating Officer that the factual matrix of the case is established, the evidence is collected and exhibited, and the pure questions of fact are determined. The integrity, completeness, and reliability of this foundational record are, therefore, matters of paramount importance. The original opportunity to establish facts, test evidence, and present one's case is an irreplaceable procedural right.

117. An infirm hearing, laced as in the present case with a wilful disregard of the mandatory procedural requirements of the Act and the 2003 Rules, does not merely occasion prejudice to the immediate party who is condemned unheard. Its deleterious effects ripple outward, increasing the hardship and exacerbating the prejudice suffered by both sides to the lis. The party who is denied a fair hearing is, of course, compelled to undertake the onerous and expensive exercise of pursuing appellate remedies to vindicate its procedural rights.

118. The party who succeeded before the Adjudicating Officer, on the other hand, finds the fruits of its success suspended, its legitimate expectation of finality frustrated, and its resources depleted in defending an appeal that could have been avoided had the proceedings been conducted with due procedural rectitude at the first instance.

119. The present appeal is a testament to this very phenomenon.

The Appellant has been driven to invoke the appellate jurisdiction of this Tribunal, expending considerable time, effort, and resources. The Respondent No. 1, having secured a favourable order, has seen its enforcement stayed and has been compelled to defend the appeal. The beneficiary banks, though largely disinterested in the procedural dispute, have been arrayed as respondents and have incurred costs in filing their replies.

120. The public exchequer, which sustains this Tribunal, has borne the cost of adjudicating a matter that ought to have been concluded, at least at the first instance, with due adherence to the principles of natural justice. All of this could have been avoided had the Learned Adjudicating Officer simply ensured that the notice of the final hearing was dispatched to the correct electronic mail addresses that were specifically furnished to his office.

121. The Information Technology Act, 2000 is a special legislation, enacted to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication. The adjudicatory and appellate structure erected under the Act is, correspondingly, unique and merits careful consideration. A proper appreciation of this structure is essential to understanding the critical importance of the role played by the Adjudicating Officer as the foundational tier of this edifice.

122. As we have already observed, the adjudicatory process commences with the Adjudicating Officer, who functions as the court of first instance. It is before the Adjudicating Officer that the complaint is lodged, the parties are summoned, the pleadings are exchanged, the evidence is adduced, and the factual findings are rendered. The Adjudicating Officer is tasked with the crucial responsibility of collecting, exhibiting, and analysing the pure factual substratum of the case. His order represents the first, and often the most determinative, application of the law to the facts as found by him.

123. Under Section 57 of the Information Technology Act, 2000 confers upon any person aggrieved by an order made by an Adjudicating Officer the right to prefer an appeal to this Tribunal. The Telecom Disputes Settlement and Appellate Tribunal, established under Section 14 of the Telecom Regulatory Authority of India Act, 1997, functions as the Appellate Tribunal for the purposes of the IT Act. This Tribunal is vested with the jurisdiction to hear and dispose of appeals from the orders of Adjudicating Officers and is empowered, under Section 57 (4), to confirm, modify, or set aside the order appealed against.

124. Thereafter Section 62 of the IT Act, 2000, confers upon any person aggrieved by a decision or order of this Tribunal the right to file an appeal to the High Court within sixty days of the communication of the order. The language of Section 62 is noteworthy and merits careful attention. The section provides that such appeal may be filed "on any question of fact or law arising out of such order."

125. In the ordinary course, a second appeal, that is to say, an appeal from the order of an appellate court or tribunal is entertainable only on a substantial question of law. This is the well-settled principle that governs second appeals under Section 100 of the Code of Civil Procedure, 1908, where the scope of the second appellate court is confined to substantial questions of law and does not extend to reappreciation of evidence or redetermination of facts.

126. The legislature, however, has made a conscious and deliberate departure from this norm in Section 62 of the IT Act by permitting an appeal to the High Court "on any question of fact or law." The consequence of this departure is that the High Court, in an appeal under Section 62, is vested with jurisdiction that is wider than that of an ordinary second appellate court; it may examine questions of fact with the same amplitude as questions of law. This statutory design reflects the legislative recognition that disputes under the IT Act may involve technically complex questions of fact relating to cybersecurity, forensic evidence, digital forensics, IP address analysis, and system vulnerabilities, which may require independent judicial examination even at the second appellate stage.

127. It is needless to state, but we state it for completeness, that even after an order is passed by the Hon'ble High Court under Section 62, a further challenge may be mounted before the Hon'ble Supreme Court of India by way of a Special Leave Petition under Article 136 of the Constitution of India. While the grant of special leave is discretionary, the availability of this remedy ensures that the adjudicatory process under the IT Act is ultimately subject to the superintendence and corrective jurisdiction of the highest constitutional court of the land, exercising its special leave jurisdiction.

128. This statutory architecture has an important jurisprudential consequence. Since the original order of the Adjudicating Officer is expected to sustain appellate scrutiny before this Tribunal, and thereafter before the High Court under Section 62 on questions of fact and law, the initial adjudication cannot be casual, impulsive, or procedurally attenuated. The greater the depth of appellate supervision contemplated by the statute, the greater is the obligation of discipline, fairness, and completeness at the first instance.

129. For all these reasons, it is both advisable and incumbent upon every Adjudicating Officer exercising power under Section 46 of the Information Technology Act, 2000 to proceed in a manner that is fair, impartial, non-arbitrary, and measured. The authority must ensure effective service, clear scheduling, meaningful opportunity to respond, due consideration of interlocutory applications, and reasoned determination founded upon the record.

130. For avoidance of doubt, we firmly reiterate that it is not merely a matter of adjudicatory prudence; it is a statutory obligation flowing from the Act and Rules and a constitutional obligation flowing from the guarantee against arbitrariness. The office of the Adjudicating Officer occupies too central a place in the statutory design to permit its process to be reduced to hurried formality ungoverned by cardinal principles of law.

SUGGESSTIONS MADE BY PARTIES AND COUNSELS AT BAR

131. Before proceeding to frame general directions, it is necessary to notice that the question of procedural reform did not arise in the abstract. By order dated 25.07.2025, this Tribunal recorded the submission of learned counsel appearing for the appellant that, before Adjudicating Officers functioning under Section 46 of the Information Technology Act, 2000, next dates are often not assigned in the ordinary course and that final hearings may commence upon fresh notice alone.

132. Significantly, learned counsel for Respondent No. 1 also submitted that the procedure followed by Adjudicating Officers varies from State to State and requires standardisation, so that there may be consistency in adjudication under Section 46 across the country. It is in that backdrop that this Tribunal invited suggestions from the parties.

133. The Appellant has filed its Written Submissions, wherein it has approached this exercise in two tiers, first, by identifying the practical concerns faced by litigants before the A.O.'s office; and second, by tendering specific, actionable suggestions addressed to each concern. We thus record their concerns and suggestion as under:

Practical Concerns Identified by the Appellant A. Absence of Scheduled Hearing Dates being that the Adjudicating Officer does not assign the next date of hearing at the conclusion of each session. Instead, fresh notices are issued before each hearing, often resulting in incomplete or failed service. As per the Appellant this practice leads to repeated adjournments and non- appearances, as parties remain unaware of scheduled hearings.

B. Adjudication Without Proper Notice, as result of the above, in the absence of effective service, matters are being decided solely on the record, without the benefit of oral submissions or clarifications from the parties. Parties, having been unaware of the hearing, are then constrained to file recall applications, introducing further delay into proceedings that are already required to be disposed of within six months.

C. Violation of Statutory Timelines, although Rule 4(k) of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003 mandates disposal of every application within four months and the entire matter within six months, recurring procedural lapses comprehensively defeat this statutory objective.

D. Non-listing of Applications as in the present case as Application filed by parties are not placed before the Adjudicating Officer with any regularity.

Specific Suggestions Tendered by the Appellant A. Comprehensive Memo of Parties being that every Complaint filed before the Adjudicating Officer must contain, in the memo of parties, the full name, complete address, email ID and telephone number (preferably WhatsApp-enabled mobile number) of each Complainant and each Respondent. This requirement must be mandatory, and deficiency in compliance must be a ground for return of the Complaint at the scrutiny stage.

B. Multi-Modal Service i.e. Service of notice upon receipt of the Complaint shall be effected simultaneously through all available modes postal (registered post A.D.), email and WhatsApp. Dasti service may additionally be resorted to. The Complainant must file an affidavit of service along with proof of service at each stage. The summons issued by the AO must specifically mention (i) the next date of hearing; (ii) the time within which the Reply is to be filed; and (iii) the email address and contact details of the Secretariat of the Adjudicating Officer. C. Authority to Appear, where a party appears through an Advocate, Pleader or any authorised representative, a formal Authority to Appear (or Vakalatnama) must be filed, containing the full contact particulars of the party being represented and the address and mode for future service.

D. Mandatory Assignment of Next Date in Open Court wherein the Adjudicating Officer must assign the next date of hearing to the person appearing, in the presence of all appearing parties, on the day of each hearing itself. The practice of

subsequently issuing fresh notices in lieu of assigning dates must be discontinued.

E. Recording of Next Date in Orders, ideally in every order passed by the Adjudicating Officer must specifically record the following (i) the names of counsel and parties present; and (ii) confirmation that the next date of hearing has been communicated to the appearing parties in open proceedings. This recording must be a mandatory part of the body of every order.

F. Listing of Interlocutory Applications i.e. any application filed before the Adjudicating Officer must be placed before the Officer within a reasonable time, and notice must be issued to the non-applicant party, normally for the next fixed date, except in cases requiring urgent attention.

G. Cause List on Website and Premises, wherein, a cause list for the day must be prepared by the office of the Adjudicating Officer, published on the website of the concerned Ministry/State Government, and simultaneously displayed at a conspicuous place on the premises of the AO's office.

H. Dedicated Days and Advertised Timings, ideally, the Adjudicating Officer must designate specific days of the week exclusively for hearings under the IT Act, and this schedule must be widely advertised for the benefit of the general public and litigants. Inquiry timings must also be notified so that any person may inquire about a pending matter

134. The Respondent No. 1 has tendered its suggestions through Mr. Mahendra B. Limaye, who has proposed a structured, day- based timeline for every proceeding before the Adjudicating Officer, calculated from the date of filing of the Complaint ("D- 1"), and his valuable suggestion is tabulated below:

Stage	Day	Activity	Mode
1	D-1	Complaint filed before the Adjudicating Officer	--
2	D-7	Scrutiny complete; if admitted, hearing date	--

intimated to parties with complaint copies 3 D-15 Admission hearing (if in doubt); hearing date --

intimated if admitted 4 D-30 First hearing Hybrid 5 D-45 Additional hearing for non-appearing parties Hybrid 6 D-75 Replies, written submissions, and evidence of all Virtual respondents 7 D-120 Rejoinders, sur-rejoinders, and evidence to be Virtual exchanged 8 D-150 Final hearing and last opportunity for submissions Hybrid 9 D-165 Final hearing concluded; order reserved Hybrid 10 D-180 Pronouncement of judgment or order Virtual

135. In addition to the timeline, the Respondent Bank's Counsel proposed four supplementary measures:

> A. No adjournments to be granted. If an adjournment is granted, parties must be directed to comply with the stage then current before the next timeline decided by the Adjudicating Officer.
>
> B. In case of failure to serve the notice or insufficient address, the complainant must take all efforts to serve all the respondents before the first hearing or additional hearing date.
>
> C. The next date of hearing to be specifically communicated on the hearing date itself.
>
> D. The office of the Adjudicating Officer must record all the video-conferencing proceedings, and the official video- conferencing link must be made available to all parties and complainants in person.

136. This Tribunal records, with a measure of satisfaction, that the suggestions filed by the Appellant and the Respondent Bank converge on several fundamental points such as the necessity of assigning the next date of hearing at the conclusion of each session, rather than relying on fresh notices; the need for multi-mode service of notices, including electronic and telephonic modes; the desirability of a structured timeline for adjudicatory proceedings; the recording of proceedings; and the publication of cause lists. What is of considerable importance is that, despite the adversarial position of the parties on the merits of the appeal, a substantial area of convergence emerges from these suggestions. In the considered view of this Tribunal, these suggestions are of real and valuable assistance.

GENERAL DIRECTIONS TO THE ADJUDICATING OFFICERS FOR STREAMLINING THE A.O. OFFICE UNDER SECTION 46 OF THE IT ACT, 2000.

137. In the light of the analysis undertaken in this judgment, the systemic deficiencies acknowledged by both parties, the suggestions placed before this Tribunal, and the powers vested in this Tribunal under Section 57 (4) read with Section 58 (1) of the IT Act, 2000, this Tribunal considers it appropriate to issue the following general directions to the Adjudicating Officers functioning under Section 46 of the Information Technology Act, 2000, across all States and Union Territories to unify and streamline the procedure to ensure Access to Justice in light of mandatory requirements of Article 14, 21 and 39A of the Constitution of India,1950.

138. These directions are issued to bring uniformity, consistency, and procedural fairness to the adjudicatory process, and to prevent the recurrence of the kind of procedural infirmity that has necessitated the setting aside of the Impugned Order in the present case and are as follows:

> I. Filing, Registration, and Acknowledgment of Complaints:-

(i) Every complaint filed under Section 46 of the IT Act shall be registered and acknowledged by the office of the Adjudicating Officer with a diary number on the date of receipt. Where the complaint is filed electronically, an automated acknowledgment with the diary number shall be sent to the complainant.

(ii) If any defect is found in the complaint, including deficiency in documents or court fees, the complainant shall be informed of such defect within seven days of receipt and shall be granted reasonable time to rectify the same.

(iii) Every complaint filed either on plain paper using a specific proforma or electronically accompanied by a fee calculated as per the specified rules under the Section 46 of the IT Act.

(iv) The complaint shall mandatorily contain, in the memo of parties, the full name, postal address, email address, and mobile telephone number (preferably WhatsApp-

enabled) of each party. Where a party is represented by an advocate or authorised representative, the vakalatnama or authority to appear shall also contain the email address and mobile number of the advocate or representative.

II. Service of Notices

(i) Upon admission of the complaint, the Adjudicating Officer shall issue notice to all necessary parties, simultaneously by all available modes electronic mail, registered post with acknowledgment due, and SMS or WhatsApp message to the mobile number on record.

(ii) The complainant shall be required to file an affidavit of service, annexing proof of service by each mode, within a reasonable time as directed by the Adjudicating Officer.

(iii) Where service cannot be effected despite diligent efforts, the Adjudicating Officer shall record this fact and may direct alternative modes of service, including substituted service in accordance with Rule 7 (c) of the 2003 Rules.

(iv) Where a party or its Counsel furnishes updated or corrected contact details at any stage of the proceedings, the office of the Adjudicating Officer shall immediately update its records and ensure that all future communications are addressed to the corrected details.

III. Initial Hearing and Recording the Plea

(i) On the date so fixed, the Adjudicating Officer shall explain to such person or persons to whom notice is issued about the contravention alleged to have been committed in relation to any of the provisions of the Actor of any rule, regulation, direction or order made thereunder.

(ii) If the person in respect of whom notice is issued pleads accepts the contravention, the Adjudicating Officer shall record the plea, and may impose penalty or award such compensation as he thinks fit in accordance with the provisions of the Act, rules, regulations, order or directions made thereunder.

(iii) Alternatively on the date fixed the person or persons against whom a matter is filed may show cause why an enquiry should not be held in the alleged contravention or that why the report alleging the contravention should be dismissed.

(iv) The Adjudicating Officer on the basis of the report of the matter, investigation report (if any), other documents and on the basis of submissions shall form an opinion that there is sufficient cause for holding an enquiry or that the report into the matter should be dismissed and, on that basis, shall either by order dismiss the report of the matter, or shall determine to hear the matter.

IV. Assignment of Hearing Dates and Communication

(i) At the conclusion of each hearing, the Adjudicating Officer shall assign the next date of hearing in the presence of the parties or their Counsel and shall ensure that the next date is recorded in the order of the day. The practice of relying exclusively on fresh notices for subsequent hearings, without assigning the next date in the course of the proceedings, shall be discontinued.

(ii) Where a party or its Counsel is not present at the hearing, the next date shall be communicated to such party by electronic mail and SMS or WhatsApp within two working days.

(iii) Notwithstanding the assignment of the next date, a reminder notice shall be sent to all parties by electronic mail and SMS or WhatsApp at least five days before the date of hearing.

(iv) The Adjudicating Officer shall himself only will hear the complaint on the designated days in a week or month without delegating this work to any other officer.

V. Cause List and Transparency

(i) A cause list for each hearing day shall be prepared and published on the official website of the Department of Information Technology of the State or Union Territory concerned, at least three days prior to the date of hearing.

(ii) A physical copy of the cause list shall also be displayed at a conspicuous place on the premises of the office of the Adjudicating Officer.

(iii) The Adjudicating Officer shall designate specific days in a week or month for hearing complaints under the IT Act, and this information shall be published on the aforesaid website and at the office premises.

VI. Conduct of Hearings

(i) The Adjudicating Officer shall adopt hybrid hearing modes, combining physical and virtual presence through video-conferencing. The Adjudicating Officer shall retain discretion to direct physical attendance where necessary.

(ii) All proceedings conducted by video-conferencing shall be officially recorded, and the recording shall form part of the record of the case.

(iii) At each hearing, the Adjudicating Officer shall record the appearances of the parties and their Counsel, and shall ensure that the order of the day reflects the business transacted and the next date assigned.

(iv) The final hearing will be in presence of all the parties involved in the matter. The Adjudicating Officer only will hear the matter without delegating his work to any other officer.

VII. Disposal of Applications

(i) Every application filed by a party shall be placed before the Adjudicating Officer within seven days of its receipt and shall be listed for hearing at the earliest available date.

(ii) The Adjudicating Officer shall not proceed to final hearing or disposal of the complaint while substantive applications remain pending and undisposed of, unless specific reasons are recorded in writing.

(iii) Every application as far as practicable shall be disposed of by a reasoned order.

VIII. Timelines

(i) While the statutory rule as per Rule 4 (k) is that every application should, as far as possible, be heard and decided within four months and the whole matter within six months must be kept in view, timeline discipline must operate consistently with valid service, fair opportunity, and proper disposal of interlocutory matters.

(ii) The broad stage-wise timeline suggested at the Bar contained at Para 134 of this judgement may serve as a model for case management, but it shall remain indicative and subject to the facts and complexity of individual matters.

(iii) Adjournments shall be granted sparingly and only for sufficient cause recorded in writing.

(iv) Before proceeding ex parte on account of non-

appearance, the Adjudicating Officer shall satisfy himself that service has been duly and effectively completed in accordance with Rule 7 of the 2003 Rules and that the record reflects such satisfaction. The reasons for proceeding in the absence of the party shall be expressly recorded, in conformity with Rule 4(h).

(v) Where a party has not appeared despite service, and the stage of the matter so permits, the Adjudicating Officer may, in appropriate cases, afford one additional or final opportunity before reserving the matter, especially where the consequences are serious and the record indicates some prior participation or attempted appearance.

IX. Reasoned Orders and Communication

(i) Every order passed by the Adjudicating Officer, whether final or interlocutory, shall be a reasoned order. Final orders shall reflect the date of decision consideration of the record, evidence, submissions, and statutory factors relevant to the determination.

(ii) Certified copies of final orders, and where appropriate important interlocutory orders, shall be supplied or communicated to the parties or their authorised representatives without avoidable delay, consistent with Rule 6 of the 2003 Rules. The mode of such communication shall be noted on the file.

X. Infrastructure and Record-Keeping

(i) The Department of Information Technology of each State and Union Territory shall, in compliance with G.S.R. 240(E) dated 25.03.2003, provide the necessary infrastructure including video- conferencing facility, dedicated email, and adequate staffing.

(ii) A register of all complaints, notices, hearings, applications, and orders shall be maintained and shall be open to inspection by parties upon request.

(iii) All electronic records shall be preserved in digital form as part of the record of the case.

XI. Compliance

(i) These directions are issued in the exercise of this Tribunal's appellate jurisdiction under Section 57 of the IT Act, 2000 and are intended to supplement, not supplant, the provisions of the IT Act and the 2003 Rules. The Adjudicating Officers shall implement these directions with immediate effect and shall report compliance to this Tribunal, through the Department of Information Technology of the respective State or Union Territory, within ninety days of the date of this order.

139. The Registrar of this Tribunal is directed to forward a certified copy of this Judgment, thereof, to:

> I. The Secretary, Ministry of Electronics and Information Technology (MeitY), Government of India, New Delhi;
>
> II. The Chief Secretaries of all States and Lieutenant Governor &/or Administrator of Union Territories, III. The IT Secretary of all States and Union Territories who are the respective Adjudicating Officers appointed under Section 46 of the IT Act;

140. Having thus answered Issue No. I & II, the natural and inevitable consequence is that the Impugned Order cannot be sustained on its present procedural foundation. Since the matter is capable of being disposed of on these ground alone, and since the parties have canvassed substantial and elaborate contentions on the merits including contested questions regarding the applicability of Sections 43(a), 43(g), and 43A of the IT Act, the adequacy of security measures, the interpretation of forensic reports, the significance of IP address logs, the delivery of SMS alerts, and the respective obligations of the Appellant and the Respondent Bank all of which are questions that ought not to be prejudged after an infirm hearing.

141. Hence it is neither necessary nor proper, at this stage, to record any conclusive view on the merits. All contentions on the substantive aspects of the dispute are expressly left open for consideration afresh in appropriately conducted proceedings.

142. In view of the foregoing discussion, and having regard to the findings recorded on Issue Nos. I and II, we are of the considered opinion that the impugned order dated 11.02.2025 cannot be sustained in law. The same is, accordingly, quashed and set aside.

143. The matter is remitted to the Learned Adjudicating Officer for de novo adjudication on merits. While undertaking the said exercise, the Learned Adjudicating Officer shall have due regard to the mandate of Section 46 of the Information Technology Act, 2000, as well as Rules 4 (c), 4 (d), 4 (h), 4 (j) and 7 of the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003, and shall proceed strictly in accordance with law without being influenced by the observation in the present Cyber Appeal.

144. Keeping in view the order dated 01.08.2024 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, as also the mandate of Rule 4 (k) of the aforesaid Rules, the Learned Adjudicating Officer shall endeavour to conclude the proceedings, in accordance with law, preferably within a period of four months from the date of the receipt pf the copy of this Order. The parties are directed to extend full cooperation in the inquiry and shall not seek unnecessary adjournments. With the aforesaid observations and directions, the present appeal stands allowed.

The impugned order dated 11.02.2025 is set aside. No orders as to cost. Any pending interlocutory applications shall stand disposed of accordingly.

_____ (JUSTICE D. N. PATEL) CHAIRPERSON
_____ (SANJEEV BANZAL) MEMBER N/S