

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 12th January, 2021

+ **W.P.(C) 138/2021**

PAYPAL PAYMENTS PRIVATE LIMITED Petitioner
Through: Mr. Mukul Rohatgi and Mr. Sajan
Poovayya Senior Advocates with Mr.
Anuj Berry and Mr. Shiv Johar,
Advocates. (M:9810025473)

versus

FINANCIAL INTELLIGENCE UNIT INDIA Respondents
Through: Mr. Chetan Sharma, ASG with Mr.
Amit Mahajan, CGSC and Mr. Dhruv
Pande, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done by video conferencing.

CM APPLs. 422/2021 & CM APPLs. 423/2021(for exemption)

2. Allowed, subject to all just exceptions. Applications are disposed of.

W.P.(C) 138/2021 & CM APPL. 421/2021 (for interim relief)

3. The Petitioner in the present petition challenges the impugned order dated 17th December, 2020, passed by the Director, Financial Intelligence Unit-India, Ministry of Finance, Government of India. By the impugned order, the Petitioner has been held to be a “reporting entity” and a “payment system operator”, under Section 2(1)(wa) and Section 2(1)(rc) of the Prevention of Money Laundering Act, 2002 (*hereinafter*, ‘PML Act’). Further, the impugned order finds the Petitioner guilty of violations under the provisions of the PML Act, and has imposed a penalty amounting to Rs.96 Lakhs. The impugned order, thereafter, directs the Petitioner to register itself as a “reporting entity” with the Financial Intelligence Unit-

India (*hereinafter*, “FIU-IND”) as well as to appoint a Principal Officer and communicate the name, designation and address thereof, within a period of 15 days of the receipt of the said order. The operative portion of the said impugned order reads as under:

“52. In view of the above, I, in exercise of the powers conferred upon me under Section 13(2)(d) of the Prevention of Money Laundering Act, 2002 impose a total fine of Rs. 96,00,000/- (Rupees Ninety Six lakhs only) on PayPal Payments Private Limited which will be commensurate with the violations committed by it. PayPal Payments Private Limited shall pay the said amount of fine within 45 days of receipt of this Order by way of Demand Draft in favour of “Pay & Account Officer, Department of Revenue” failing which the provisions of Section 69 of the Act shall apply.

53. Further, by virtue of powers conferred upon me under Section 13(2)(b) of the Prevention of Money Laundering Act, 2002, I, find it expedient to direct PayPal Payments Private Limited to:

(a) register itself as a reporting entity with FIU-IND within 15 days of the receipt of this Order;
(b) appoint the Principal Officer and communicate the name, designation and address thereof within 15 days of the receipt of this order; and
(c) appoint the Designated Director and communicate the name, designation and address thereof within 15 days of the receipt of this order.”

4. On behalf of the Petitioner, Mr. Rohatgi, Id. Senior Counsel and Mr. Poovayya, Id. Senior Counsel appear and submit that the Petitioner is only a facilitator platform which conducts two types of transactions. The first type of transactions are transactions in foreign exchange, which are merely facilitated between registered reporting entities. The second type of transactions are domestic transactions in Rupees. It is submitted by Mr.

Rohatgi, Id. Senior counsel that each and every foreign exchange transaction is reported by the concerned reporting entity and the Petitioner is merely providing a facilitator platform and charging a nominal fee for each of the transactions. No foreign exchange is actually collected or paid by the Petitioner platform. He categorically submits and assures the Court that in the transactions facilitated by the Petitioner, no actual money is received or disbursed by the Petitioner- except for the payment of the nominal facilitator fee. He therefore submits, that the Petitioner cannot be deemed to be a “reporting entity” under the PML Act. Reliance is placed by the Id. senior counsel, upon the RBI’s affidavit filed in another writ petition, where the RBI took a stand that the Petitioner is not operating or participating in a payment system, and the Payment and Settlement Systems Act, 2007 (*hereinafter, ‘PSS Act’*) does not apply to the Petitioner.

5. On the strength of these submissions, it is urged by the Id. Senior Counsels that the impugned order, holding that the Petitioner would be liable to be a reporting entity under the PML Act, is not tenable.

6. Mr. Chetan Sharma, Id. ASG appearing along with Mr. Amit Mahajan, Id. Standing Counsel, has taken a preliminary objection that the Petitioner ought to avail of the alternative remedy available under Section 26 of the PML Act, which provides for an appellate remedy before the Appellate Tribunal. It is further submitted by Mr. Sharma, Id. ASG, that a reading of the definitions of “payment system”, “payment system operator” and “reporting entity” under sections 2(1)(rb), 2(1)(rc) and 2(1)(wa) of the PML Act, clearly shows that the Petitioners form a part of the said definitions provided. Id. ASG, in addition submits that this Court would not have jurisdiction to entertain this petition on the basis of the judgment

passed by the Id. Division Bench of this High Court dated 5th December, 2018, in **W.P.(C) 12494/2018** titled, **Aasma Mohammed Farooq and Anr.v Union of India**.

7. Heard Id. counsels for the parties and perused the impugned order and the stand of the RBI in the affidavit relied upon by the Petitioners. The case of the Petitioner is that it merely facilitates transactions and does not actually enter into any transactions with either of the parties conducting the same. On a query from the Court, Mr. Rohtagi, Id. Senior Counsel states that the Petitioner is not a payment wallet.

8. A perusal of the RBI's affidavit shows that the stand of the RBI is that the Petitioner would not be attracted by the Payments and Settlements Scheme, under the PSS Act. The relevant portion of the RBI's affidavit is set out below:

“6-7. With regard to the Paras No. 6 & 7, it is submitted that RBI's 'Ombudsman Scheme for Digital Transactions, 2019' is applicable to system participants as defined under the scheme. According to this scheme, system participant means any person other than a bank participating in a payment system as defined under Section 2 of the Payment and Settlement Systems Act, 2007 excluding a 'System Provider'. Further, according to this scheme, 'System Provider' means and includes a person who operates an authorized payment system as defined under Section 2 of the Payment and Settlement Systems Act, 2007. It is further submitted that currently Paypal Payments Private Ltd. is not operating or participating in, a payment system and hence this scheme is not applicable to it.”

9. This court is of the opinion that the question as to whether a business like the Petitioner's, which is of recent origin in India, ought to fall

within the ambit of a 'payment system' and whether the Petitioner would be a 'payment system operator' and a 'reporting entity', requires consideration. A substantial legal issue has arisen in this petition, and the question of jurisdiction has also been raised. Accordingly, issue notice to the Respondents. Notice is accepted by Mr. Amit Mahajan, Id. Standing Counsel.

10. As per Id. counsels, there is no other payment gateway entity which has been brought under the PML Act. Under the facts and circumstances of the present case, it is deemed appropriate to implead Reserve Bank of India as Respondent No.2. Ordered accordingly. Let the amended memo of parties be filed within one week.

11. The stand of the RBI in the affidavit referred above appears to be in contrast with the view taken in the impugned order. The RBI and Union of India ought to take a clear stand after due consultation as to whether they consider platforms such as that of the Petitioners as being within the purview of the PML Act. Accordingly, the Secretary, Ministry of Finance, is directed to constitute a Committee with a nominee of the RBI and the Ministry of Finance, to clarify their position as to whether companies like the Petitioners who claim to be facilitators of monetary transactions, both in foreign exchange and in Indian Rupees, ought to be categorised as "payment system operators" and hence "reporting entities" under the PML Act. Let the Committee meet within ten days and the conclusion of the Committee be filed, by way of an affidavit, within two weeks thereafter.

12. In the meantime, the following directions are issued:

- i. The Petitioner shall, henceforth, maintain records of all transactions under Section 12(1)(a) of the PML Act, in electronic form on a secure server, located in India, for the same to be retrieved, if required, subject to further orders in this writ petition.
 - ii. The Petitioner shall furnish a bank guarantee, to the satisfaction of the Registrar General of this Court, for a sum of Rs.96 lakhs. The said bank guarantee shall be deposited within two weeks.
 - iii. The Managing Director of the Petitioner Company shall furnish an undertaking to the Court to the effect that it would abide by any orders that may be passed in this petition, including furnishing of data (irrespective of where the servers are located), as may be required by a reporting entity under Section 12 of the PML Act, if the Petitioner is unsuccessful in this petition. The said affidavit of undertaking be filed within two weeks by the Petitioner.
13. Subject to the Petitioner's compliance of the abovementioned directions, the impugned order shall remain stayed.
14. List before the Registrar General for acceptance of the Bank Guarantee on 16th February, 2021. List this matter for further hearing on 26th February, 2021.

PRATHIBA M. SINGH
JUDGE

JANUARY 12, 2021/dj/Ak