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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: March 13, 2024

+ W.P.(CRL.) 780/2024, CRL.M.A.7287/2024

MR TALIB HASSAN DARVESH

..... Petitioner

Through: Mr. Siddharth Luthra and
Mr. Siddharth Agarwal, Sr. Advs.
with Mr. Ayush Agarwal, Mr. Udhav
Sinha, Mr. Amar Gahlot, Ms. Srishty
Jaura, Mr. Nalin Bajaj, Ms. Purvi
Garg and Mr. Prashant Singh, Advs.

versus

THE DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel
for E.D. with Mr. Vivek Gurnani, Mr.
Kartik Sabharwal and Mr. Abhigiya,
Advs.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

CRL.M.A.7287/2024

1. Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been preferred on behalf of the petitioner with the following prayers:

“a. Issue a Writ, order or direction in the nature of a mandamus or any other appropriate writ, order or direction directing the Respondents to provide a copy of the ECR/ AMZO/ 12/2021 to the Petitioner along with complete records and annexures [if any] and also place the same before this Hon'ble Court;



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b. Issue a writ, order or direction in the nature of a mandamus and/or certiorari or any other appropriate writ, order or direction quashing the ECIR being ECIR/ AMZ0/12/2021 and all consequential investigations and proceedings arising out of the same initiated against the Petitioner by the Respondents;

c. Issue a writ, order, or direction in the nature of a mandamus and/or certiorari or any other appropriate writ, order or direction quashing the summon dated 22.02.2024 issued to the Petitioner by the Respondent No 2 in relation to the ECIR being ECR/ AMZ0/12/2021.

d. Issue a writ, order, or direction in the nature of mandamus and/or certiorari or any other appropriate writ, order or direction, quashing and setting aside of the order/directive/noting vide which the ED investigation was transferred from Ahmedabad to Delhi.

e. Pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to direct no coercive steps be taken against the Petitioner in relation to impugned ECIR No. ECR/AMZ0/12/2021."

2. CRL.M.A.7827/2024 preferred under Section 482 Cr.P.C. read with Article 226 of the Constitution of India with following prayers is pressed by learned counsel for the petitioner:

"Pass ad-interim ex-parte order staying the ED investigation arising out of ECIR No. AMZ0/12/2021 and the Impugned Summons dated 22.02.2024; and/or

b. Pass ad-interim ex-parte order directing the Respondent to forthwith refrain from taking any further coercive steps against the Petitioner"

3. Petitioner is aggrieved by the continuance of ED investigation conducted by the respondent based on RC 0772020E0002 dated 02.12.2020 by CBI Mumbai under Section 120B read with Section 420 IPC, Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 against M/s Technovaa Plastic Industries Private Limited (Company) and others, wherein petitioner is named as accused No.3.



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4. In brief, as per the case of the petitioner, M/s Technovaa Plastic Industries Private Limited was sanctioned a term loan of Rs.85.62 crores by Bank of Baroda which was disbursed and utilized before 01.04.2015. The account of the company was declared NPA by Bank of Baroda on 30.03.2018 and further M/s Ernst & Young were engaged for conducting forensic audit of the company for the period 01.04.2015 to 31.03.2018.

5. It is further the case of the petitioner that NCLT Ahmedabad admitted an application for initiation of Corporate Insolvency Resolution Process (CIRP) against the company. Thereafter, in one of the CoC meetings, once again M/s Ernst & Young LLP was appointed by Bank of Baroda to conduct forensic audit of the company and the report of the same became the basis of adverse proceedings initiated by Bank of Baroda. A written complaint dated 02.12.2020 was filed by Bank of Baroda based on EY audit alleging that the company along with others including the petitioner committed bank fraud to the tune of Rs.57.29 crores.

6. Based upon the said complaint of Bank of Baroda, RC0772020E0002 dated 02.12.2020 was registered by CBI. Accused persons including the petitioner approached the Bombay High Court by way of W.P. (Crl.) 4862/2022 seeking quashing of FIR dated 02.12.2020 registered by CBI, which was subsequently withdrawn on 08.12.2023 granting liberty to the accused to approach afresh, if they were chargesheeted in the proceedings. Petitioner is also stated to have been granted anticipatory bail vide order dated 08.12.2022 by learned Sessions Judge, Bombay.

7. Search and seizure under Section 17 of Prevention of Money Laundering Act, 2002 (PMLA) is also stated to have been conducted by the respondent at the residential premises of the petitioner situated at Bengaluru



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on 22.02.2024. Further, summons were issued for appearance of petitioner in person or through AR on 01.03.2024. However, on 01.03.2024 on appearance of designated officer of petitioner, the insistence is stated to have been made for appearance of the petitioner.

8. In the aforesaid background, learned counsel for the petitioner presses for staying the ED investigation along with impugned summons dated 22.02.2024. It is also prayed that respondent be refrained from taking coercive steps against the petitioner.

9. Shri Siddharth Luthra, Senior Advocate on behalf of the petitioner submits that the aforesaid EY Audit has been declared unreliable by the National Company Law Tribunal Ahmedabad vide order dated 09.02.2021 in IA No.618/2019 in CP(IB) No.189/2018 on multiple grounds and as such any proceedings arising thereon, in the investigation undertaken by ED deserves to be quashed. It is further urged that there is nothing on record before any forum to suggest the existence of any “proceeds of crime” in any manner and as such there cannot be any question of committing the offence of money laundering under the Prevention of Money Laundering Act, 2002 (PMLA). It is also pointed out that the impugned summons dated 22.02.2024 are vague as the same does not convey if the petitioner is being summoned as a witness or suspect and neither the details of the documents and records has been specified in Annexure 1 of the summons, which are required to be investigated by ED. The entire exercise undertaken by ED is contended to be a fishing expedition and an arbitrary exercise of power. Reliance is further placed upon ***A.P. Mahesh Cooperative Urban Bank Shareholders Welfare Association v. Ramesh Kumar Bung and Ors., SLP (Criminal) No.3869 of 2021 decided on July 20, 2021, Mewa Ram Jain v. State of***



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Rajasthan and Others, S.B. Criminal Miscellaneous Petition No.7313/2023 decided by High Court of Judicature for Rajasthan at Jodhpur on 22.11.2023.

10. On the other hand, interim relief is opposed by learned counsel for the respondent/ED. He submits that the petitioner cannot be insulated from any coercive action at the initial stage itself and no protective orders can be passed in favour of the petitioner ignoring the mandate of Section 45 of PMLA, 2002. It is further submitted that proceedings initiated by Enforcement Directorate (ED) is an independent investigation into money laundering allegations based upon the ECIR and the benefit cannot be granted at this stage merely on account of order dated 09.02.2021 passed by NCLT or the orders granting anticipatory bail to the petitioner in FIR registered by CBI.

Referring to Section 41 of PMLA, 2002, it is urged that jurisdiction of Civil Courts is barred in respect of any matter in which the Director or an Adjudicating Authority or the Appellate Tribunal is empowered under the Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Further, relying upon Second Proviso of Section 32A of Insolvency and Bankruptcy Code, 2016, which deals with liability for prior offences etc, it is submitted that any person incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence continues to be liable for proceedings for such offence



committed by the corporate debtor, notwithstanding that corporate debtor's liability has ceased under the sub-Section.

It is also contended that for the purpose of conduct of enquiry/investigation, the concerned officers have the power to summon any person, whose attendance is considered necessary for the purpose of evidence or produce any record during the course of investigation or proceedings under the PMLA and the same is not impacted by non-mentioning of the documents required for investigation / enquiry in the summons impugned by the petitioner. It is further urged that since the offences in the RC registered by CBI are scheduled offences under the PMLA, the investigation/proceedings under the PMLA is in accordance with law and the petitioner is bound to appear as per summons issued under Section 50 of the Act.

It is also urged that inherent powers under Section 482 Cr.P.C. may not be used for staying the investigation or taking any coercive measure against the petitioner, as the same would amount to exercise of powers under Section 438 Cr.P.C. for anticipatory bail. Reliance is further placed upon ***Vijay Madanlal Choudhary and Others v. Union of India and Others*, 2022 SCC OnLine SC 929; *Dr. Manik Bhattacharya v. Ramesh Malik and Others*, 2022 SCC OnLine SC 1465; *Directorate of Enforcement v. Niraj Tyagi and Others*, Criminal Appeal No. 834/2024 decided on 13.02.2024.**

11. In ***A.P. Mahesh Cooperative Urban Bank Shareholders Welfare Association v. Ramesh Kumar Bung and Ors.***(supra), it was observed that ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors*, (2021) SCC OnLine SC 315** allows space for the High Court to pass an interim order in exceptional cases with caution and circumspection, giving brief



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reasons and what is frowned upon in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors* (supra) is the tendency of the Courts to pass blanket, cryptic, laconic, non-speaking orders relating to “no coercive steps shall be adopted”. The proposition of law to aforesaid extent is not disputed but exercise of power depends upon examination of factual matrix of each case.

12. The summons issued by ED cannot be quashed merely because the relevant documents required for purpose of investigation or confrontation to the petitioner, have not been specified in the summons. It needs to be kept in perspective that under the scheme of PMLA, 2002 upon identification of existence of property being proceeds of crime, the Competent Authority is to inquire into relevant aspects in relation to such property and take necessary measures in this regard as per provisions of PMLA, 2002. Since ECIR in an internal document created by Department before initiation of prosecution against persons involved with process or activity connected with proceeds of crime, it is not necessary to reveal the evidence collected by the ED at this stage in the summons forwarded to the petitioner.

13. It may also be observed that merely in view of order dated 26.10.2018 passed by NCLT, Ahmedabad bench in insolvency proceedings and reference of the same in order dated 08.12.2022 passed by learned Court of Session, Greater Bombay in Anticipatory Bail Application No. 2546 of 2022 preferred by petitioner, cannot lead to a conclusion at this stage, that petitioner is not associated with proceeds of crime. Neither the same takes away the jurisdiction to investigate the proceedings under PMLA, 2002.

Summons under Section 50 of the PMLA, 2002 have been issued by Competent Officer in connection with inquiry/investigation, *inter-alia*, for



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purpose of collection of information or evidence regarding proceeds of crime under the Act and the same is not hit by Article 20 (3) of the Constitution of India. Petitioner is yet to be absolved of scheduled offence by way of discharge, acquittal or quashing and as such protection orders cannot be issued in favour of petitioner ignoring the mandate under Section 45 of PMLA, 2002 for grant of bail. Further the summoning in exercise of statutory powers cannot be stalled merely on mere apprehension that petitioner may be arrested and prosecuted on basis of summons issued after registration of ECIR, in proceedings initiated by ED. In the facts and circumstances, no grounds for interim relief are made out at this stage.

It may be clarified that no observations have been made on merits or demerits of the proceedings initiated by Enforcement of Directorate at this stage, and the questions are left open to be considered in the light of investigation by ED.

Application is accordingly disposed of.

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List on 07.05.2024.

(ANOOP KUMAR MENDIRATTA)
JUDGE

MARCH 13, 2024/sd/R