

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6695/2008**

SUJANA STEELS LTD. & ORS.

Through

..... Petitioner

Mr. Amit Chadha, Sr. Advocate with Ms.
Naina Kejriwal, Advocates.

versus

SPECIAL DIRECTOR OF ENFORCEMENT & ANR.

Through

..... Respondent

Mr. Sachinb Datta and Ms. Poorva
Nanwati, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **30.11.2009**

1. By the impugned order dated 3rd July, 2008, the Appellate Tribunal for Foreign Exchange has disposed off the applications of the petitioners for waiver of pre deposit of penalty amount with a direction that the petitioners should deposit 50% of the penalty amount.
2. The petitioner admittedly is a company, which is in operation and functioning. Counsel for the petitioner submits that the cash deposit of Rs. 4,00,000,00/- is likely to have adverse impact on the cash flow and crush them. It is also pointed that the petitioner had obtained stay order from Court against invocation of letter of credits but the banks concerned made payments. He further states that an application has been made to the Reserve Bank of India for waiver of import.

3. Counsel for the respondent Enforcement Directorate has drawn my attention to the allegations and the findings recorded in the order dated 25th March, 2008, passed by Special Director, Enforcement Directorate. It is pointed out that the civil suits filed by the petitioners were dismissed as not pressed and contempt applications were not filed. It is submitted that in the present case, the cargo never reached India and the foreign exchange was not repatriated.

4. The allegations and findings against the petitioners are serious. It cannot be said that the petitioners are entitled to complete waiver of pre deposit. Admittedly, payment in foreign exchange was made but the cargo never reached India. The question relates to involvement of the petitioner and their directors. Further the petitioner No.1 is a running company and penalty of Rs.4,00,000,00/- has been imposed on the petitioner No.1 and Rs.1,00,000,00/- each has been imposed on the petitioner Nos.2 and 3 Chairman and Managing Director. A penalty of Rs.30,00,000/- has also been imposed on the petitioner No.3 Chief Executive of the petitioner No.1 company. Thus, the penalty imposed is about Rs.6,30,000,00/-. The penalty amounts are substantial and even deposit of 50% of the penalty amount will certainly have adverse impact on the cash flows and working. The petitioners have filed first appeals and have to be heard both on merits as well as quantum of penalty. By the interim order passed by this Court, the petitioners have been asked to deposit Rs. 25,00,000/- only.

5. Keeping in view the fact that the petitioner is a running company, it is directed that the petitioner No.1 will deposit a further sum of Rs. 50,000,00/- (total Rs.75,00,000/-) and the Chairman and the Managing Director of the petitioner No.1 company will deposit Rs.11,00,000/- each. The petitioner No.4 will deposit Rs.3,000,00/-. The said deposits will be made by the petitioners in two equal installments. The first installment will be paid on or before 15th January, 2010 and the second installment will be paid on or before 1st April, 2010. The petitioners will file an affidavit within four weeks before the Appellate Tribunal for Foreign Exchange giving details of the immovable properties owned by them including immoveable properties owned by their family members i.e. spouse and children. The petitioners will also give details of their bank accounts. The petitioners will not sell, dispose or encumber the immovable properties except with prior permission of Appellate Tribunal for Foreign Exchange. The petitioners will update details of their bank accounts and inform the learned Tribunal in case they or their family members i.e. spouse or children acquire any new immovable properties.

The writ petition is accordingly disposed of.

SANJIV KHANNA, J.

NOVEMBER 30, 2009
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