

GAHC010291352019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8848/2019

PHENIX PROPERTIES LTD.
A PUBLIC LTD. COMPANY HAVING ITS REGD. OFFICE AT G.S.ROAD,
LACHIT NAGAR, ULUBARI, GHY-7, REP. BY THE DIRECTOR SRI SOMNATH
GUPTA, AGED ABOUT 58 YEARS

VERSUS

THE STATE OF ASSAM AND 10 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME DEPTT.,
DISPUR, GHY-6

2:THE DIRECTOR GENERAL OF POLICE
ULUBARI
GHY-7

3:THE DIRECTOR
BUREAU OF INVESTIGATION (ECONOMIC OFFENCES) SRIMANTAPUR
RUPNAGAR
GHY
DIST- KAMRUP (M)
ASSAM

4:THE REGIONAL MANAGER
SECURITY AND EXCHANGE BOARD OF INDIA
REGIONAL OFFICE
L AND T CHAMBERS
3RD FLOOR
16 CAMAC STREET
KOLKATA- 700017

5:THE ASSTT. MANAGER
SECURITY AND EXCHANGE BOARD OF INDIA

LOCAL OFFICE
4TH FLOOR
NEDFI HOUSE
DISPUR
GHY-6

6:THE DY. COMMISSIONER
NAGAON
DIST- NAGAON
ASSAM

7:THE DY. COMMISSIONER
CACHAR
SILCHAR
DIST- CACHAR
ASSAM

8:THE DY. COMMISSIONER
SHANKARDEV NAGAR
HOJAI
DIST- HOJAI
ASSAM

9:THE CIRCLE OFFICER
KALIABOR REVENUE CIRCLE
DIST- NAGAON
ASSAM

10:THE CIRCLE OFFICER
HOJAI REVENUE CIRCLE
DIST- HOJAI
ASSAM

11:THE CIRCLE OFFICER
SILCHAR REVENUE CIRCLE
DIST- CACHAR
ASSA

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 24-07-2024

1. Heard Mr. K. H. Khandakar, learned counsel for the petitioner. Also heard Ms. M. Hazarika, learned Senior Counsel assisted by Mr. D. Khan, learned counsel appearing on behalf of respondent Nos. 4 and 5; and Mr. K. Gogoi, learned Government Advocate appearing on behalf of respondent Nos. 1, 2, 3, 6, 7, 8, 9, 10 and 11.

2. The petitioner is a public limited company whose business operations have remained suspended since the year 2012. A criminal prosecution was initiated vide BI(EO) PS Case No. 15/2012 registered under Sections 120(B)/420/406 of IPC and in the process, it is claimed by the petitioner that the bank account of the petitioner was freezed by the investigating authority.

3. The respondent BI(EO) has filed an affidavit in this proceeding and has taken a stand at paragraph 7 of the affidavit that though BI(EO) had originally objected to the petitioner company's move to alienate its assets, in view of the pendency of the aforesaid criminal investigation, however, after completion of the investigation, charge sheet has already been submitted in the aforesaid case and therefore, at this stage, BI(EO) is not objecting to reopening of the bank account inasmuch as the same is now within the domain of the learned trial Court.

4. It is apposite to record herein that, Security and Exchange Board of India (SEBI) had passed an order on 27.04.2016 inter alia directing the petitioner company to refund the money collected by the company to the investors through issuance of redeemable preference shares. The SEBI also

granted permission to the petitioner to sell the assets of the company for the sole purpose of making the refunds as directed in the matter. However, it is alleged such sale permissions were not being granted by the authorities due to pendency of the investigation initiated by BI(EO).

5. It is also seen from the order of the SEBI that the company and/or its management were permitted to sell the assets of the company only for the sole purpose of making refunds and deposit of the proceed was to be made in an ESCROW account to be opened in a nationalized bank.

6. At this stage, the learned counsel for the petitioner submits that in view of stand taken by the BI(EO), there shall be no problem for operating the account as the investigation is already complete. However, it is the grievance raised by the learned counsel for the petitioner that such ESCROW account could not be opened for the reason of an order passed by the SEBI, whereby, the account of the petitioner has been frozen. Admittedly, such order is neither part of this record, nor a subject matter of challenge.

7. Therefore, in the aforesaid litigational background, this Court is of the opinion that nothing survives to be adjudicated at present. However, the learned counsel for the petitioner at this stage submits that petitioner may be permitted to raise his grievances before the SEBI once again seeking permission to open an ESCROW account so that petitioner can sell the properties and comply with the direction of the SEBI passed on 27.04.2016, under Section 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, as recorded as recorded hereinabove.

8. Ms. M. Hazarika, learned Senior Counsel has also not objected to such prayer inasmuch as the petitioner shall have a liberty to seek

clarification in this regard so far it relates to opening of an ESCROW account and sale of the properties as directed by the SEBI in its order dated 27.04.2016.

9. Accordingly, the present writ petition stands closed with a liberty to the petitioner to approach the SEBI for redressal of his grievances, if any, including the grievance of not being able to open an ESCROW account and in the event, such application is filed, same may be considered as per law.

10. This disposes the writ petition.

JUDGE

Comparing Assistant