

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22147 of 2014

Rose Valley Hotels and Entertainment Limited, having its Registered Head Office at RGM - 25/3010, Raghunathpur, VIP Road, Kolkata - 700059, Regional Office at H.D.F.C. Building, Anisabad, Old Bypass, Khagaul Road, P.S. - Gardanibagh, Town and District - Patna, Represented through Sri Lakhindhar Ghosh, S/o - Late Gopal Chandra Ghosh, holding the post of Senior Regional Manager, who is working for gain in Rose Valley Hotels and Entertainment Limited.

.... Petitioner

Versus

1. The Union of India represented by the Secretary, Department of Revenue, Ministry of Finance, Government of India, having his office at 12B-A/North Block, New Delhi - 110001.
2. The Directorate of Enforcement, Prevention of Money Laundering Act, 2002, Government of India, represented by its Director, having his office at Lok Nayak Bhawan, 6th Floor, Khan Market, New Delhi - 110003.
3. The Registrar/Administrative Authority, Adjudicating Authority under the Prevention of Money Laundering Act. 2002, Government of India, having his office at Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001.
4. The Chairman, Adjudicating Authority under the Prevention of Money Laundering Act, 2002, Government of India, having his office at Room No. 25, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110001.
5. The Joint Director, Directorate of Enforcement, Prevention of Money Laundering Act, 2002, Government of India, Patna Zonal Office, having his office at 4th Floor (Eastern Wing), BSFC Building, Fraser Road, Patna - 800001 (Bihar).
6. The Joint Director, Directorate of Enforcement, Prevention of Money Laundering Act, 2002, Government of India, having his office at N-3/134, Naya Palli, IRC Village, VIP Area, Bhubaneshwar - 751015, Odisha.
7. The Assistant Director, Directorate of Enforcement, Prevention of Money Laundering Act, 2002, Patna Zonal Office, having his office at 4th Floor (Eastern Wing), BSFC Building, Fraser Road, Patna - 800001 (Bihar).
8. The Assistant Director, Eastern Region, Directorate of Enforcement, Prevention of Money Laundering Act, 2002 Government of India, having his office at CGO Complex, 3rd MSO Building, 6th Floor, DF Block, Salt Lake, Kolkata, 700064.
9. The Deputy Director, , Eastern Region, Directorate of Enforcement, Prevention of Money Laundering Act, 2002, Government of India, having his office at CGO Complex, 3rd MSO Building, 6th Floor, DF Block, Salt Lake, Kolkata, 700064.
10. The Special Director, Eastern Region, Directorate of Enforcement, Prevention of Money Laundering Act, 2002 Government of India, having his office at CGO Complex, 3rd MSO Building, 6th Floor, DF Block, Salt Lake, Kolkata, 700064.
11. The Additional Director (Prosecution), Enforce Directorate, having his office at Lok Nayak Bhawan, 6th Floor, Khan Market, New Delhi - 110003.
12. The State of Bihar represented by the Chief Secretary, Government of Bihar, having his office at Old Secretariat, Bihar at Patna.
13. The Secretary, Department of Revenue, Government of Bihar, having his office at Old Secretariat, Bihar at Patna.
14. The Secretary, Department of Finance , Government of Bihar, having his office at Old Secretariat, Bihar at Patna.

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15. The Secretary, Department of Home , Government of Bihar, having his office at Old Secretariat, Bihar at Patna.
 16. The Director General of Police , Government of Bihar, having his office at Old Secretariat, Bihar at Patna.
 17. The Senior Superintendent of Police, Patna, District - Patna.
 18. The City Superintendent of Police, Patna, District - Patna.
 19. The Central Bank of India, represented by its Chairman, having his office at Central Office, Chander Mukhi, Nairman Point, Mumbai - 400021.
 20. The Zonal Manager, Central Bank of India having his office at 2nd Floor, Block - B, Maurya Lok Complex, Dak Bungalow Road, Dist - Patna, Bihar - 800001.
 21. The Punjab National Bank, represented by its Zonal Manager, having his office at R-Block, Chanakya Place, Patna - Pin Code - 800001.
 22. The State Bank of India, represented by its Managing Director (N.B.G.), State Bank Bhawan, 18th Floor, Madam Cama Road, Mumbai - 400021.
 23. The Zonal Manager, State Bank of India having his office near Gandhi Maidan, District - Patna, State - Bihar, PIN - 800001.
 24. The HDFC Bank, represented by its Regional Manager, having his office at the HDFC Bank Ltd, SR - 01, Rajendra Ram Plaza Plot No. 875, Exhibition Road, Patna, Bihar - 800001.
 25. The United Bank of India, represented by its Zonal Manager cum DGM and Chief Regional Manager, having his office at 4, N.C. Dutta Sarani, Kolkata, Pin Code - 700001.
 26. The Union Bank of India, represented by its Branch Manager, having his office at Union Bank of India, At Post - Chautham, District - Khagaria, Bihar, Pin - 851201.
 27. The Bank of India, represented by its Zonal Manager, having his office at Chanakya Place, Birchand Patel Marg, Patna, Bihar, Pin Code - 800001.
 28. The Bihar Gramin Bank, represented by its Chairman, having his office at Orth HFCL, Gate NH - 31, Begusarai, Bihar - 851135.
 29. The Axis Bank, represented by its Senior Vice-President, having his office at 2nd Floor, Wadia International Center, Pandurang Budhakar Marg, Worli Mumbai - 400025.
 30. The UCO Bank, represented by its Chairman, having his office at Head Office, 10, Biplobi Trailokya Maharaj Sarani, Kolkata - 700001.
 31. The Allahabad Bank, represented by its Chairman, having his office at Head Office, 2, Netaji Subhas Road, Kolkata - 700001.
 32. The Vijaya Bank, represented by its Chairman, having his office at Administrative Office, Janardan Tower No. 2, Residency Road, Bangalore - 560025.
 33. The Union Bank of India, represented by its Chariman, having his office at Union Bank Building, Central Office, 239, Backbay Reclamation, Post Box No. 93 A, Nariman Point, Mumbai - 400021.
 34. The Madhya Bihar Gramin Bank, represented by its Chairman, having his office at Meena Plaza, South of Museum, Patna - 800001.
 35. The Indian Bank, represented by its Chairman, having his office at Indian Bank Building, P.B. No. 1384, 31, Rajaji Road, Chennai - 600001.
 36. The Assam Gramin Vikash Bank, represented by its Chairman, having his office at G.S. Road, Bhanga Ghar, Guwahati - 781005 (Assam).
 37. The Indusind Bank Ltd., represented by its Chairman, having his office at P.O. Box No. 9421, Chakla, MIDC, Andheri (E), Mumbai - 400093.
 38. The Andhra Bank, represented by its Chairman, having his office at Andhra Bank Building, Sultan Bazar, P.B. No. 161, Hyderabad - 500001.
 39. The West Bengal State Co-operative Bank, represented by its Manager, having his office at 24-A, Waterloo Street, Kolkata - 700069.

40. The Bank of Maharashtra, represented by its Chariman, having his office at Lok Mangal, 1501, Shivaji Nagar, Post Box No. 919, Pune - 411005. The IDBI Bank, represented by its Chairman, having his office at 6th Floor, Suraj House, Plot No. 90, 7th Street, MIDC Andheri (E), Mumbai - 400093.
41. The Syndicate Bank, represented by its Chairman, having his office at Post Box No. 1, Manipal - 576119, Karnataka.
42. The Bank of Baroda, represented by its Chairman, having his office at Baroda Corporate Center, C- 26, G Block, Bandra - Kurla Complex, Bandra East, Mumbai - 400021.
43. The Canara Bank, represented by its Chairman, having his office at 112, Jayachamarajendra Road, Post Box No. 66-48, Bangalore - 560002.
44. The Karnataka Bank, represented by its Chairman, having his office at Mahaveera Circle, Kankanady, Post Box No. 599, Dakshina Kannada District Karnataka State, Mangalore - 575002.
45. The Oriental Bank of Commerce, represented by its Chairman, having his office at E-Block , Cannaught Place, P.B. No. 329, New Delhi - 110001.
46. The Central Bank of India, represented by its Chairman, having his office at Central Office Chander Mukhi, Nariman Point, Mumbai - 400021.
47. The Tripura State Co-operative Bank Ltd., represented by its Chairman, having his office at Amulya Market, 2nd Floor , Post Office Chowmuhani, Agartala - 799001, Tripura.
48. The Assam Gramin Vikash Bank, represented by its MD and CEO, having his office at 8th Floor, Tower - 1 , One India Bulls Center, Jupiter Mills Compound, 841, SB Marg, Eliphiston Road, West Mumbai - 400013.
49. The HDFC Bank Ltd., represented by its Deputy Vice President, having his Office at 3A, Gurusaday Road, Kolkata - 700019.
50. The United Bank of India, represented by its Chairman, having his office at 16, Old Court House Street, Kolkata - 700001.
51. The ICICI Bank, represented by its Chairman, having his office at ICICI Bank Tower, Bandra Kurla Complex, Mumbai - 400031.

.... Respondents

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Appearance :

For the Petitioner: Mr. L.N.Rao, Sr. Advocate
Mr. Abhoy Kumar Singh, Sr. Advocate
Mr. Y.V.Giri, Sr. Advocate
Mr. Soumik Dev, Advocate
Mr. P.N. Mazumdar, Advocate
Mr. Goutham Shiv Shankar, Advocate
Mr. Sumeet Kumar Singh, Advocate
Mr. Sanchay Srivastava, Advocate
Mr. Binod Kumar Singh, Advocate

For the Resp. UOI: Mr. Samsuddin, Sr. Advocate
Mr. Sanjay Kumar, ASG
Mr. Manoj Kumar Singh, C.G.C.

For the Resp. No.21: Mr. Kumar Priya Ranjan, SC

For the Resp. No. 24: Mr. Girijesh Kumar, Advocate
For the Resp. No.38 Mrs. Sheela Sharma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)
Date: 11-03-2015

The present writ petition has been filed with a prayer, inter alia, for quashing/setting aside the letters dated 26.07.2013, 29.07.2013, 29.07.2013 and 27.07.2013, the summons, the seizure Memorandum dated 22.05.2014, the communication dated 22.09.2014 and the provisional attachment order dated 27.11.2014 variously contained in Annexures 15 to 20, 23 and 24 respectively and for other ancillary reliefs.

2. I.A. No. 1044 of 2015 has been filed praying for amendment of the relief portion in the writ petition, inter alia, seeking quashing/setting aside of the ECIR dated 13.06.2014 (Annexure-35 series) as also the impugned show cause notices all dated 26.12.2014 (Annexure-36 series).

3. We allow I.A. No. 1044 of 2015 and the same is treated as forming part of the writ petition, wherein the prayer shall stand amended accordingly.

4. Heard the parties. The matter is listed for admission when extensive arguments have been advanced by the parties.

5. The facts of the case in brief are as follows. Pursuant to certain information received from the Deputy Inspector General of Police, EOW, Odisha, Bhubaneshwar dated 29.05.2014, a case



was registered vide ECIR No. BSZO/03/2014 dated 13.06.2014 by the Assistant Director, Enforcement Directorate, (PMLA), Kolkata Zonal Office, Kolkata) and the matter was taken up for investigation under the provisions of the Prevention of Money Laundering Act, 2002 (the 'PMLA' hereinafter for brevity) and the Rules framed thereunder. In due course, a provisional attachment order dated 27.11.2014 (Annexure-24) came to be passed by the Joint Director, Enforcement Directorate, Bhubaneswar u/s 5(1) of the PMLA on the basis of materials and evidences placed before him as a result of investigation carried out. According to the said provisional attachment order, the investigation, in essence, revealed the purported criminal activities of the petitioner and the Rose Valley Group of Companies involving the offence of cheating thereby attracting the provision of Section 420 of the Indian Penal Code being a scheduled offence under the PMLA, through illegal collection of public deposits with promise of return at high rates of interest, as well as money circulating activity without being enlisted as an NBFC in RBI and SEBI which was prohibited under the provisions of Prize Chits and Money Circulation Scheme (Banning) Act, 1978 as well as other similar activities. Scrutiny of the balance-sheets of the Group Companies also revealed cross-shareholding leading to an inference that to defraud the public, the deposits collected from the public was shown as share capital of the group companies constituting fake capital by changing the colour



of public deposits collected illegally into share capital of the group companies. On initial analysis of the documents collected during course of investigation, it came to light that an amount of Rs. 466,19,08,264/- had been collected from the investors in the Odisha region and further that total collections from the public at large exceeded Rs. 15,484 crores. On these as well as other extensive materials enumerated in the provisional attachment order, the Joint Director recorded that he had reasons to believe that if no Provisional Attachment Order was passed in the case at that crucial stage, the investments in the properties made out of proceeds of crime were likely to be concealed, transferred or dealt with in such a manner that may result in frustrating the proceedings relating to confiscation of such proceeds of crime under Chapter III of the PMLA. Accordingly, he ordered the provisional attachment of the immovable properties mentioned in Schedule-A to the order comprising 2807 Bank accounts identified till then through investigation having Rs. 295,85,31,627/- as balance, along with further credits, if any, therein, as well as interest accrued thereon, in terms of Section 5 (1) of the PMLA and its proviso.

6. A preliminary objection was taken on behalf of the respondents with regard to the maintainability of the writ petition within the jurisdiction of this Court. Learned senior counsel for the petitioner, Mr. Nageswara Rao, on the other hand, submits that while the petitioner-company has its Head



Office at Kolkata, one of its regional offices is located at Anisabad, Patna. Learned counsel further submits that pursuant to the provisional attachment order dated 27.11.2014 (Annexure 24), the petitioner-company's accounts maintained with Banks located within the State of Bihar have been attached, one such being Account No. 19400210000373 with UCO Bank, Kahalgaon, District Bhagalpur. As such, part of the cause of action has arisen within the territorial jurisdiction of this Court and in view of Article 226(2) of the Constitution of India, the writ petition is maintainable. For this purpose he relies on a recent decision of the Hon'ble Apex Court reported in (2014) 9 Supreme Court Cases 329 (Nawal Kishore Sharma Vs. Union of India).

7. We are in agreement with the submissions of learned senior counsel for the petitioner and have no hesitation in holding that in view of the fact that some of the petitioner-company's accounts maintained with banks located within the State of Bihar have been attached, the cause of action has partially arisen within the State of Bihar and as such, in view of Article 226(2) of the Constitution of India, the writ petition is maintainable before this Court.

8. Mr. Nageswara Rao has questioned the overall validity of the entire action of the Respondent authorities and more particularly, the issuance of the provisional attachment order under Section 5 of the PMLA. He submits that such provisional attachment order is wholly without jurisdiction in terms of

Section 5(1)(b) of PMLA, which primarily envisages a precondition with regard to the likelihood of a proceeding relating to confiscation of the proceeds of crime being frustrated, which, in turn, presupposes the activity of money laundering referable to Section 3 of PMLA but which is completely absent herein.

9. Learned counsel for the respondents, on the other hand, vehemently opposes the writ petition on the plea that an effective statutory procedure is in place with adequate safeguards built-in within the PMLA to counteract money laundering. In exigent situations, Section 5 of PMLA provides for provisional attachment of property representing proceeds of crime. Section 8 of PMLA contains provisions for adjudication, in terms of which the adjudicating authority, upon receipt of a complaint/application, is required to serve a notice to the concerned aggrieved person and after considering the reply and hearing him as well as taking into account all the relevant materials placed on record before him, pass an order recording a finding whether the properties in question are involved in money laundering. It is only upon arriving at such a decision that an order confirming the provisional attachment made under Section 5(1) of the PMLA can be passed. Furthermore, if upon conclusion of trial under the Act, the Special Court finds that the offence of money laundering has not taken place and the property is not involved in money laundering, the same shall be ordered to be

released under Section 8(6) of the PMLA. In other words, the adjudicating authority is vested with the requisite powers to determine the legality and validity of the provisional attachment and whether the Petitioner has indulged in the offence of money laundering.

10. As indicated above, the allegations against the Petitioner-Company, in a nutshell, are that it dishonestly collected public deposits as an NBFC in contravention of the provisions of the Prize Chits and Money Circulation (Banning) Act, 1978 and thereby committed the offence u/s 420 IPC being a Scheduled Offence under the PMLA, and such proceeds of crime metamorphosed into the untainted share capital of the Petitioner's group Companies through crossholding thus amounting to the offence of money laundering under the PMLA.

11. Serious allegations have therefore been leveled against the petitioner-company and its group companies which raise the issue of their having prima-facie indulged in criminal activities to defraud the public at large and having illegally collected considerable funds by committing a scheduled offence. Whether or not the Petitioner has committed the offence of money laundering requires an in-depth appraisal and analysis of complex facts and circumstances in which the activities of the Petitioner remain shrouded. Having regard to the materials in the show cause notice, however, it can hardly be said with any degree of certainty that the Petitioner falls beyond the ambit and

purview of PMLA as being not covered under the provisions thereof, which remains an open question.

12. It may be not out of place to note here that the Petitioner-Company has approached the Hon'ble Calcutta High Court in W.P. 28701(W) of 2014 in the context of PMLA, inter alia, with a prayer for defreezing its Bank account, which matter is also pending.

13. After careful consideration and in the totality of the facts and circumstances of the case, therefore, we would refrain at this stage from expressing any opinion on the issue of money laundering by the Petitioner or the applicability of the PMLA, which if done, would not only preempt the exercise of jurisdiction statutorily entrusted to the authorities under the PMLA, but is also likely to prejudice the Petitioner in the proceedings before the adjudicating authority. The elaborate statutory provisions of PMLA are well-equipped to deal with cases of the present nature and the adjudicating authority is amply imbued with powers under Section 8 of the PMLA to decide the validity of the provisional attachment. When the Petitioner's claims based in considerable proportion on issues of fact are capable of being decided by a competent statutory authority, there appears to me little reason for this Court to exercise its extraordinary constitutional writ jurisdiction at this stage.

14. We also feel it necessary to observe that the averment

made in paragraph 17 of I.A. No. 1044 of 2015 is not entirely accurate in stating that a host of show cause notices dated 26.12.2014 (Annexure-36 series) were issued in utter violation of the undertaking given by the respondent No. 3 before this Court, in the face of the interim order dated 23.12.2014 passed with a direction to the following effect –

“Considering the fact that the learned counsel for the respondents agree that until the returnable date, no coercive action will be taken against the writ petitioner pursuant to the impugned order, dated 27.11.2014 (Annexure 24 to the writ petition), we, at this stage, do not make any interim order except directing that in terms of the submissions, which have been made on behalf of the respondents, the respondents shall not, without leave of this Court, take any coercive action against the writ petitioner until the next date of hearing.”

15. While several show cause notices have been annexed as Annexure-36 series relating to the group companies and its officials, nothing has been brought on record to show that any such show notice was at all issued to the petitioner-company in violation of the interim order passed in its favour as aforesaid. Such statement by the Petitioner is thus misleading. In these circumstances, the challenge to the show cause notices dated 26.12.2014 issued to various other persons as contained in Annexure-36 series to the amendment petition at the instance of the Petitioner-Company is clearly completely misconceived.

16. We also note that the interim relief granted to the

Petitioner-Company by order dated 23.12.2014 was effective specifically only till the next date of hearing and is thus no longer in force. Needless to say, therefore, the Respondent authorities shall be at liberty to proceed for adjudication in accordance with Section 8 of the PMLA.

17. In the above view of the matter, we do not find this a fit case calling for interference in exercise of the discretionary and extraordinary powers of this Court in its writ jurisdiction.

18. In the result, the writ petition stands dismissed. There shall be no order as to costs.

AFR

(Vikash Jain, J)

(L. Narasimha Reddy,CJ) -I agree.

(L. Narasimha Reddy,CJ)

B.T/Chandran

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