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

+ **W.P.(CRL) 2422/2016 & CrI. M.A. No.12808/2016**

**RAHUL SARAF**

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with  
Mr. Chayan Sarkar, S.K. Singhi, Arjit  
Pratap Singh, Jaiprakash, Ritul  
Tandon, Jaideep and Karan Bindra,  
Advocates

versus

**C B I & ANR**

..... Respondent

Through: Mr. Nikhil Goel and Mr. Ashutosh  
Ghade, Adv for CBI with Dy. S.P.  
Mr. R. Parthasarathy, EOW IV  
Mr. Anil Soni, CGSC for R-2

**CORAM:**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**ORDER**  
**22.08.2016**

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Issue notice. Mr. Goel accepts notice. He is assisted by the IO Mr. Parthasarathy. I have heard the submissions of learned senior counsel for the petitioner as well as those advanced by Mr. Goel on advance notice. Since a consensus has been reached between the parties for the present, the matter can be disposed of today itself. Accordingly, I proceed to dispose of the same.

The petitioner has preferred the present writ petition to seek the quashing of notices dated 14.07.2016 and 04.08.2016 issued by the respondent to the petitioner in pursuance of receipt of letters rogatory from the Russian Federation. The petitioner seeks a restraint against the respondents from taking any action pursuant to the said notices.

The brief background of the case is that the petitioner is a Director of an Indian company, namely, Saraf Agencies Private Limited (SAPL). The said company was engaged in setting up a project for production of synthetic rutile and slag at District Ganjam, Orissa. According to the petitioner, the project idea was incorporated in the year 1996 by SAPL. The Research and Development activities were undertaken by SAPL and various MOU's were signed between SAPL and Indian Rare Earth Ltd., Ishihara Sangyo Kaisha Ltd.-Japan, IDOCL, a Government of Orissa undertaking for the furtherance of supply of raw materials. That during this period from 2003, the Government of Orissa started acquiring the land under the Land Acquisition Act for SAPL for setting up of the project. The entire consideration for acquiring the land was paid by SAPL to the Government of Orissa from its own resources.

Meanwhile, around December, 2001, the Russian Federation submitted a business plan to the Government of Orissa expressing their intention for setting up of a joint venture project with two Russian Companies namely *J.S.C Technochem Holding* and *Pigment Corporation* for production of pigments and a Memorandum of Understanding was signed in September, 2005 by and between SAPL and the Russian entities agreeing to set up an integrated chemical and metallurgical complex to produce titanium slag, pig iron and ferro titanium and other products with

different capacities.

In the year 2006, in the presence of Mr. Vladimir Putin, Hon'ble President of Russia and Dr. Manmohan Singh, the then Hon'ble Prime Minister of India a Co-operation agreement was signed between the two countries

In the year 2007, the Russian Government sent a proposal to the Government of India for the release of USD 126 Million from the Rupee Rouble fund for investment in the Titanium Project. The same was also accepted by the Government of India on 14.07.2007, with the condition that the said fund shall be released as a part of the share capital of the Russian Partner in the J.V and the same shall be subject to a lock in period of 5 years. Accordingly a JV agreement was executed on 29.01.2008. The Joint Venture entity was named Titanium Products Pvt. Ltd. hereinafter referred to as TPPL and the same was incorporated in the State of Orissa on 28.03.2008. The Russian partner to the JV had created disputes on the contribution of SAPL in the share capital of the JV Company claiming non contribution and the same is pending assessment before the Hon'ble Arbitral Tribunal constituted by the Hon'ble Supreme Court of India vide order dated 18.02.2011. The share certificates to the signatories of the MOA and AOA stands allotted, however, the share certificates of Indian Partners was not handed over to them and were taken away by the then General Director of TPPL, Mr. G. Lunev, a Russian nominee who was to sign as a third signatory and return the same.

An arbitration agreement was entered into by and between the Parties on 03.03.2010 and 23.04.2010 in presence of the officials of the government of India and Government of Orissa.

The Russian Partner, breaching the terms of the agreement, failed to come forward and take over the SEZ or comply with any other formalities to give effect to the said agreement dated 03.03.2010 and 23.04.2010. That thereafter, Indian Partner invoked the arbitration clause and also approached the Hon'ble Supreme Court of India for constituting a tribunal.

That the Hon'ble Supreme Court of India vide an order dated 18.02.2011 constituted the arbitral tribunal.

That complying with the decisions arrived at through a meeting dated 03.03.2010 SAPL transferred all its rights, title and interest in its SEZ in favour of TPPL subject to payment of compensation and completion of documentations and transfer formalities to be done by Russian partner/ JV Company. Out of the total claim for transfer of SEZ, part consideration of Rs. 135.16 Crores was paid to SAPL by TPPL and it was also assured that the balance amount shall be paid within the next 30 days. The Russian Partner continued to adopt a hostile approach towards Indian partner and as result of which the J.V failed and a lot of statutory compliances under the Companies Act and alike, could not be made. That the Joint Venture could not start its operation ever since it came into existence. That there were multiple civil litigations pending between the Indian partner and its Russian Partner viz., in the City Civil Courts at Calcutta, Hon'ble High Court at Calcutta, National Company Law Tribunal, Eastern Bench, Kolkata and at the High Court of Orissa besides the Hon'ble Arbitral Tribunal.

The petitioner received the impugned notices from the respondent under Section 160 Cr PC from which it was learnt that the respondent was investigating under Chapter XII of Cr PC a case being Criminal Case 385014 of IVth Investigative Department of Major Investigations,

Directorate of Russian Federation, Moscow on the letters rogatory issued by the Government of Russian Federation. The petitioner was required to remain present for the purpose of investigation in relation to the said case. Consequently, the present petition has been preferred by the petitioner.

The submission of Mr. Nandrajog, learned senior counsel for the petitioner is that the petitioner is completely in the dark with regard to the nature, purport and content of the case initiated in Russia, which is under investigation. The petitioner is not aware as to whether or not the petitioner is an accused in the said proceedings. Moreover, the petitioner is also not aware as to what bearing the investigation may have on the on-going arbitration between SAPL and the Russian counterparts, as noticed above.

Mr. Nandrajog submits that the Indian and Russian Federation have entered into a treaty on mutual legal assistance in criminal matters. He has referred to Article 13 of the said treaty and in particular to Article 1.1, 1.2, 1.3 and 2.4 thereof, which reads as follows:

“  
*Part III – Procedure*  
*Article 13*  
*Contents of requests*

- 1. In all cases requests for assistance shall include:*
  - 1.1 the competent authority conducting the investigation, criminal prosecution or proceedings to which the request relates;*
  - 1.2 a description of the nature of the investigation, criminal prosecution or proceedings, including a copy or summary of the relevant facts and laws;*
  - 1.3 the purpose for which the request is made and the nature*

*of the assistance sought; and*

1.4 xxx xxx xxx xxx xxx xxx xxx xxx

2. *Requests for assistance shall also contain the following information:*

2.1 xxx xxx xxx xxx xxx xxx xxx xxx

2.2 xxx xxx xxx xxx xxx xxx xxx xxx

2.3 xxx xxx xxx xxx xxx xxx xxx xxx

2.4 *in the case of requests to take evidence from a person, information as to whether that evidence is required to be sworn, affirmed, or otherwise taken in conformity with the law of the Requested Party, and a description of the subject matter of the evidence or statement sought ... ..;”.*

Mr. Nandrajog submits that the petitioner cannot be expected to compromise his position in relation to any criminal proceedings, and he is entitled to protection of his rights under Article 20(4) of the Constitution of India. It is argued that merely because the criminal proceedings have been initiated in Russia, the petitioner cannot be worse off than he would have been had the case been initiated in Indian Courts as, in that situation, he would at least know the nature of the case and the allegations, if any, made against him as an accused, if at all.

Learned counsel for the respondent, on instructions, submits that the concerns of the petitioner can be met by providing the petitioner with the extract from the request for legal assistance dated 18.09.2015 received from the Russian Federation. He submits, on instructions from the IO, that the respondent has no objection to provide the gist of the case which is

contained in the background note in the first three and half pages of the said request. However, the respondent cannot share the interrogatories in advance with the petitioner as the said interrogatories would have to be answered by the petitioner upon his personal appearance.

Mr. Nandrajog submits that once the petitioner receives the said background note, the petitioner would decide the future course of action that the petitioner may be advised to take. However, for the present, the petitioner feels satisfied if the said note is provided.

Accordingly, the respondent is directed to provide, during the course of the day, to the petitioner through counsel the first three and half pages of the said request for legal assistance dated 18.09.2015 i.e. the portion before the interrogatories begin.

In case the petitioner is issued any fresh notice under Section 160 Cr PC, the petitioner shall promptly deal with the same in the manner that the petitioner considers appropriate. Else, the petitioner shall join the investigation.

Petition stands disposed of in the aforesaid terms.

Order dasti under the signatures of the Court Master.

**VIPIN SANGHI, J**

**AUGUST 22, 2016**

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