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

\+ W.P.(CRL) 2617/2016

M/S. OMAR INTERNATIONAL PVT LTD

..... Petitioner

Through: Mr. Shaad Anwar, Advocate

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondent

Through: Mr. Avi Singh, ASC with Mr. Jaskaran, Adv for State with Insp. Ajeet

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **15.12.2016**

1. The petitioner has preferred the present writ petition being aggrieved by the inaction of the respondents i.e. the State and the Joint Commissioner, EOW of Delhi Police in taking any effective investigation and steps in respect of case FIR No.107/2015 dated 19.8.2015 registered at PS EOW, Delhi under Section 420/467/468/471/120B IPC.

2. The case of the petitioner is that the petitioner is an exporter of meat. The accused Cosmos Trade International Company Limited and Cosmos Trade International Limited, whose Directors have also been named in the FIR, had placed orders for procuring buffalo meat from the petitioner.

According to the petitioner, he had made supplies of the said buffalo meat. The petitioner claims that the accused made only part payment leaving an outstanding balance of US$ 16,16,210 (which translates to more than 9 crores). The petitioner states that Cosmos Trade International Company Limited admitted in its letter dated 04.06.2014 submitted to the petitioners bank Syndicate Bank Ltd., New Delhi that the balance of around US$ 35,00,000 is outstanding against them and they are under an obligation to make payment to the petitioner, for which they sought time.

3. The petitioner states that the accused persons provided the petitioner with the swift wire transfer details in respect of payment of outstanding amount of US$ 16,61,210 purportedly made by the accused company to the petitioner. Copies of the swift wire transfers dated 30.06.2014, 21.07.2014, 28.07.2014, 19.08.2014, 26.08.2014, 04.09.2014 and 22.10.2014 stated to have been sent by Sarfaraz Latif, Director of Cosmos Trade International with acknowledgment of payment to the petitioner have been placed on record. The petitioner states that on inquiry, the said swift wire transfer details were found to be forged and fabricated and non-existing. The petitioner did not receive the payment in terms of the said swift wire transfers.

4. The petitioner made its complaint on 16.03.2015, which led to the registration of the aforesaid FIR belatedly on 19.08.2015. Thus, it would be seen that, from the beginning, the EOW dragged its feet in the matter by not registering the FIR for nearly five months of the making of the complaint. Since no substantial steps were taken by the EOW in the case, the petitioner has preferred the present petition.

5. The petition was filed on or about 22.08.2016. Notice was issued in the petition and time was sought by the EOW to file a status report with regard to the investigation carried out till date. Two weeks time was granted vide order dated 07.09.2016, and the matter was adjourned to 30.09.2016. On 30.09.2016, the first status report filed on record was perused and a direction was issued that the process with regard to issuance of the letter rogatory be expedited, and further status report be filed.

6. A further status report has been filed by Vikram Singh Rana, ACP, EOW, as per which the draft letter rogatory was sent to the office of Director, Prosecution, Tis Hazari, Delhi which has been approved by him. The approved draft was received on 23.11.2016. The same was sent to the ACP, New Delhi on 30.11.2016 for obtaining approval of the MHA. After that office of ACP, Delhi forwarded the draft letter rogatory to the Dy. Secretary (Home), Delhi vide its office letter dated 02.12.2016. The status report states that the matter has been pursued at GNCTD Secretariat, where the file is under process for the approval of Dy. Secretary (Home). The fact remains that till date, the request for issuance of letter rogatory has not been forwarded to the MHA. Obviously, the same has not been forwarded to HSBC Bank, Hong Kong.

7. The first status report filed on record shows that, according to the accused, the swift payments which are claimed to be forged, are simply "request application", which had been made by Cosmos Trade International to HSBC Bank online to make the necessary arrangement for payment, from time to time, not only to the complainant, but also to some other supplier/ exporter.

8. Pertinently, even though the FIR has been registered, inter alia, under Section 420/467/468/471 IPC, there is nothing to show that the I.O. has called upon the accused to produce any material or evidence of actually having the submitted the said request application to HSBC Bank, Hong Kong and as to whether any response was received from the said Bank to such request application.

9. During the course of submission, Mr. Singh has pointed out that the I.O. has asked the accused to produce the account statement of the account maintained by the accused with HSBC Bank, Hong Kong. The I.O., who is present in court, states that the said statement has not been produced by the accused. The I.O. points out from the record that the notice issued to the accused for production of the account statement was issued on 21.07.2016.

10. It, therefore, appears that the accused is sitting pretty and not cooperating with the investigation. In the face of such conduct and attitude of the accused, the lethargy shown by the I.O. in the present case is completely inexplicable. The Court can well appreciate the frustration faced by the petitioner on account of the completely impotent investigation being conducted by the I.O. It appears that, for whatever reason, the I.O. is completely "helpless" in the matter, and he finds himself at the mercy of the accused. Despite the accused not cooperating, he seems to have not moved even his little finger to take any action against him for his arrest and custodial interrogation. In view of the aforesaid, this court has no confidence that the investigation in the case would, even in future, be properly handled by the EOW. For fair and proper investigation in the case, it has become imperative to transfer the investigation in the present case to another

competent and independent investigating authority.

11. I am conscious of the decisions of constitution bench of the Supreme Court in ***State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.***, (2010) 3 SCC 571, and the subsequent decision in ***K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Ors.***, (2013) 12 SCC 480. Transfer of investigation to the CBI by the Court, though competent for this court to order, should be sparingly resorted to. The Supreme Court in State of West Bengal (supra) observed in para 70 as follows:

> "*70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police.* ***This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights****. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations*." (emphasis supplied)

12. Looking to the fact that the case involves international trade; involves investigation whether the swift wire transfers/ request applications made by the accused to its bank, namely, HSBC Bank, Hong Kong are forged and fabricated; whether the said swift wire transfers/request applications were actually made by the accused to HSBC Bank, Hong Kong or not; the amount involved is substantial, wherein an Indian exporter appears to have been duped, inter alia, by a foreign entity, and; the accused – according to the status report claims to have used the same *modus operandi* in respect of others as well – thus giving rise to the possibility of the accused being involved in a multi-victim scam, I am of the view that this is a fit case where investigation should be transferred to the CBI. It is ordered accordingly. The I.O. shall forthwith transfer the case file to the CBI. A copy of this order be communicated to the Director, CBI forthwith for compliance.

13. Petition stands disposed of.

VIPIN SANGHI, J

DECEMBER 15, 2016
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