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

% Judgment delivered on: 07.11.2017

\+ **LPA 707/2017**

INTERGEST INDIA INTERNATIONAL LTD...... Appellant

versus

GENERAL MANAGER – UOI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Pankaj Kumar Singh and Mr Harsh Gauyam.

For the Respondent : Mr Anurag Ahluwalia for R-2 & 3.
Mr Harsh Kumar Gautam, Ms Suman Lata, Advocates with Mr Brahm Dutt, Director Intergest.

CORAM:-
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

CM No.39915/2017(exemption)

Allowed, subject to all just exceptions.

CM Nos.39914/2017(delay in filing appeal for two days), 39916/2017(delay in re-filing appeal for eight days)

For the reasons stated in the applications, the applications are allowed. The delay in filing and re-filing the appeal is condoned.

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1. The appellant is aggrieved by the Single Judge's decision dismissing its petition *in limine*.

2. Briefly, the petitioner was regularly transacting with the Erstwhile USSR; it claims that certain goods were exported and approximately Rs.11 crores is due as consideration towards the export proceeds. According to the averments in the writ petition, repeated representations/letters were addressed to the Authorities including the Government of India and the Reserve Bank of India (since the Committee had been set up in the wake of the dissolution of the USSR, which resulted in the financial cure).

3. It was urged that the writ petitioner's representations were replied to sometimes and eventually, it became aware through queries under the Right to Information Act, 2005, that an amount equivalent or about Rs.7.2 crores was remitted to another exporter, who was M/s. Techno Craft.

4. It is a matter of record that the petitioner had approached Civil Court for injunctive relief on an earlier occasion and had eventually prosecuted that course before the Supreme Court when its Special Leave Petition was dismissed.

5. The Single Judge was of the opinion that the petition was highly belated and could not, therefore, be entertained. He was of the opinion that the writ petitioner could not merely rest on averments that it had continued to represent but rather should have taken active steps to prosecute its claim.

6. The Court notices that in the counter-affidavit filed by the Bank of India, averments were made that amounts were received by it and were

remitted back to the Reserve Bank of India.

7. Relevant extracts of the counter-affidavit are as follows:-

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"1. In regard to para 1, it is submitted that as far as the respondent No.1 – Bank is concerned, there is reportedly a copy of Fax message dated 09.12.1994 purporting to convey effecting of payment of INR 108 million to Deutsche Bank as per instructions of Bank of Foreign Economic Affairs of USSR (BEFQA). However, the respondent No.1 Bank has no such record as to accept the above Fax message as authentic since the matter is 20 years old and the related record stands destroyed as per the Bank's guidelines. It is further submitted that account of BEFA was closed as far back as on 10.04.1992 with the balance in the account if any having been remitted to Central Account with RBI vide IOM No.MSOB:AGM:MKD:112 dated 18.07.2011. It is further submitted that the respondent No.1 does not hold the amount mentioned in any of the accounts whatsoever. In view of the above submissions, the contents of the said para are denied in toto.

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5. In regard to para 5, it is submitted that as far as the respondent No.1 Bank is concerned, the respondent No.1 Bank has no such record as to accept the above Fax message as authentic since the matter is 20 years old and the related record stands destroyed as per the Bank's guidelines. It is further submitted that account of BEFA was closed as far back as on 10.04.1992 with the balance in the account if any having been remitted to Central Account with RBI vide IOM No.MSOB: AGM: MKD : 112 dated 18.07.2011. It is further submitted that the respondent No.1 does not hold the amount mentioned in any of the accounts whatsoever. In view of the above submissions, the contents of the said para are denied in toto.

36. In regard to para 1, it is submitted that as far as the respondent No.1 – Bank is concerned, there is reportedly a copy of Fax message dated 09.12.1994 purporting to convey effecting of payment of INR 108 million to Deutsche Bank as per instructions of Bank of Foreign Economic Affairs of USSR (BEFQA). However, the respondent No.1 Bank has no such record as to accept the above Fax message as authentic since the matter is 20 years old and the related record stands destroyed as per the Bank's guidelines. It is further submitted that account of BEFA was closed as far back as on 10.04.1992 with the balance in the account if any having been remitted to Central Account with RBI vide IOM No.MSOB:AGM:MKD:112 dated 18.07.2011. It is further submitted that the respondent No.1 does not hold the amount mentioned in any of the accounts whatsoever. In view of the above submissions, the contents of the said para are denied in toto."

8. It is evident that some amounts are said to have been remitted pursuant to some arrangement entered into by the Union after *inter se* disputes with respect to remittances was settled with the Central Bank of the Erstwhile USSR (whose assets and liabilities were taken over by the Russian Foreign Bank).

9. It facially appears to the Court that the petitioner continued and persisted to claim amounts, however, its claims were not specifically addressed to – perhaps because no writ petition or civil action was launched. It also appears that some amounts were remitted to the Central Account – it appears from the averments extracted above, in the Bank of India's affidavit at no less than three places.

10. Having regard to all these circumstances, the Reserve Bank of India is hereby directed to look into the matter and after verifying such material, as may exist with it or what is presented by the petitioner and also having

regard to the materials and documentary evidence, which may be forthcoming from the Bank of India, it may pass an appropriate order in accordance with law.

11. The Reserve Bank of India shall endeavour to complete the process within 12 weeks from today.

12. It is, however, clarified that this order shall not be construed in any manner as re-opening the issue with respect to payments made to M/s. Techno Craft or any other party, the facts of whose case are not before the Court.

13. The Appeal is disposed of.

14. Copy of the order shall be marked *Dasti* without process fee to the Reserve Bank of India, who shall be served directly.

15. Order *Dasti.*

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

November 07, 2017
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