IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 55 OF 2018

India Gold Ltd.
Through its Director Mrs. Shirish Jain … Petitioner
Vs.
The State of Maharashtra and Anr. … Respondents

…

Mr. Suryajeet Prithviraj Chavan for Petitioner.
Mr. Ameeta Kuttikrishnan for the Respondent-CBI.
Mr. S.R. Shinde, APP for the Respondent-State.

…

CORAM : PRAKASH D. NAIK, J.
DATE : 23rd JULY, 2018.

P.C.

1. The petitioner has approached this Court for the following relief :-

> *"a. The records and proceedings of Misc. Application No. 95 of 2016 and Misc. Application No. 48 of 2017 be called for from the files of the Hon'ble Sessions Court, Mumbai and after perusal of the said records, this Hon'ble Court be pleased to quash and set aside impugned Order dated 17th March, 2017 passed by Hon'ble Sessions Court, Mumbai in Misc. Application No. 48 of 2017 to the extent of imposing condition of maintaining the balance of the said Bank Account as on the date of freezing of the said Bank Account and the Misc. Application No. 95 of 2016 and Misc. Application No. 48 of 2017 be allowed in its entirety."*

2. The petitioner is a company registered under provisions of

Companies Act. This petition is preferred through its Director Shantilal Jain. On 16th October, 2012, a registered leave and licence agreement was executed between Mrs. Indira Shantilal Jain and M/s Uvi production through Mrs. Monica Maluka for a period of eleven months in respect to commercial premises in Varsha Building, situated at 13 Adarsh Society, Malad (West) Mumbai for using the same as production office in the name of M/s Uvi Production. Petitioner contends that, Smt. Indira Jain is wife of one of the Director of Petitioner Company and Mrs. Monica Maluka is the wife of one Mr. Barot. Mr. Barot was also interested in purchasing Seven Galas situated at Sharad Industrial Estate for setting up film studio. Accordingly, the transaction was finalised for consideration of Rs.5,66,50,000/- of Rs. 1.5 crore was paid and accordingly letter of allotment was issued. The petitioner states that the amount of Rs.1.5 Crore towards part consideration was received by Sharad Construction Company from different companies, which is a business concern of petitioner company by RTGS in its account No. 30000909372. In due course of business the amount of Rs.1.5 crore was transferred to the account of petitioner. The leave and licence agreement stated above had come to an end and the licencee had left the premises and the deposit amount was refunded to them. The transaction in respect to 7 Galas was not completed by making due payment towards further consideration, nor it was cancelled. Respondent No.2 bank issued letter dated 11th December, 2014 to the petitioner stating that, they have received summons under Section 91, 102 and 160 of Code of Criminal Procedure to freeze cash credit account No. 32259720607. It was learnt that the account was frozen due to transfer of Rs.1.5 crore into the said account. M/s Sharad Construction Company is a partnership firm in which Director of Petitioner Company is one of the partner. It is contended that funds received from M/s Sharad Construction is purely a business transaction as the said concern is handled by Directors of petitioner company. It is contended that the said account is a cash credit account and not the current account.

3. The petitioner wrote letter dated 27th November, 2015 to the bank stating that in case of ODCC account in debit balance, the bank cannot be said to be holding any amount on behalf of borrower when the bank lends money to a party under various limits, the bank is neither debtor of customer nor it holds any money for or on his account. The bank was requested to release property whereby they can make payment and close the cash

credit account or they can maintain part balance to save account to be classified as NPA. Thereafter, petitioner sent two similar letters dated 30th November, 2015 and 23rd December, 2015.

4. The petitioners preferred an application before the Special Court for defreezing petitioner's account viz Misc. Application No. 95/2016 CBI gave no objection for defreezing the account. The learned Special Judge by order dated 22nd August, 2016 partly allowed the said application. CBI was directed to issue suitable order to State Bank of India, IFB, Malad (W), Mumbai so as to defreez Current Account No. 32259720607, with specific direction to the Bank to keep the balance amount which was available in the account on the date of its seizure. The petitioner wrote letter dated 6th October, 2018 to bank stating that the account is cash credit account which is operated as current account contrary to that the bank has put a hold on Rs.3,29,80,609/-. As stipulated in order the balance of amount as on date of freezing is to be retained but balance as on date of seizure was overdraft of Rs.3,29,80,609/-. It cannot be termed as credit balance to be maintained in their account and the amount to retained in current account and not cash credit account. The bank by letter dated 7th October, 2016 replied the above letter and stated that, in the petitioner's letter

they have accepted that it is a cash credit account operated as current account which is not the fact since cash credit account is a borrowed account which is totally different from current account which is a deposit account. The bank has put hold in their account after defeezing the account in compliance with order of the Court. The balance as on date of seizure is Rs.3,29,80,609. Hence, the bank have merely put hold on the said amount. In pursuance to that, the petitioner had preferred Misc. Application No. 48 of 2017 before the same court for modification of order dated 22nd August, 2016. In the said applilcation it was contended that, the order dated 22nd August, 2016 requires modification. It was stated that, bank statement of petitioner clearly reflects that, the accounts is cash credit account and not current account. The petition relied upon correspondence with bank and bank statement. It is contended that the hold on Rs.3,29,80,609 is completely misunderstood and the same cannot be kept on hold as the same is overdraft of Rs.3,29,80,609/- and not the balance in the said account. The bank statement demonstrate that the said position as to balance amount and overdraft amount. The overdraft cannot be termed as credit balance to be maintained in application account. The prosecution filed reply and submitted that application may be allowed. The Court by order dated 17th March, 2017 modified the earlier order and CBI was directed to defeez cash credit account with specific direction to the bank to keep the balance amount which was available in the account on the day of its seizure.

5. The petitioner is aggrieved by orders passed by the Special Court (CBI) to the extent of condition. It is submitted that although the application for defreezing was allowed, the condition imposed by the court while allowing the said application was not warranted. It is submitted that CBI had given no objection for defreezing the said account. Even while deciding the application for modification, CBI had given no objection for allowing the said application. It is submitted that the petitioner is not concerned with the offence. The amount was received in business transaction. It is submitted that keeping balance amount in cash credit account is not possible as the same is overdrawn balance. The petitioner is required to incur various expenses.

6. During the course of investigation, in connection with special case No. 64 of 2015, it was noticed that petitioner has received funds from Sharad Construction Company. According to petitioner, the funds received for the petitioner company is purely on business transaction as the Sharad Construction Company is a

firm which is handled by the Directors of the petitioner company. The bank statement and correspondence shows that account is a cash credit account and not a current account. CBI had given no objection for granting reliefs in the first application as well as in the second application for modification.

7. The learned counsel for the respondent submitted that the order passed by the Special Court by assigning cogent reason. It is submitted that although, CBI had given no objection for operation of the account. It is submitted that amount is required to be secured and therefore there is no reason to set aside the order passed by the Court's below.

8. It is required to be noted that prayer for defreezing the account has been allowed by the Court, subject to condition mentioned therein. The petitioner company had received 1.5 crores from Sharad Construction Company and the amount put on hold is Rs.3,29,80,609/-. No reason has been assigned for putting on hold the said amount. Investigation is complete and chargesheet has been filed. The Court has allowed defeezing but directed to keep balance available on day of seizure. In the circumstances, the nature of condition imposed by Court was not warranted. It is pertinent to note that maintaining the balance in

cash credit account is not possible as the same has over drawn balance which is to be paid to the respondent-bank by the petitioner, the Court ought to have considered that there are various expenses required to be incurred by the petitioner. It is not possible for the petitioner to operate the account in proper prospective. Shri Shantilal Jain, the Director of petitioner tendered undertaking before this Court stating that he is also partner of Sharad Construction Company and authorised to file the undertaking before this Court. It is stated that the amount of Rs.1.5 crores was received by Sharad Construction Company and petitioner and Sharad Construction Company has no role in Crime No.66 of 2014. It is also stated that without prejudice to rights and contention of Sharad Construction Company in view of circumstances, he undertakes to secure the amount of Rs.1.5 Crore if required as and when Sharad Construction Company makes application for defreezing account of Sharad Construction Company. The said undertaking is taken on record.

9. Taking into consideration all aspects of the matter and the submissions advanced by both the parties, the order passed by the Courts below is required to be set aside to the extent of condition. Hence, I pass the following order.

ORDER

(i) Petition is allowed. The impugned order dated 17th March, 2017 passed by Special Judge CBI in Misc. Application No. 480 of 2017 to the extent of imposing conditions of maintaining the balance of said bank account as on the date of freezing the said bank account is set aside;

(ii) During the course of trial, in case the trial Court finds that the amount of Rs.1.5 crore is involved in crime and in the event the Court directs the petitioner to produce the amount, the same shall be produced by petitioner or Sharad Construction Company.

(iii) Petition stands disposed off.

Sachidanand Kuttan Nair
Digitally signed by Sachidanand Kuttan Nair
Date: 2018.07.25 14:38:47 +0530

(PRAKASH D. NAIK, J.)