

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

W.P.NOS.19388 AND 19389 OF 2018

COMMON ORDER

Petitioners in both the writ petitions claim to be Managing Director and erstwhile Additional Director respectively of Zynergy Solar Projects and Services Private Limited (for short 'Zynergy'). In the said company, it is stated that Cascade Energy Pvt. Ltd., Singapore, is a share holder. In the affidavits filed in support of the writ petitions, allegations are made against the said share holder and also with regard to proceedings initiated by them before different forums. As the same are not required for adjudication of the present *lis*, and also cannot be gone into under the writ jurisdiction, the same are not being referred to.

2. One Mr. Kabir Shiraj, claiming to be the Power of Attorney holder of M/s Cascade Energy Pvt. Ltd., approached the High Court of Judicature at Madras under Section 482 of Cr.P.C. seeking for a direction to Additional Director and Senior Assistant Director, of Serious Fraud Investigation Office (SFO), who are respondents 1 and 2 therein, to investigate under Section 210(2) of the Companies Act, 2013 (for short 'the Act') on the petitioner's complaint dated 5.10.2017, for the offences alleged to have been committed by Mr. Rohit Rabindranath, Managing Director and CEO and Mrs. Reenanath of M/s Zynergy, and to take necessary action. By order dated 07.02.2018, in CrI.O.P.No.2594 of 2018, the learned single Judge of the High Court of Madras, disposed of the petition, and the operative portion reads as under:

"Hence, the petitioner is directed to give a copy of the complaint to the respondents 1 & 2. On receipt of such an application, the respondents 1 & 2 shall investigate into the complaint in accordance with law under the provision of Section 210(2) of the Companies Act and take appropriate decision. Such an exercise shall be completed as expeditiously as possible."

In pursuance of the above orders, and in pursuance of the orders of the Central Government under Section 210(2) of the Act, the Investigating Officer of 2nd respondent – SFO, issued the impugned summons dated 21.05.2018, for recording the statement of writ petitioners and others, and for production of records. Challenging the said summons, the present writ petitions have been filed.

3. The impugned summons in both the writ petitions is similar. For ready reference, the impugned summons dated 21.05.2018, in W.P.NO.19338 of 2018, is extracted as under:

“Whereas the Central Government in exercise of its powers conferred u/s 212 of the Companies Act, 2013 assigned the investigation into the affairs of Zynergy Solar Projects and Services Pvt. Ltd (ZSPSPL) and Archer Systems Pvt. Ltd. (ASL) to the Serious Fraud Investigation Office (SFO). In compliance of the directions of the Central Government, the Director, SFO designated the undersigned along with other officers as Inspectors under Section 212(1)(c) of the Companies Act, 2013 to carry out the investigation into the affairs of Zynergy Solar Projects and Services Pvt. Ltd (ZSPSPL) and Archer Systems Pvt. Ltd. (ASL).

2. Shri Rohit Rabindranath, Mr. Maanik Nath, Mrs. Reena Nath, Shri Ranjeev Rai are Directors and Shri Rajiv Pradhan past director of Zynergy Solar Projects and Services Pvt. Ltd (ZSPSPL) and Archer Systems Pvt. Ltd. (ASL). Now, therefore, in exercise of powers vested with the undersigned, Shri Rohit Rabindranath, Mr. Maanik Nath, Mrs. Reena Nath, Shri Ranjeev Rai and Shri Rajiv Pradhan are hereby directed to appear before the undersigned personally at Regional Office, Serious Fraud Investigation Office, 4th floor, Corporate Bhawan, Thattiannaram, Bandlaguda, Hyderabad – 500 068 at 11.00 am on 30.05.2018 for examination and recording of statement under oath.

3. Shri Rohit Rabindranath, Mr. Maanik Nath, Mrs. Reena Nath, Shri Ranjeev Rai and Shri Rajiv Pradhan are directed to bring with them all related documents / information Zynergy Solar Projects and Services Pvt. Ltd (ZSPSPL) and Archer Systems Pvt. Ltd. (ASL) as per Annexure – A attached to this summons. The non-compliance of the above directions shall make Shri Rohit Rabindranath, Mr. Maanik Nath, Mrs. Reena Nath, Shri Ranjeev Rai and Shri Rajiv Pradhan liable to be prosecuted under Section 217(8) of the Companies Act, 2013.”

4. Learned Senior Counsel Sri R. Raghunandhan Rao, appearing for the petitioners, would submit that a reading of the impugned summons shows that the Central Government in exercise of its powers conferred under Section 212 of the Act, assigned the investigation into the affairs of the company i.e., Zynergy, to SFO. He submits that Section 212 (1) of the Act, mandates that the Central Government have to first form an opinion that it is necessary to investigate into the affairs of the company by SFO under four contingencies in clauses (a) to (d) mentioned therein. In the present case, before invoking the jurisdiction under Section 212(1) of the Act, no opinion, has been formed by the Central Government. He submits that if the impugned summons, have to be taken, as having been issued in pursuance of the order of the High Court of Madras dated 07.02.2018, the summons shall refer to the said order, but the impugned summons does not refer to the order passed by the High Court of Madras. He states that the petitioners have filed petitions to recall the order dated 07.02.2018 before the High Court of Madras. He submits that the impugned summons are issued mentioning that the Central Government has exercised the power under Section 212 (1) of the Act. Therefore, in the absence of forming an opinion as required under Section 212 (1) of the Act, Central Government cannot assign the investigation to SFO, and hence the impugned summons are liable to be set aside.

5. On the other hand, Sri K. Lakshman, Assistant Solicitor General, for the respondents, would submit that the investigation was ordered by the Central Government under Section 210(2) of the Act, by virtue of the orders passed by the High Court of Madras in CrI.O.P.No.2594 of 2018 dated 07.02.2018. In pursuance of the order dated 07.02.2018, the Central Government vide order dated 5.3.2018, directed that the investigation

shall be carried out by the officers of SFO, to be appointed by the Director of SFO and in turn, the Director of SFO, vide order 09.05.2018 designated the officers mentioned therein as Inspectors, to carry out the investigation into the affairs of the company - Zynergy. Learned Senior Counsel submits that petitioners having filed recall petitions before the High Court of Madras, cannot maintain writ petitions before this court. He also submits that the petitioner in CrI.O.P.No.2594 of 2018, is not made a party to the present writ petitions. On these grounds, the writ petitions are not maintainable.

6. The learned Assistant Solicitor General further submits that as the Central Government ordered investigation under Section 210(2) of the Act, pursuant to the orders of the High Court of Madras, question of forming any opinion by the Central Government, as required under Section 212(1) of the Act, does not arise. If the power is exercised under Section 212 of the Act, questioning of forming opinion by the Central Government, that it is necessary to investigate into the affairs of the company by SFO; would arise. He submits that on receipt of summons, petitioners sent e-mails on 31.05.2018, wherein they have not stated that they were not aware of the orders passed by the Central Government under Section 210(2) of the Act on 5.3.2018, ordering investigation. With these contentions, learned Assistant Solicitor General, sought to dismiss the writ petitions.

7. Impugned summons refers to Section 212 Act. For invoking the jurisdiction under Section 212(1) of the Act, as contended by the learned Senior Counsel for the petitioners, the Central Government has to first form an opinion that it is necessary to investigate into the affairs of the company, and then assign the investigation to SFO. But mentioning of

the said provision in the impugned summons appears to be inappropriate, since the requirement in the present case, for ordering investigation into the affairs of the company, arose due to the order dated 07.02.2018 passed by the High Court of Madras in the petition filed under Section 482 Cr.P.C. The same is mentioned in order dated 05.03.2018 passed by Central Government, which is basis for appointment of inspectors by 2nd respondent vide proceedings dated 09.05.2018.

8. Under Section 210(2) of the Act, where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company. The High Court of Madras vide its order dated 07.02.2018, which is already extracted above, ordered for investigation. Therefore, in exercise of jurisdiction under Section 210(2) of the Act, the Central Government vide its order dated 05.03.2018, ordered for investigation. In these circumstances, as noted above, question of forming opinion by the Central Government before assigning the investigation to SFO, as required under Section 212(1) of the Act, does not arise.

9. In the light of orders of the High Court of Madras dated 07.02.2018 and the order of the Central Government dated 05.03.2018 under Section 210(2) of the Act, ordering investigation into the affairs of the company; mentioning of provision under Section 212 of the Act in the impugned summons, would not enure to the petitioners, or would render the entire proceedings nugatory.

10. In pursuance of the order of the Central Government dated 05.03.2018 under Section 210(2) of the Act, ordering investigation, the

Director, SFO, vide order dated 09.05.2018, designated the inspectors for carrying out the investigation into the affairs of the company and such power is traceable to sub section 3 of Section 210 of the Act. But the Director, in the order dated 09.05.2018, refers to Section 212 of the Act, basing on same, impugned summons also refer to the same, which is inappropriate, but cannot be said to have caused any prejudice to the petitioners, and does not render the impugned summons invalid.

11. Further, as per the submissions of the counsel, petitioners have already filed petitions before the High Court of Madras, for the purpose of recalling the order dated 07.02.2018 in Crl.O.P.No.2594 of 2018, and the same are pending adjudication. Having availed the said remedy, petitioners cannot invoke the jurisdiction of this court under Article 226 of the Constitution of India, questioning the summons, which are nothing but the offshoot of the order dated 07.02.2018.

12. Having regard to the above facts and circumstances, I do not see any reason to entertain the writ petitions and the same are accordingly dismissed at the stage of admission.

13. Observations, if any, made in this order, shall have no effect or influence the disposal of recall petitions filed by the petitioners before the High Court of Madras in Crl.P.No.2594 of 2018.

14. Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:15—06—2018

AVS