IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.46084 of 2017
Date of decision: 8th March, 2018

Gurnihal Singh Pirzada

… Petitioner

Versus

Directorate of Enforcement and others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Dheeraj Jain, Sr. Counsel Govt. of India and
Mr. Roopesh Kumar, Assistant Director,
Directorate of Enforcement
for respondents No.1 and 4.

Mr. Sumeet Goel, Advocate for respondent No.2/CBI.

Ms. Urvashi Dhugga, Advocate for respondent No.3.

FATEH DEEP SINGH, J.

This petition under the provisions of Section 482 Cr.P.C. by petitioner Gurnihal Singh Pirzada is by way of seeking prayer for issuance of appropriate directions to the Special Investigation Team (for short, 'SIT') constituted vide orders dated 16.09.2015 (Annexure P1) of this Court passed in CRM-M No.1526 of 2015 seeking relief that the SIT especially the Directorate of Enforcement (for short, 'ED') is acting in contravention and beyond the orders of this Court which was supposed to investigate the dispute of M/s International Customer Related Management Services Pvt. Ltd. (for short, 'ICRMS') and rather it has plunged into third party disputes by virtue of which the SIT is interfering

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into the dispute of M/s Rosalind Builders and Constructions Pvt. Ltd. with one Jatinder Singh Dua, to which the petitioner has no role and that the petitioner is being harassed and repeatedly called by the ED which is trying to play its own trumpet and the allegations that are sought to be concocted are unilaterally done by the ED which is against the spirit of the orders and therefore going beyond the purview and scope of the powers so entrusted to them by virtue of orders of this Court (Annexure P1) and has prayed that appropriate directions be issued to the SIT to conduct investigations strictly in accordance with the orders/directions contained in Annexure P1.

Upon notice, respondent No.1 – Directorate of Enforcement (ED) has filed independent reply addressing the question of the maintainability of the present petition and taking plea that during the course of investigations being conducted by the ED under the provisions of Prevention of Money Laundering Act, 2002 (in short, 'PMLA'), prima facie evidence has been collected as to the role of certain individuals as well as their business associates/companies/firms regarding misuse of funds from ICRMS. Besides this, it is stand of this respondent denying that the ED has transgressed its limits and acted in violation of the orders of this Court (Annexure P1) dated 16.09.2015 and has sought to level insinuations against the petitioner with regard to certain acts and conduct not directly connected with ICRMS and has termed each and every allegation to be statement of lies and termed the assets acquired by the

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petitioner to be out of the proceeds of crime in respect of funds drawn from ICRMS and claimed that the investigations conducted by it were on the basis of evidence collected and sought dismissal of the petition.

Similarly respondent No.2 – Central Bureau of Investigation (CBI), in its reply besides taking usual objections has denied each and every allegation raised by the petitioner claiming that after investigations were handed over to the SIT, earlier FIRs have been re-registered and has detailed their numbers and the offences and it is further claimed by this respondent that investigation has already been conducted in few matters while in remaining they are nearing completion and has sought to alienate itself from the working of respondent No.1 – ED and has disassociated itself from the acts being resorted to by respondent No.1 and has sought dismissal of the petition.

Respondent No.4 – Serious Fraud Investigation Office (SFIO) in its reply has simplicitor denied the allegations of the petitioner and has confined that the allegations levelled by the parties pertaining to the affairs of ICRMS are being investigated by the SIT, regarding which regular case has been registered and that they are only confining themselves as per the provisions of the Companies Act, 2013 and has sought to allay fears that the Company was not being run in accordance with the prescribed rules and procedure and has sought dismissal of the petition resorting that the Court may pass any order as it may deem fit.

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Heard Mr. P.S. Ahluwalia, Advocate for the petitioner; Mr.Dheeraj Jain, Sr. Counsel Govt. of India assisted by Mr. Roopesh Kumar, Assistant Director from Directorate of Enforcement on behalf of respondents No.1 and 4; Mr. Sumeet Goel, Advocate for respondent No.2/Central Bureau of Investigation and Ms. Urvashi Dhugga, Advocate for respondent No.3/Department of Income Tax and perused records of the case.

This Court while disposing off CRM-M No.1720 of 2013 vide its order dated 16.09.2015 (Annexure P1) had passed the following directions:-

> *"… … … in the exercise of these powers it would be desirable for this Court to issue directions to constitute a Special Investigating Team and to entrust them investigations consisting of two credible officers of repute each from the departments which have the necessary expertise i.e. the Serious Fraud Investigation Office (SFIO) of Company affairs under the Ministry of Corporate affairs, Government of India, Enforcement Directorate to look into the money laundering angle, Income Tax Department to ensure that there has been no escape from legitimate taxation as well as by the Central Bureau of Investigations which could ensure due exercise of powers in collecting such evidence as is necessary and which is essential integral part of investigations. The entire records shall be handed over to them and*

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with directions to the Authorities concerned to fully cooperate with the SIT so formed."

Subsequently, another application in the same very petition by way of CRM No.37905 of 2015 was disposed off by this Court vide orders dated 27.11.2015 wherein the following observations were delivered by this Court:-

"Since the dispute inter-se the parties has arisen over the affairs of a Company which is governed by the provisions laid down in the Companies Act, as amended from time to time, the Legislature in its wisdom has introduced Section 210 of the Companies Act (in short, 'the Act') making provisions for investigation into the affairs of a Company under which by virtue of exercise of powers under Section 211 of the Act, the Central Government by its notification has constituted Serious Fraud Investigation Office (SFIO) under the Ministry of Corporate Affairs vide resolution dated 02.07.2003. The SFIO is headed by a Director and in terms of Section 212 of the Act, is empowered to solely investigate into the affairs of the Company and the Investigating Officer so appointed by the Director shall exercise the powers of Inspector in terms of Section 217 of the Act and which offences shall be cognizable. Section 212(2) of the Act has made provisions whereby when investigations have already been handed over to SFIO, the organization already conducting such investigations shall be barred from proceeding further and is bound to transfer the

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investigations to SFIO. In the light of intimation sent to this Court vide letter No.SFIO/Inv/Insp/Apmnt/ 2015-16/I/5984/2015 dated 20.10.2015, Mr.R.K. Gupta, Senior Assistant Director, SFIO and Mr.Ganesh Lal Meena, Senior Assistant Director, SFIO have been nominated on behalf of the SFIO for the purpose of constituting SIT and thus, this segment of SFIO would look into the violations and would have supremacy over the investigations under the Companies Act.

Since the other constituents of the SIT are the officers from Income Tax Directorate and under the new rules, Directorate of Income Tax (Intelligence and Criminal Investigation) has been set up under Director General of Income Tax and thus, the field formation of this organization responsible for holding such investigations at Chandigarh will look into the violations into the income tax laws and the senior most person appointed by Central Board of Direct Taxes (CBDT) or appropriate authority as per their organizational structure shall be responsible for conducting investigations under the Income Tax Act.

The other arm of this SIT is Directorate of Enforcement and which looks after violations under the provisions of Money Laundering Act etc. Since the Directorate of this organization is under the administrative control of Department of Revenue for operational purposes and though the policy issues pertaining to provisions of Money Laundering Act are the responsibility of the Department of Revenue, so the Director of Enforcement of the Regional Office

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> *responsible for looking after the Chandigarh Region or competent authority shall appoint officers in compliance of the judgment dated 16.09.2015 and would be responsible for collecting, developing and disseminating intelligence and other related information amongst the other members of the SIT.*
>
> *It is made clear that to bring about proper command and control over the investigations,* ***it would be expedient in the interest of justice to direct that an officer, not below the rank of DIG, CBI, shall head the SIT to whom all the other officers shall report and the CBI shall look into the investigations to facilitate collection of evidence, recording of statements and similar functions to enable the SIT to collect and compile the evidence and to ensure that the same is speedily done, as it is holding expertise in investigating the criminal aspects of the crime.*** *All these members of the SIT shall share the information amongst themselves to facilitate proper investigations and would follow rules of protocol as per those followed by the Union of India/Government."*

From this, it is abundantly clear in the light of unison shown by the learned counsel representing various parties that the officer from CBI would be heading the SIT to look into the investigations, facilitate collecting of evidence, recording of the statements and similar functions to enable the SIT to collect and compile the evidence, and subsequently this Court vide orders dated 31.05.2017 had disposed off another petition

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bearing CRM-M No.18479 of 2017 wherein following directions were issued:

> *"(I) The SIT would not act beyond what has been assigned to it by virtue of orders dated 16.09.2015 and 27.11.2015 of this Court and would thereby concentrate and investigate the dispute of ICRMS inter-se between its Directors and thus, attain the purpose for which it has been constituted;*
>
> *(II) The SIT shall not plunge itself into third party dispute of the petitioner with respondent No.4, especially FIR in question which as has been brought to the notice of this Court is primarily a dispute over memorandum of understanding between the petitioner and respondent No.4, the latter an independent Company and is not inter-se the Directors of ICRMS;*
>
> *(III) As per the stand of learned counsel representing the SIT before this Court in his statement and reply, they will not in any manner use any coercive means against the petitioner, his family members or relatives regarding their own personal business Companies and would strictly adhere to their assignment as per the orders dated 16.09.2015 and 27.11.2015."*

Thus, the very purpose of passing orders (Annexure P1) by this Court by virtue of which different constituents formed part of the SIT for a specialized investigation into every angle of running of the affairs of ICRMS. During the course of hearing, Mr. Roopesh Kumar, Assistant

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Director from the Directorate of Enforcement has made statement undertaking that their agency would not order attachment of the bank accounts of ICRMS, affairs of which are under investigation by the SIT.

The contention that is sought to be raked up during the course of submissions by learned counsel for the petitioner is that under the garb of these investigations the very working of ICRMS is being jeopardized and their business interests are being frittered away and thus, further undermining the running of the Company and that policy of pick-and-choose is being adopted during the matter of investigation by the SIT.

Though the same is sought to be thwarted by learned counsel for the respondents, however, it is well evident to the Court during the course of proceedings that the various constituents of the SIT, somehow or the other, are not working in unison and in tandem with each other and are trying to carry on individually which is quite contrary to and in violation of the directions of this Court contained in order (Annexure P1) dated 16.09.2015 thus, necessitates issuance of directions to the constituents of the SIT to follow investigations and carry on the same strictly in accordance with all the orders of this Court enumerated above and to ensure that all these agencies so formed part of the SIT, act cohesively in unison towards attaining the purpose and goal of the orders of this Court, else there is every likelihood if these agencies are allowed to carry on individually would certainly defeat the very intent and purpose for which the SIT has been constituted. These constituents are

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directed not to go beyond the directions of this Court issued from time to time which have been well discussed herein above and also to ensure that there is smooth running and working of the SIT and not to carry on the policy of pick-and-choose. It be ensured by the SIT that the running of the affairs of ICRMS is not stalled in any manner and the very object and purpose for which the Company has been established is allowed to be achieved through legal means.

Thus, it necessitates and flows from it that the SIT and its constituents in the light of orders (Annexure P1) shall ensure by all means that their investigations do not go haywire and rather than following and pursuing the policy of pick-and-choose, the goals for which it has been constituted are achieved by all means and shall not in any manner plunge into third party dispute of the petitioner with others and further that the SIT shall not use any coercive means against the petitioner, his family members or relatives regarding their own personal businesses/avocations and would strictly adhere to their assignment and task as per the orders dated 16.09.2015 and 27.11.2015, and to ensure that they do not act beyond the task assigned to them by virtue of these orders and to concentrate on resolving the tangle and the investigations so entrusted to them to enable the SIT to attain the purpose for which it has been constituted.

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In the light of what has been detailed and discussed above and with these observations and directions, the present petition stands disposed off.

(FATEH DEEP SINGH)
JUDGE

March 8, 2018
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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