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

\+ W.P.(C) 9469/2018 & CM No. 36770/2018

ABHINAV GIRDHAR ..... Petitioner

Through: Mr Atul Chitale, Sr. Advocate with Ms Amita Soshi, Mr Gurjyot Sethi and Mr Raj Kumar, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Amit Mahajan, CGSC for UOI with Ms Mallika Hiremath, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 10.09.2018

1. Issue notice. The learned counsel for the respondents accepts notice.

2. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "(a) Issue a writ of certiorari and/or any other writ, order or direction quashing the entire proceedings, prosecutions and adjudication arising out of the complaint dated 29.08.2017 bearing F.No. T-3/ FIU/08/DZ/16/A((RS) filed against the Petitioner under the Foreign Exchange Management Act, 1999,
>
> (b) Issue a writ of prohibition or any writ, order or direction restraining the Respondent No.3 from proceeding with the adjudication proceedings arising out of the complaint dated 29.08.2017 bearing F. No.T-3/FIU/08/DZ/16/A((RS) until a decision is taken by the Respondent No 4 on the compounding application dated 19.07.2018 sent by the Petitioner."

3. The principal allegation against the petitioner is that he has used his credit card for making substantial payments overseas. It is stated that such payments were made in connection with the business of one of the companies promoted by the petitioner and on its behalf. Although, it is also submitted that the petitioner had sought clarification from the Reserve Bank of India (hereafter 'RBI') in this regard, it is not disputed that the said remittances were in violation of the provisions of the Foreign Exchange Management Act, 1999 (hereafter 'FEMA').

4. Mr Chitale, learned Senior Counsel appearing for the petitioner had also referred to a letter dated 28.06.2018, whereby the petitioner had applied to RBI (through ICICI Bank Ltd.) unequivocally stating that the petitioner would like to compound the contravention under Foreign Exchange (Compounding Proceedings) Rules, 2000. The petitioner has also received a response from the RBI seeking certain clarification and also called upon the representative of the petitioner to visit the RBI with all related documents. In the aforesaid circumstances, it is apparent that the petitioner's compounding application is pending consideration before the RBI. Indisputably, if the said application is allowed, the proceedings for contravention of FEMA would not be sustainable.

5. In the aforesaid view, the present petition is merited and the respondents are directed to defer the adjudication proceedings arising out of the complaint dated 29.08.2017 till the RBI takes a decision on whether to compound the contravention. The RBI is directed to conclude the proceeding within a period of two months from today.

6. Needless to state that if the RBI declines the petitioner's request for compounding or otherwise considers it not maintainable; the respondents would resume the proceedings in connection with the complaint and proceed in accordance with law.

7. The petition is disposed of in the aforesaid terms. The pending application also stands disposed of.

8. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

SEPTEMBER 10, 2018
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