IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.32107 of 2018 (O&M)

Date of decision: 26th March, 2019

M/s Fateh Homes Pvt. Ltd. & others

… Petitioners

Versus

Special Investigation Team through DIG, CBI

… Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arjun Pratap Atma Ram, Advocate for the petitioners.

Mr. Sumeet Goel, Advocate for the respondent.

FATEH DEEP SINGH, J.

This is a petition filed by three private limited Companies incorporated under the name and style of M/s Fateh Homes Private Limited; M/s Fateh Resorts Private Limited and M/s Fateh Softech Private Limited, all having same address of the premises and have instituted the instant petition under Section 482 of the Code of Criminal Procedure (for short, 'the Code' or 'Cr.P.C.') by the same very Director, Joginderpreet Singh. The petition is directed against the Special Investigation Team (for short, 'the SIT') constituted by this Court vide orders dated 16.09.2015 in two petitions bearing CRM-M No.1720 of 2013 titled 'Madan Singh vs. U.T. of Chandigarh and others' and CRM-M No.1526 of 2015 titled 'Raman Uppal vs. State of Punjab and others' decided together by way of Annexure P2. It is worthwhile to mention here that the SIT so constituted comprised of Central Bureau of Investigation (CBI), Enforcement Directorate (ED), Income Tax Department and Serious Fraud Investigation Office (SFIO). Periodic reports by way of status in the investigations were submitted by the SIT which are matter of records.

Before adverting on to the present petition, it is very much necessary and essential to trace the very genesis of this dispute which has a chequered history. The Company under the name and style of M/s International Customer Related Management Services Pvt. Ltd. (for short, 'the ICRMS' or 'the parent Company') had come about by various participants and of which the present petitioners is alleged to owe their legacy. A dispute had arisen inter-se between the Directors and petitioners the constituents in respect of which innumerable litigation, civil as well as criminal, had come about and which fact is not at all disputed and need not be referred to here.

In the present petition, the petitioners have sought to impugn and challenge the conduct of the SIT in registering FIRs by way of six cases bearing No.RC-2202016E0005; RC-2202016E0006; RC-2202016E0007; RC-2202016E0008; RC-2202016E0009; RC-

2202016E0010 dated 13.06.2016 in CBI, EO-II, New Delhi which were in fact re-registering of the earlier FIRs got registered by the local police at Chandigarh, Mohali and Ludhiana. The petitioners claim that the respondent in this petition is carrying on the investigation so entrusted to it in violation of the orders of this Court (Annexure P2) followed by subsequent orders dated 27.11.2015 (Annexure P3), orders dated 31.05.2017 (Annexure P4) and orders dated 08.03.2018 (Annexures P6 and P7) and rather have plunged into third party disputes, alleging that the action of the respondents is in sheer violation and defiance of the orders of this Court, and therefore, the claim that all consequences arising thereof by virtue of which the individual constituents of the SIT have embarked upon individual process and which is contrary to the purposes for which the SIT was brought about into force.

The subsidiary grouses that further emancipate are to the effect that actions of the respondent individual constituents of the SIT as well were in violation and defiance of the orders/directions of this Court and thus, prayed for setting aside of these orders, actions and proceedings initiated by the SIT and its individual constituents by virtue of which they have sought to go to the extent of attaching properties of the petitioners and issuing them various show-cause notices when otherwise nothing concrete has come against the petitioners linking them for having carried on any malpractices in the functioning of the ICRMS and singling them on that score.

Upon notice to the respondent, reply was filed though accepting the orders passed in various petitions by this Court including constitution of the SIT comprising of Central Bureau of Investigation (CBI), Enforcement Directorate (ED), Income Tax Department and Serious Fraud Investigation Office (SFIO) as well as registering of various FIRs but claimed that the ICRMS was a Benami Company of one Mr.Gurnihal Singh Pirzada, an Ex-IAS officer. It is claimed that it is in compliance of the orders (Annexure P2) the member departments initiated inquiry/investigation under their respective Laws and Acts, regarding which status reports were filed. On merits, the respondent in its response has averred that the actions being initiated by the SIT including its individual constituents, are legally justifiable as it is in respect of the funds of the ICRMS which have been siphoned and misused that the actions under the various provisions of law have been initiated including under the Prevention of Money Laundering Act, 2002; the Prohibition of Benami Property Transactions Act, 1988; the Income Tax Act, 1961 and have sought to distinguish between the action of the answering respondent and that of its individual constituents. The respondent has sought dismissal of the petition.

Heard Mr. Arjun Pratap Atma Ram, Advocate for the petitioners; Mr. Sumeet Goel, Advocate for the respondent and perused the records.

In the initial petition before this Court, out of which orders (Annexure P2) have come about on 16.09.2015, it is sufficiently highlighted by this Court that Ms.Pawanjot Kaur Gill was one of the Directors of the parent Company and was authorized to sign on behalf of the company and who had resigned from this company in the year 2005. In her place, Mr. Madan Singh and Mr. Harshvinder Singh were appointed as Directors on 29.09.2011. It is not displaced by any means that prior thereto, Mr. Sukhbir Singh Shergill and Mr. Raman Uppal besides others were the Directors of this parent company, which is also evident from Annexure P25 [in CRM-M No.1720 of 2013]. Thus, before this Court earlier it was emphatically submitted that the entire records of the list of Directors kept in the office of Registrar of Companies was not available and under the premise of computerization of the office, a shield was taken on that score. This fact is duly reflected in the earlier orders of this Court (Annexure P2). Thus, the façade that is sought to be projected during the course of submissions by the learned counsel on behalf of the respondent that the petitioners were running the affairs of the parent company, does not hold good, especially when there has been claims and counter-claims in the first petition before this Court and which primarily had led to multifarious disputes between various claimants over the ICRMS. Mr.Goel, representing the respondent on the specific query of this Court was unable to highlight if any such claim has been brought to the notice of this Court earlier in the various status reports submitted to this Court in the present imbroglio. It was nowhere pointed out by the SIT as to specifically from which of the angles there has been evasion of income tax, there have been instances of laundering of money of the parent company or in any manner the likely sources of routing this ill-gotten wealth under the very illusion of genuine transactions by the parent company. The Registrar of Companies never initiated any investigation in the affairs of ICRMS nor any action for oppression or mismanagement was ever initiated. It needs to be stressed here that this was the primary reason for this Court to have constituted the SIT with a view to explore every angle into the functioning of the parent company. Though with much fanfare, on behalf of the respondent, Mr.Goel has sought to claim that six FIRs were got registered under the aegis of the

CBI but at the same time the counsel could not defy the arguments of the learned counsel for the petitioners that in the final report submitted under Section 173 Cr.P.C. which was a case got registered against Mr. Gurnihal Singh Pirzada aforesaid, the CBI has filed closure report on 28.03.2018 which was duly vouched by the Superintendent of Police of the CBI. Thus, a distressing feature to the arguments and stand of the respondent to the alleged claim of laundering of money, evasion of income tax or acting contrary to the interest of the parent company against the petitioner companies. Thus, none of the Directors, Shareholders including the present petitioners are accused of commission of scheduled offences under the provisions of the Prevention of Money Laundering Act, 2002; the Prohibition of Benami Property Transactions Act, 1988 and the Income Tax Act, 1961, so on and so forth; nor there appears to be any violation specifically brought to the notice of this Court during these submissions of any of the provisions of the special statutes and apparently from this all, any illegal action attributable to the petitioners do not come up for scrutiny.

During the course of submissions by the petitioners' counsel that the Enforcement Directorate had issued provisional attachment orders (Annexure P5) on the strength of same set of allegations which are subject matter of judicial scrutiny. More so, the undisplaced fact as has been brought to the notice of this Court during the course of submissions by the petitioners' counsel that a settlement agreement had come about on 17.08.2017 (Annexure P23) [in CRM-M No.1720 of 2013] between Mr. Raman Uppal, Mr. Sukhbir Singh Shergill, Ms. Gurbir Kaur Shergill, Mr. Jatinder Singh Dua, Mr.Sagar Singh Dua, Mr. Randeep Singh and Mr.Gurdeep Singh and the parent company ICRMS through its Directors/Share Holders and the latter act was by virtue of resolution of the company which has authorized its Board of Directors to borrow, invest and advance the company funds to the delegates or the Directors as they may deem necessary including issuance of debentures and shares. It is reiterated with much force and vehemence by Mr.Goel for the respondent that Mr.Sukhbir Singh Shergill, one of the Directors of the parent company, had made a statement against the present petitioners in the proceedings by one of the constituents of the SIT namely Enforcement Directorate. Had it been so, what led to the filing of the closure report dated 28.03.2018 when the only claim as per Mr. Goel, learned counsel for the respondent, is that its shareholders had only allowed the petitioners for having given unsecured loans from the parent company but the same is vouched for their settlement agreement

(Annexure P23) (ibid), puts the Court on its guard over such digressing by the individual constituents of the SIT. Thus the allegations of siphoning off of funds of ICRMS by the petitioners do not hold good. Besides, what action under the Law has been got initiated against the Directors of the parent company is totally missing. What role is attributed by cogent evidence against Mr.Gurnihal Singh Pirzada and his wife, the counsel for the respondent has failed to underline. Rather this stand of respondent strengthens the belief of this Court as has been observed in its orders dated 20.08.2018, 16.09.2015 that constituents needs to work cojointly. Thus, the claim of the respondent that properties of petitioners are Benami or there is Money Laundering, do not stand the Test of Scrutiny.

The claim that Mr.Raman Uppal who was one of the plaintiffs when initially the civil suit (Annexure P25) (ibid) was filed by him to lay claim over being one of the owners of the parent company and had been doing, so as per the arguments of learned counsel for the petitioners, in various cases before this Court as well as before the Hon'ble Supreme Court and obviously prior thereto as per the petitioners' stand which remained un-contradicted by the respondent that Mr.Raman Uppal had taken the stand having authorized Mr.Deepinder

Singh Dhaliwal and Mr.Gurnihal Singh Pirzada as his attorneys. Mr.Goel on behalf of the respondent though has sought to put up much resistance to the submissions of the learned counsel for the petitioner Mr.Arjun Pratap Atma Ram, but failed to enliven his submissions to the arguments that under the signatures of Mr.Jatinder Singh Dua from the Bank account of one of the petitioners, he was advanced a loan of a substantial amount then, in the year 2009. It is worthwhile to refer here that even in the findings of this Court (Annexure P2), Mr.Raman Uppal is linked with Smt.Promila (now deceased) being son and mother duo and the latter happens to be the Director of the parent company at one time.

During the course of submissions, it could not be denied by the two sides that prior to the filing of the petition which has given rise to the orders of this Court (Annexure P2) in the criminal proceedings inter-se between the Directors, it was in consequence of the settlement agreement (Annexure P23) [ibid], the parties have ensured that all these proceedings against each other were given a decent burial. By what means the petitioners are sought to be inter-linked to the wrong doings in the running of the parent company, nothing substantial was brought to the notice of this Court. When this Court by virtue of the orders dated 16.09.2015 had directed that the SIT shall only investigate the dispute of the ICRMS inter-se between its Directors and rather than looking into that aspect of the matter what is canvassed before this Court is that the individual constituents of the SIT for a motivated cause appears to have embarked upon their individual misadventures rather than assisting the Court to achieve the purpose for which the orders (Annexure P2) were passed and therefore, has completely and clearly gone off the tangent as to the real issues of the ICRMS.

A question comes to the mind of this Court that when all these constituents of the SIT who on one hand have initiated individual actions under the relevant Acts governing them and which was being overlapped by findings of the SIT in view of being all based on the wrong-doings of the functioning of the ICRMS and when on one hand in the criminal prosecution as detailed above, the SIT through CBI had filed closure report and on the same very facts, how it could initiate action against the petitioners under the individual Acts rather smacks of vendetta. No doubt, the petitioners have a legitimate legal recourse and remedies available to them under the relevant Acts for the issuance of the orders of the individual constituents by attaching the properties of the petitioners, prosecuting them and so on and so forth, but it cannot be missed that it is the contradictory stands of the constituents of the SIT and the Departments individually which leads this Court to infer that all is not well over the actions that have been initiated under the various Acts by the individual constituents of the SIT. The same is sought to be given impetus by the learned counsel for the petitioners, who has sought to hammer home the point that in such an action by the individual constituents of the SIT, Mr.Gurnihal Singh Pirzada is being haunted individually leaving other Directors/Shareholders, who too are responsible in running the affairs and misdemeanors, if any, of the parent company, especially when the petitioners are not wielding sufficient influence in running the affairs of the ICRMS. As has been highlighted by learned counsel for the petitioners by going through the notices (Annexures P5, P9, P10, P11, P13, P14, P15, P16 and P17) by the individual constituents of the SIT and which are based on the very facts which are before this Court and was the paramateria of this dispute which has led to the passing of the orders (Annexure P2) by this Court. Furthermore, this Court vide orders dated 31.05.2017 (Annexure P4), has ensured that the SIT would not act beyond what has been assigned to it by virtue of orders dated 16.09.2015 and 27.11.2015 by this Court and to ensure that the SIT does not plunge itself into third party dispute and that the SIT would not use any coercive measures against the then petitioner in that matter (Annexure P4) before this Court who happens to be none but Mr.Jatinder Singh Dua, one of the Directors of the ICRMS and which directions certainly need to have been applied to the case of the present petitioners as well, as they are allegedly transacting with the duly authorized Directors of the parent company. Though the claim of learned counsel for the petitioners that the proceedings initiated under the Income Tax Act against Mr.Gurnihal Singh Pirzada pertains to the same very facts on the report of Punjab Vigilance Bureau, claiming that loan from the ICRMS to one of the petitioners was on the assurance of Mr.Gurnihal Singh Pirzada though might have a far reaching consequence on the final conclusion of investigations by the SIT but at this juncture it would be suffice to hold that factually these are intermingling and that was what had led to constitution of the SIT. Learned counsel for the petitioners claims that Mr.Gurnihal Singh Pirzada though as alleged by the respondent, had appreciable control and substantial interest in the ICRMS but on perusal of the records of this case, nothing tangible has come about and therefore such a stand of the respondent side appears to be a preposterous proposition. More so, it is the own stand of the respondent side that the provisions of these Acts governing the individual constituents of the SIT are very stringent provisions and therefore, criminal prosecution have to be initiated against the parties under these special Laws but as is reflected in the own displaced submissions of the two sides, in the closure report as per the claim of the CBI dehors all these allegations. On behalf of the petitioners, reliance is sought to be placed on **'Union of India vs. Mohan Lal Capoor and others' 1974 AIR (SC) 87; 'Aslam Mohd. Merchant vs. Competent Authority and others' 2008(14) SCC 186; 'Sitaram Agarwal & another vs. Subarata Chandra & Damkrishna Dhara & others' 2008(7) SCC 716; 'Shri Joseph Isharat vs. Mrs. Rozy Nishikant Gaikwad' 2017(5) AIR Bom.R 706; 'Dayawati and another vs. Inderjit and others' 1966 AIR (SC) 1423; 'Lakshmi Narayan Guin vs. Niranjan Modak' 1985(1) RCR(Rent) 27; 'Mahanivesh Oils and Foods Pvt. Ltd. v. Directorate of Enforcement' 2016(2) RCR(Criminal) 611; 'J. Sekar vs. Union of India & others' 2018(2) RCR(Criminal) 586; 'Satish Mehra vs. State of N.C.T. of Delhi and another' 2013(2) RCR(Criminal) 883; 'Transmission Corporation of A.P. Ltd. and Ors. vs. M/s Sri Rama Krishna Rice Mill' 2006 AIR (SC) 1445; 'R.Rajagopal Reddy (dead) by L.R.s and others vs. Padmini Chandrasekharan (dead) by L.R.s' 1996 AIR (SC) 238; and 'Dilip N. Shroff vs. Joint Commissioner of Income Tax, Mumbai & another' 2007(6) SCC 329** but not much can be commented upon at this juncture as it might have its implications on the future investigations by the SIT.

This Court, thus draws the conclusion that there is nothing substantial or appreciable control or interest as alleged by the respondent side to Mr.Gurnihal Singh Pirzada who is claimed to be running the puppet show even of the present petitioners. Thus, in the light of any such evidence the arguments of Mr.Goel representing the respondent that even the ICRMS is a ghost company of Mr.Gurnihal Singh Pirzada, cannot be accepted when there is no clear-cut finding submitted to this Court by the SIT to that effect, nor it could be held that the ICRMS was doling out loans at the behest of this person. More so, the inference that is sought to be reached by this Court is strengthened from the fact that Mr.Sumeet Goel, learned counsel for the respondent could not convince by any tangible means what action the individual departments, the constituents of the SIT, have taken against the Directors of the ICRMS, is rather illustrative of the element of witch-hunting rather than carrying on impartial investigations and what is reflective of these acts of the individual departments is that they are more in a haste to supersede the investigations of the SIT which is being lingered since the year 2015. What has been detailed and discussed above, it would be significant to mention that there is nothing clear, unambiguous as to what the SIT is carrying-on, on the strength of the orders of this Court (Annexure P2) or as has been pleaded before this Court on the strength of the documents by the petitioners side the individual constituents of the SIT are venturing into by having resort to their departmental procedures of issuing show-cause notices, provisional attachment orders etc.

In the light of foregoing reasons, findings and drawing conclusions, this Court holds and draws the conclusions that the various departments by repeatedly invoking the provisions of their respective Acts have sought to be-little/prejudice the SIT and its findings rather than lending a helping hand and ensuring that there is proper and fair dispensation of justice. Thus, by this all necessitates that since it is the same very allegations and facts that have come about to be investigated by the SIT and which are being acted upon in haste by the individual constituents under their relevant Acts and would defeat the endeavours of this Court in unraveling the truth, and as long as the constituents of the SIT do not in their joint venture of the SIT draw a definite conclusion, it would be in the fitness of things to hold that the individual acts of these constituents, the Enforcement Directorate (ED), Income Tax Department and the Serious Fraud Investigation Office (SFIO) which would affect the

SIT findings, need not be ventured into at this juncture and are thus all such notices so issued cannot be implemented and are rendered otiose. Let the SIT draw its conclusions based on tangible, impeccable evidence and till then these individual constituents are restrained from taking any coercive means under their individual Acts on the same very facts against the petitioners.

Present petition as such stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

March 26, 2019
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No