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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th March, 2019

+ CRL.M.C. 1128/2016 and Crl.M.A.1827/2016, 2676/2016 and 10219/2016

LICHEN METALS PRIVATE LIMITED & ANR. Petitioner
Through Mr.Vikas Pahwa, Sr.Advocate with
Mr.Kailash Pandey, Mr.Ranjeet Singh,
Ms.Nuur Sharma, Advocates
versus

CENTRAL BUREAU OF INVESTIGATION..... Respondent
Through Mr.Narender Mann, Spl.PP for CBI
with Mr.Manoj Pant, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first petitioner i.e. M/s Lichen Metals Private Limited (LMPL) is described as a group of companies of M/s Edelweiss Commodities Services Ltd., which had been a business associate, since 2008, of State Trading Corporation (STC), an entity controlled by the Government of India. The second petitioner has been concededly connected to M/s Edelweiss Commodities Services Ltd and also authorized by LMPL to sign documents on its behalf.

2. Upon consideration of the evidence – oral and documentary – as submitted with the report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the respondent Central Bureau of Investigation (CBI) on conclusion of investigation into its First Information Report (FIR) vide RC

No.221/2013/E0002/CBI/EO-III/New Delhi, the Special Judge (Prevention of Corruption Act) having registered a criminal case (CC No.04/2014) and having taken cognizance, issuing process, after securing their presence by order dated 17.12.2015, found charge made out so as to put the petitioners herein (A-4 and A-5 respectively), along with three others, on trial. The three other persons against whom charge was framed by the said order included P.E. Lyngdoh (A-1), D.S.Parmar (A-2) and S.K.Negi (A-3). All of the said persons were at the relevant point of time officers of STC, A-1 being the General Manager (Branch Head), A-2 being the Deputy General Manager (Marketing) and A-3 being the Deputy General Manager (Finance), each stationed at Kolkata. Charge has been found made out against all five accused persons, including the petitioners herein, for the offence under Sections 120B read with Sections 420/471 of Indian Penal Code, 1860 (IPC) and Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. Separate charges have been framed against the other three accused (A-1 to A-3) for offences under Sections 420 and 471 IPC, and additionally under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

3. The petitioners herein have brought this petition invoking the revisional jurisdiction and inherent powers of this Court under Sections 397, 401 and 482 Cr.P.C. read with Articles 226 and 227 of the Constitution of India, 1950, to assail the above said decision of the Special Judge, the only contention pressed at the hearing being that all the acts of commission and omission alleged by CBI in the above

mentioned case relate to Kolkata (West Bengal) and, therefore, the Court of Special Judge at New Delhi did not have the requisite jurisdiction to entertain it, prayer being for the proceedings in the criminal case to be quashed on this account, reliance being placed on the rulings in *Y.Abraham Ajith and Others Vs. Inspector of Police, Chennai and Anr.* (2004) 8 SCC 100 and *Ramesh and others Vs. State of T.N.* (2005) 3 SCC 507. Noticeably, the said cases cited at bar relate to prosecution for offences under Sections 498A and 406 IPC. Be that as it may, it is trite law that the jurisdictional error goes to the root of the matter and if there is nothing connected to the offence for which the criminal prosecution has been launched against the petitioner at New Delhi, the proceedings would be vitiated.

4. The case for the prosecution has been summarized succinctly by the Special Judge in the impugned order, relevant portion whereof reads thus:

“3. STC is one of the canalizing agency of Government of India for import and export of certain commodities including bullion. The bullion is imported by STC from its empanelled foreign suppliers for its empanelled Indian associates which import it for the purpose of export, after some value additions like jewellery etc. After receipt of bullion consignment from foreign suppliers, payments are made in US dollars by STC after collecting equivalent Indian currency from Indian associates. The liability of India associate towards imports of bullion may increase or decrease as per value of US dollar in terms of Indian currency as on the date of payment. To hedge this uncertainty of value of US dollar, the Indian associate

had option to fix his liability towards payment of imported bullion on a particular date by taking foreign exchange “forward cover” through STC authorized dealer bank as per RBI guidelines. The customer like STC can take foreign exchange “forward cover” from authorized dealer bank, only if the authorized dealer bank allocates the required limit to it in this regard.

4. M/s LMPL is a group of companies of M/s Edelweiss Commodities which was an existing business associate of STC since 2008 and had imported gold through STC, Kolkata from 2008 to 2011 but had never taken any forward cover. Accused S.S.Kedia was not any office bearer in M/s LMPL but was a Vice President of M/s Edelweiss Commodities. He was authorized to sign any document on behalf of M/s LMPL as per its resolution passed in the meetings by its board of directors, i.e., Sh.Pahlad Shinde, who was the Executive Director with other two non-executive Directors on 26.11.2010.

5. D.S.Parmar, the then DGM, STC, Kolkata in connivance with P.E.Lyngdoh, the then Branch Manager, STC without empanelling, M/s LMPL, Mumbai as its business associate entered into an agreement with it on 31.01.2011 for import of duty free gold/silver through STC. This agreement was signed by S.S.Kedia on behalf of M/s LMPL and by D.S.Parmar, DGM, STC, Kolkata. It is alleged that the agreement was made by STC in violation of the laid down procedure, which clearly says that for carrying out any business on behalf of any private party, such private party had to be empanelled as its business associate in the light of its trading guidelines dated 10.05.2010. The procedure of enlistment of M/s LMPL, Mumbai was initiated only after entering into

agreement with it on 04.02.2011 when S.S.Kedia, authorized signatory of M/s LMPL requested Sh.Paul Lyngdoh of STC, Kolkata for enlistment of M/s LMPL in STC vide his letter dated 04.02.2011.

6. Business between M/s LMPL and STC started since 04.02.2011 and till 22.07.2011, 4650 kg of gold was imported. However, no “forward exchange” cover was taken by M/s LMPL from STC for the said imports. In fact M/s LMPL had not taken any forward cover from STC, Kolkata during 2011 and 2012, as normally the gold was being imported by them on credit basis from STC and within a very short period of time, i.e., within a week, this imported gold after some value additions were also being exported on cash basis so there was natural hedging and there was no need for booking of foreign exchange forward covers.

7. It is alleged that on 27.06.2011, S.S.Kedia got employment of P.E. Lyngdoh’s son Sh.Grant Lyngdoh as an Executive in M/s LMPL, who was at that time in B.Sc. final year with poor percentage of marks.

8. It is further alleged that on 26.07.2011, P.E. Lyngdoh requested Joy Deb Mukherjee, AGM, SBI International Bank, Corporate Account Group, Kolkata for allocation of additional limit of Rs.450 crores to STC, Kolkata for booking of foreign exchange forward contract worth 100 million USD on LC/SBLC basis. A request was also made by P.E.Lyngdoh to B.S. Negi, DGM (Finance), STC, New Delhi. On 26.07.2011, Sh. Joy Deb Mukherjee informed Krishan Mohan, Chief Manager, IB, SBI, CAG, Kolkata that FC limit of Rs.450 crores is being permitted with credit exposure limit of Rs.9 crores in the account of STC for booking of forward cover. Thereafter, letter dated

27.07.2011 was sent to the AGM, SBI, CAG, Kolkata by the AGM/ Relationship Manager, SBI, CAG, New Delhi regarding sanction of forward cover limit of Rs.450 crore with credit exposure limit of RS.9 crore wherein, it was specifically mentioned that this forward contract limit will be on the documentary evidence method. It was also told to the AGM, SBI, CAG, Kolkata in this letter to ensure to obtain documents at his end for all the transactions booked at his branch.

9. S.S. Kedia vide his indent dated 25.07.2011 on behalf of M/s LMPL requested Branch Manager/ GM, STC, Kolkata for duty free import of 2000 Kgs of 1 Kg bar of gold from MKS Finance/NCMI on Usance LC/ Stand Bye LC (SBLC) for delivery period up to 30.04.2012 as per agreement dated 31.01.2011. It is alleged that this indent was quite unusual and was an open ended indent where delivery period was from date of indent, i.e., 25.07.2011 up to 30.04.2012 and in place of delivery charges it was mentioned "As specified by supplier". But no document of supplier was enclosed. This indent did not mention of any request for taking any forward cover in the matter.

10. On the basis of tentative requirement of M/s LMPL dated 25.07.2011, P.E. Lyngdoh also faxed a letter to the Chief Manager, SBI, CAG, Kolkata for forward purchase of USD 100 million spread over from 10.07.2011 (wrongly typed as 10.07.2012 whereas, it should have been 10.07.2011) to 26.07.2012 on the ground that the due dates of payment would be on the dates for which forward purchases have been fixed.

11. On the basis of tentative requirement of M/s LMPL dated 25.07.2011, STC, Kolkata officials, namely, D.S. Parmar and S.K. Negi splitted the indent of 2000 kgs of

import of gold into two indents of 1000 kgs each on two different dates, i.e., 25.07.2011 and 26.07.2011 to make the transactions within the powers of Branch Manager of STC and to avoid the approval of the Corporate Office as per laid down financial powers of Branch and Corporate Office

12. It is also alleged that two false indents were prepared bearing No. STC/ Lichen Metals/ 24/2011-12 dated 25.07.2011 purportedly placed on M/s Natixis Commodity Markets Limited and indent no. STC/Lichen Metals/25/2011-12 dated 26.07.2011 purportedly placed on M/s MKS Finance, SA, Switzerland. It is alleged that indent bearing No. STC/ Lichen Metals/ 24/2011-12 dated 25.07.2011 purportedly placed on M/s Natixis Commodity Markets Limited was jointly signed by D.S. Parmar and K.S. Negi , both DGM STC, Kolkata for import of gold bars of 1000 kgs and was falsely shown to have been sent by FAX on Delhi FAX No. 011-46066777 of M/s Metloy Trading Services Pvt. Ltd., Indian agent of M/s Natixis Commodity Markets Limited, London.

13. Indent No. STC/ Lichen Metals/25/2011-12 dated 26.07.2011 purportedly placed on M/s MKS Finance SA Switzerland was jointly signed by D.S. Parmar and K.S. Negi for import of gold bars of 1000 kgs and falsely shown to have been sent by FAX on Delhi FAX no. 011-49684201 of M/s MMTC-PAMP India Pvt. Ltd. Indian agent MKS Finance, SA, Switzerland.

14. On receipt of telephonic booking from P.E. Lyngdoh, Treasury Marketing Officer, Regional Treasury booked the rate of USD for forward cover. P.E. Lyngdoh also faxed a letter dated 26.07.2011 to the Chief Manager,

SBI, CAG, Kolkata for forward purchase of USD 32 million.

15. It is alleged that thereafter, P.E. Lyngdoh also faxed a letter dated 27.07.2011 to the Chief Manager, SBI, CAG, Kolkata for forward purchase of USD 68 million in which date of remittance to foreign supplier was fixed arbitrary without any confirmation from the supplier. It is also alleged that the purpose of preparation of said two false indents were to fraudulently obtain the “forward foreign exchange cover” from SBI, Corporate Account Group, Kolkata by giving an impression that STC was importing 2000 kgs of gold for which payments worth 100 million USD was required to be made to foreign supplier on some future date and STC wanted to hedge the risk of fluctuating foreign exchange rates. It is further alleged that speculation in foreign exchange is prohibited as per FEMA (Foreign Exchange Management Act, 1999). SBI also issued clarification vide its circular no. CPP/CIR/SRT/1/27 dated 13.06.2011 specifying what underlying documents were to be received by the bank in foreign exchange forward contracts.

16. It is further alleged that on 28.09.2011, P.E. Lyngdoh also wrote to SBI, Kolkata that the indents placed on M/s NCML and M/s MKS Finance SA, Switzerland had been cancelled giving false justification , i.e. quantity of bullion has already been imported in advance.

17. It is further alleged that as a result of cancellation of 100 million USD, SBI calculated discounted gain worth RS.31,93,67,705/- which was credited into account of STC, Kolkata. Subsequently, STC, Kolkata issued two

letters under the signatures of D.S. Parmar and S.K. Negi for opening of FDR of RS.31,93,67,705/- and for grant of demand of loan for Rs.23,95,25,779/- against the said FDRs.

18. It is further alleged that on 30.10.2011, M/s Edelweiss wrote to P.E. Lyngdoh to cancel the said FDR of Rs.31,93,67,705/- created from the profit made by cancellation of forex forwards of USD 100 million, utilizing for making payment of demand loan of Rs. 23,95,25,779/- and out of balance gain of RS.7,97,14,740/- an amount of Rs.7,50,00,000/- transferred from SBI, CAG, Kolkata to STC's account maintained with Bank of Baroda, Kolkata on 13.10.2011 for the purpose of repayment of demand loan taken by STC, Kolkata on 13.09.2011 from Bank of Baroda. The final balance of proceeds of booking and cancellation of forward foreign exchange gain around Rs.47,14,740/- was paid by STC's Associate finance to M/s LMPL after finalization of Lichen's Bullian account with STC Kolkata Branch. Thus, whole gain with Rs.31,93,67,705/- accrued towards booking and cancellation of forward foreign exchange on false indents were transferred to M/s LMPL at the request letter of M/s Edelweiss Trading & Holding Limited.

19. It is alleged that A-1 P.E. Lyngdoh, Branch Manager, STC, Kolkata in connivance with D.S. Parmar, S.K. Negi, both DGM, STC, Kolkata and S.S. Kedia, Authorized Signatory of M/s LMPL and M/s LMPL through its directors committed an offence under Section 120B read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of PC Act, 1988 and substantive offence thereof.

5. During the course of hearing, the learned counsel on both sides, referred to evidence – oral and documentary, which was gathered during the course of investigation by CBI, supportive of the allegations to the above effect. Reference was made, *inter alia*, to a communication dated 25.07.2011 addressed by LNPL to STC on the subject of order for bullion shipment into India, it being indicated that in terms of consignment agreement dated 31.01.2011, order was to be placed for import of 2000 kg of duty free gold of specified purity, the suppliers being described as “MKS Finance/NCML” *i.e.* M/s MKS Finance of Switzerland and M/s Netixis Commodity Markets Ltd., the delivery period being up to 30.04.2012. In the wake of the said communication, indents were purportedly issued by STC in the name of the said suppliers, each for 1000 kg of the said commodity, by communications shown sent on 25.07.2011 (D-16) and on 26.07.2011 (D-17). This was followed by communications dated 26.07.2011(D-18) and 27.07.2011 (D-22), from LMPL to STC, purportedly confirming booking of final purchase for USD 32 million and USD 68 million respectively. The STC, on its part, sent requisite communications dated 26.07.2011 (D-20) and 27.07.2011 (D-21) to the State Bank of India (SBI) regarding final purchase contract in above nature for the said foreign exchange (USD), remittance required “being towards import of gold” in the above mentioned quantity.

6. There is evidence to support the view taken by the Special Judge that the forward cover was taken to be used for speculative purpose and, therefore, *prima facie*, it was not for genuine business

and, thus, contrary to the guidelines of RBI and the contract referred to above. The two agents which were involved, namely M/s MKS Finance and M/s Metloy Trading Services Private Ltd., are located in Delhi, the indents were faxed to Delhi for booking, later followed by some communications purportedly to cancel the said request.

7. It was argued before the Special Judge that since all the material transactions had been undertaken and indulged at Kolkata, all the players, agencies and entities being also located there, the institution of criminal prosecution at New Delhi is impermissible. The Special Judge has rejected this contention referring, *inter alia*, to the provision contained in Section 178(d) of Cr.P.C., which, to the extent relevant, reads thus:

“178. Place of inquiry or trial. - where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

8. It may also be noted here that the general rule as to the jurisdiction of the criminal courts in the matter of inquiries and trials is provided in Section 177 Cr.P.C., in terms of which :

“177. Ordinary place of inquiry and trial - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.”

9. The provision contained in Section 178 Cr.P.C. to the extent relevant and quoted above, is in the nature of an exception to the abovesaid general rule.

10. The Trial Judge has rejected the objection on the issue of jurisdiction referring to the above mentioned indents which were allegedly documents fabricated and faxed to Delhi office of the agents who were to make supplies which were later cancelled, such acts being part of a design leading to wrongful loss caused to STC assessed to be in the tune of Rs.3.39 crores.

11. The petitioners place reliance on *CBI, AHD, Patna Vs. Braj Bhushan Prasad & Ors.*(2001) 9 SCC 432 and *State of Jharkhand Vs. Lalu Prasad Yadav alias Lalu Prasad* (2017) 8 SCC 1, to argue that the jurisdiction in a case brought before the Court of Special Judge under Prevention of Corruption Act, 1988 is to be examined with reference to the provisions contained in Section 4(2) read with Section 3(1), the prescription in the special law prevailing over the general rule on such subject in Cr.P.C. A Special Judge is appointed, for the purposes of Prevention of Corruption Act, 1988, by the Central Government, or the State Government, under Section 3, the power and jurisdiction of such forum being indicated thus :

“Power to appoint special Judges – (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-

(a) Any offence punishable under this Act; and

(b) Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a)”

12. Section 4 may be quoted thus:

“4. Cases triable by special Judges – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973(2 of 1974), be charged at the same trial.”

13. It is clear from above, that the prime jurisdiction of the Special Judge concerns an offence punishable under Prevention of Corruption Act, 1988, the said Court also being vested with the power to try other offences if the accused is charged with such offences and a case against the same accused for such other offence may be brought “at the same trial”. In this context, it has to be borne in mind that the general rule, in terms of Section 218 Cr.P.C., is that for every distinct

offence there has to be a “separate charge”, and every such charge is to be “tried separately” as clarified under Section 220 Cr.P.C., If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person he may be charged with, and tried at one trial for, every such offence. Section 223 Cr.P.C. permits joint trial of more than one person in certain specified fact-situations, which include persons accused of same offence, committed in the course of same transaction or a person accused of an offence and persons accused of abetment of such offence, etc.

14. It is not disputed that the offences punishable under IPC which are included in the charge that has been framed, *inter alia*, against the petitioners, arise out of the same transactions as have given rise to the charge for offence under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 against the three public servants (A-1 to A-3). In these circumstances, there may be no objection (and there in fact is none) to their joint trial or, for joinder of charges under Prevention of Corruption Act, 1988 on one hand and IPC on the other.

15. This Court endorses the view taken by the Special Judge in the impugned order that since some of the acts are concerned with the office of STC at New Delhi, the communications in above nature being also addressed to the agents at New Delhi, the wrongful loss caused to STC affecting the said entity having its head office in Delhi, the petitioners cannot take exception to the jurisdiction of the Special Judge at New Delhi. In this context, besides applying Section 178

Cr.P.C. reference may also be made to Section 179 Cr.P.C. which reads thus:

“179. Offence triable where act is done or consequence ensues. When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

16. In the above facts and circumstances, the petition is found devoid of merits and is dismissed.

17. Pending applications also stand disposed of.

MARCH 11, 2019
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R.K.GAUBA, J.