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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
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Date of Decision: 18th March, 2020

1. CWP No.4144 of 2020

M/s Ireo Hospitality Company Private Limited

Petitioner

Versus

Union of India and others

Respondents

2. CWP No.4506 of 2020

Ireo Victory Valley Private Limited

Petitioner

Versus

Union of India and others

Respondents

3. CWP No.4507 of 2020

Ireo Grace Realtech Private Limited

Petitioner

Versus

Union of India and others

Respondents

4. CWP No.4512 of 2020

Ireo Residences Company Private Limited

Petitioner

Versus

Union of India and others

Respondents

5. CWP No.4513 of 2020

Ireo Private Limited

Petitioner

Versus

Union of India and others Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Balbir Singh, Senior Advocate with
Mr. Gajendra Maheshwari, Advocate
for the Petitioners.

Mr. Sourabh Goel, Senior Panel Counsel
for Union of India.

Ms. Amrita Garg, Advocate for
Mr. Arjun Sheoran, Advocate
for Non-Applicants/Intervenors
[in CWP No.4507 & 4513 of 2020].

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Dr. S. Muralidhar, J.

1. This is a batch of five petitions, by the companies belonging to the same group. The first of these petitions i.e. CWP No.4144 of 2020 is filed by M/s Ireo Hospitality Company Private Limited ('IHCPL') where the principal challenge is to the provisional attachment order dated 7th February, 2020 issued by the Principal Commissioner, CGST Commissionerate, Gurugram attaching the bank accounts of the Petitioner.

2. When CWP No.4144 of 2020 was listed for hearing before this Court on 14th February, 2020, notice of motion was issued and the petition was adjourned to 18th February, 2020 at the request of learned standing counsel for the Respondents.

3. On the following date i.e. 18th February, 2020 while further adjourning

the case to 25th February, 2020 again at the request of learned counsel for the Respondents, the Court directed that in the meanwhile the Over Draft (OD) account(s) of the Petitioner shall be de-freezed forthwith.

4. On the next date i.e. on 25th February, 2020 the following order was passed in CWP No.4144 of 2020.

> "By this petition, the petitioner has challenged the order of attachment of its bank account under Section 83 of the Central Goods and Services Tax Act, 2017 [read with Rule 159 of the Central Goods and Services Tax (CGST) Rules, 2017].
>
> Reply on behalf of respondents has been filed and the same is taken on record. Copy of reply is handed over to learned counsel for the Petitioners.
>
> The principal argument is that the necessary concomitant for exercising the powers under Section 83 of the Act is 'opinion of the Commissioner that it is necessary for protecting the interest of the Government revenue'. On the other hand, the impugned order only mentions that since proceedings have been launched against the petitioner under Section 67 of the Act, the order has been passed.
>
> We have asked learned counsel for the respondents as to what were the reasons for coming to the opinion that the interest of the revenue may be prejudicially affected when there is no demand, because even in the written statement nothing is forthcoming.
>
> Learned counsel has requested us to permit the officer who has passed the order to appear before this Court with the record and explain the reasons which weighed with him. Even though the request is hardly reasonable, we accede to it.
>
> Adjourned to 27.02.2020.
>
> Copy of the order be handed over to learned counsel for the Revenue under the signatures of Bench Secretary of this Court.
>
> Photocopy of this order be placed on the file of each connected case."

5. In the meanwhile, companion petitions had been filed and the above order was common to the first petition i.e. CWP No.4144 of 2020 and the other four petitions by the other group companies viz., Ireo Victory Valley Private Limited (CWP No.4506 of 2020), Ireo Grace Realtech Private Limited (CWP No.4507 of 2020), Ireo Residences Company Private Limited (CWP No.4512 of 2020) and Ireo Private Limited (CWP No.4513 of 2020). The challenge in those petitions *inter alia* was to the attachment of bank accounts of the concerned entities.

6. Thereafter, the petitions were again considered, after completion of the pleadings, on 3rd March, 2020 when the following order was passed by this Court:-

> "Learned counsel for the Petitioners has filed rejoinder to the reply of the respondents and the same is taken on record. Copy of rejoinder is supplied to learned counsel for the respondents.
>
> Today, Mr. Vivek Ranjan, I.R.S., Director General of GST Intelligence, Gurugram is present in the Court and has apprised the Court that the order which has been passed under Section 83 of the Central Goods and Services Tax Act, 2017 read with rule 159(1) of the Central Goods and Services Tax (CGST) Rules, 2017 and in consonance with Form GST-DRC-22 and as per that form, there is no requirement for recording the reasons.
>
> In our opinion, this argument may not stand the scrutiny of law because the enabling section is section 83 which requires that 'Commissioner is of the opinion that for the purpose of protecting interest of the Government revenue.....'.
>
> To our mind, tentatively the sine qua non for the Commissioner to arrive at 'opinion' would be material and and once Rule 159(5) permits the effected person to file objections, it would normally go without saying that he would know the reasons because if he does not know the reasons, he does not what objections to file.

> Adjourned to 17.03.2020 for further consideration.
>
> While recording our appreciation for appearance of the Officer, we declare that he need not be present on next date.
>
> A photocopy of this order be placed on the file of each connected case.

7. Further submissions were heard by this Court on 17th March, 2020 when it was urged by Mr. Balbir Singh, learned Senior counsel for the Petitioner that as long as the Petitioners' principal grievance that the provisional attachment orders were non-reasoned orders is entertained and a time bound direction is issued to the respondent to pass those orders afresh in accordance with law taking into account the submissions of the Petitioners in these petitions, the petitioners were willing to abide by any terms and conditions as may be deemed appropriate by the Court.

8. Mr.Singh, *inter-alia,* stated on instructions that an affidavit would be filed by the petitioners setting out what the balance in the frozen accounts was, as on date, and also set out the proposed withdrawals to be made from those accounts in the event of lifting of freezing orders by the Respondents till 10th April, 2020, the tentative date by which it was proposed that fresh orders would be passed by the Respondents.

9. Today, Mr. Balbir Singh, Senior Advocate has handed over an affidavit dated 17th March, 2020 of the Petitioners setting out in a tabulated form the payments that were required to be made by the Petitioners as "essential business payments" upto 10th April, 2020 from the provisionally attached

accounts for running their day to day operations and for "no other purpose". The proposed payments have been depicted as under:-

S. No.	Particulars	Approximate Expense
a.	Payment to Government and Local Authorities for statutory dues and utility charges;	Rs.8.75 Crore
b.	Payments to Banks and Financial Institutions against borrowings;	Rs.9.25 Crore
c.	Payments on account of employee salary	Rs.4.75 Crore
d.	Payments to existing vendors for completing live residential and commercial projects	Rs.4.75 Crore
	Total	Rs.27.50 Crore

10. It is further stated in paragraph 4 of the affidavit that the Petitioner companies expect further receipts of Rs.7 crores upto 10th April, 2020 on account of customer payments. It is further urged by Mr. Balbir Singh that money received by IHCPL by way of borrowings, loans, OD facility and CC limit ought not to be attached by the Respondents and that the interim order already passed in this regard by this Court on 18th February, 2020 should be made absolute.

11. Mr. Balbir Singh, Senior Advocate has further highlighted what is stated in paragraph 6 of the affidavit, that the Petitioners' have fixed deposits (FD) in various bank accounts to the tune of Rs.52,23,71,188/- which are under lien on account of security except FDR of Rs.1,43,31,817/- which is free from encumbrances.

12. Mr. Sourabh Goel, learned senior panel counsel for Union of India submitted that the affidavit was not explicit whether there was any other account of the Petitioners and whether any sums have been received by the Petitioners between 7th February, 2020 to till date.

13. Mr. Balbir Singh, Senior Advocate, further on instructions, undertakes that subject to the impugned orders being set aside, the time bound directions be issued to the respondents to pass fresh orders in accordance with law, the Petitioners would ensure that no payments other than those set out in the tabular form (in para 9 above) would be made from the accounts till date of passing of fresh orders will remain untouched. He also states that again on instructions, that the petitioner would furnish to the respondents the receipts for the payments made to the vendors for completing the live residential and commercial projects of the Petitioners, accompanied by an affidavit explaining the details of such payment. Thirdly, the Petitioners will maintain status quo with regard to FDs, both which are under lien as well as the FDR which is free from incumbrances.

14. Mr. Balbir Singh, Senior Advocate, further on instructions, undertakes that subject to the impugned orders being set aside, the time bound directions be issued to the Respondents to pass fresh orders in accordance with law, the Petitioners would ensure that no payments other than those set out in the 'tabular form' would be made from the accounts and that further receipts in the accounts till date of passing of fresh orders will remain

untouched. He also states, again on instructions, that the Petitioners would furnish to the Respondents the receipts for the payments made to the vendors for completing the live residential and commercial projects of the Petitioners, accompanied by an affidavit explaining the details of such payments. Thirdly, the Petitioners will maintain status quo with regard to FDs, both which are under lien as well as the FDR which is free from encumbrances.

15. Binding down the Petitioners to the aforementioned statement made before the Court as recorded in paras 13 and 14 above, the following directions are issued:-

(i) The impugned order of provisional attachment of Petitioners' bank accounts are hereby set aside upon the condition that fresh orders would be passed by the Respondent No.2 in that regard, in accordance with law, taking into account the submissions made by the Petitioners in these petitions, not later than 10th April, 2020.

(ii) The said orders will be communicated to each of the Petitioners not later than 12th April, 2020.

(iii) It will be open to the Petitioners, if aggrieved by such orders, to seek appropriate remedies in accordance with law.

16. It is made clear that the Court has not expressed any opinion on the contentions of the Petitioners or of the response of the Respondents thereto. These are left open to be urged by the parties at the appropriate stage.

17. It is clarified that the interim order already passed by this Court on 18th February, 2020, viz., de-freezing the OD account of IHCPL, including any borrowings, terms loans, CC limits will continue.

18. The petitions are disposed of in the above terms.

19. Order *dasti.*

[S. MURALIDHAR]
JUDGE

[AVNEESH JHINGAN]
JUDGE

March 18, 2020
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes