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

+ **W.P.(CRL) 679/2020**

COL. SANJEEV DHAWAN & ORS.

..... Petitioners

Through: Ms Zeba Khair and Mr Afzal S. Shah,
Advocates.

versus

LALIT GOYAL & ORS.

..... Respondents

Through: Mr Anurag Ahluwalia, CGSC with
Mr Abhigyan Siddhant and Mr
Shaurya Jain, Advocates for R-13.
Mr Zoheb Hossain, Sr. Standing
Counsel, Mr Parth Semwal, Jr.
Standing Counsel with Mr Shahrukh
Ali, Advocates for R-14.
Ms Anushree Narain, Ms Venu S.
Mehrotra, Advocates for Mr Sonu
Bhatnagar, Sr. Standing Counsel for
R-17.
Insp. S. Prakash, EOW.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.03.2020

CRL.M.A. 5225/2020

1. Allowed, subject to all just exceptions.

W.P.(CRL) 679/2020 & CRL.M.A. 5223/2020 & CRL.M.A. 5224/2020

2. The petitioners have filed the present petition, *inter alia*, praying that directions be issued to respondent no.13 (Serious Fraud Investigation Office – SFIO) to attach the assets of the group companies and personal properties

of respondent nos.1 to 10, till the investigation is completed by respondent nos.13 to 17 (police and income tax authorities) in terms of the directions issued by the Supreme Court in W.P.(Crl.) 142/2018 captioned '*Ramesh Sanka v. Union of India & Ors.*'.

3. The petitioners claim to be persons who have invested in a project known as 'Ireo Fiveriver', which was being developed at Sector nos.3, 4 & 4A, Pinjore, Kalka Urban Complex, District Panchkula, Haryana (hereafter 'the Development').

4. The petitioners state that a company known as 'Sunflower Township Pvt. Ltd.' had acquired development rights in relation to the land on which the said project was being built. The name of the said company was subsequently changed to Ireo Fiveriver Pvt. Ltd. The petitioners claim that they have paid substantial amounts to the said company for purchasing their respective residential units in the Development.

5. The petitioners allege that the directors of the Development have siphoned off the monies collected from the petitioners and in doing so, have cheated them. The petitioners further state that now, some of the companies of the Ireo Group of Companies, which were involved in siphoning off the funds have either filed petitions or caused petitions to be filed before the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 (hereafter 'IBC'). It is also stated that an Interim Resolution Professional has been appointed in respect of some of the companies and the same is a result of the fraud perpetuated by the directors/promoters of the said companies in order to avoid their liability.

6. The petitioners state that one Ramesh Sanka had filed a Writ Petition (W.P. (Crl.) 142/2018) before the Supreme Court setting out the fraud committed by the directors and promoters of the Ireo Group of Companies. The Supreme Court had examined the said petition and had passed an order for making necessary inquiries by the concerned authorities.

7. The learned counsel appearing for the petitioners state that over a year has since elapsed, but the inquiries have not been completed as yet and in the meanwhile, the promoters and directors of the Ireo Group of Companies are managing the affairs of the company to make preferential payments and avoid the processes of law. She submits that in the aforesaid context, it is imperative that urgent orders be passed for attaching the properties of the promoters and directors of the Ireo Group of Companies and the investigation by SFIO be completed in a time bound manner.

8. The petitioners further pray that SFIO be directed to conduct a forensic audit of respondent nos.11 and 12 (Ireo Fiveriver Pvt. Ltd. and its parent company – Ireo Pvt. Ltd.).

9. It is apparent from the averments made in the present petition as well as the order passed by the Supreme Court in W.P.(Crl.) 142/2018, that several agencies are inquiring into the affairs of the Ireo Group of Companies. This includes the Income Tax Department as well as SFIO. The contention that the Supreme Court has expressly directed that the investigation be conducted into the affairs of the said company does not appear to be correct. The relevant paragraph of the order dated 25.01.2019 passed by the Supreme Court in W.P.(Crl.) 142/2018, is set out below:-

“19. So far as the raising of other grievances as set out *supra* by the writ petitioner against the other respondents are concerned, suffice it to say, this court by order dated 11.07.2018 had issued notice to the official respondents Nos.7 to 11. These respondents pursuant to the notice issued have filed their respective status report in relation to the inquiries, which is being undertaken by them in their respective jurisdiction. We have perused the same.

20. Needless to say depending upon the outcome of the inquiry once it is completed by the respective official respondents in their exclusive jurisdiction under various Acts, the appropriate action as provided in law will follow against all those who are found guilty.

21. Before parting, we make it clear that we have not expressed any opinion on several factual issues alleged and denied by all the parties against each other in this writ petition and in respective IA

22. This order, therefore, will not influence any authority or the Court or ongoing inquiry or proceedings while dealing with any issue. The same has to be dealt with uninfluenced by this order.”

10. It is apparent from the above that the Supreme Court had not expressed any opinion as to the allegations made against the respondents but had noticed that several agencies were inquiring into the affairs of the said company. In the aforesaid background, the Supreme Court had directed that the respective agencies, (arrayed as respondent nos. 7 to 11 before the Supreme Court) would conduct their enquiries and depending on the outcome of the said enquires, would take appropriate action in accordance with law.

11. Mr Ahluwalia, learned counsel appearing for SFIO, submits that

enquiries are being made and necessary action in accordance with law would be taken.

12. Having stated the above, it is apparent from the averments made in the present petition that there are serious allegations regarding siphoning of funds. In view of the above, SFIO is required to examine whether a forensic audit is required to be conducted into the affairs of the Ireo Group of Companies. If the concerned officer is of the view that such an audit is required to be conducted SFIO shall forthwith take steps, if not already done, for conducting a forensic audit of the companies. However, in the event the officer is of the view that no such forensic audit is necessary, he shall record his reasons for taking such a view. This Court does not consider it apposite to issue any directions in this regard as it is expected that SFIO shall conduct the enquiries/investigation and take all such necessary steps that it is required to take for the effective investigation in the matter.

13. Insofar as the allegation that petitions filed before the NCLT under the IBC are *mala fide* is concerned, the petitioners are at liberty to approach the concerned authority/tribunal for its grievances in accordance with law. It is not apposite for this Court to pass any orders with regard to proceedings that are pending before the NCLT.

14. In so far as the apprehension that the directors and promoters of the Ireo Group of Companies would flee from the country and avoid legal process is concerned, SFIO is directed to examine the said apprehension and if necessary, take steps to protect the interest of all those concerned, in

accordance with law.

15. In so far as the petitioner's prayer that the properties of the Ireo Group of Companies be attached is concerned, this Court does not consider it apposite to pass any such orders for two reasons. First, the petitioner is unable to point out the legal framework within which such orders are required to be passed. And, second, that a Coordinate Bench of this Court has passed an interim order in W.P. (C) 10337/2018, restraining certain companies from creating interests in any third parties or parting with possession of their immovable properties. It is relevant to note that petitioners in the present petition are also the petitioners in that petition. Clearly, the petitioners cannot approach multiple forums seeking the same relief.

16. The petition is disposed of with the aforesaid observations. The pending application is also disposed of.

VIBHU BAKHRU, J

MARCH 11, 2020
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