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

% Judgment delivered on: 13th August, 2020

+ **CONT.CAS(C) 369/2020**

**RAJIV CHAKRABORTY RESOLUTION PROFESSIONAL
OF ERA INFRA ENGINEERING LIMITED Petitioner**

versus

**NAVEEN TYAGI BRANCH MANAGER, AXIS
BANK LIMITED & ORS. Respondents**

Advocates who appeared in this case:

For the Petitioner: Mr. Mohit Kishore, Ms. Wamika Trehan, Mr. Siddharth
Srivastava and Mr. Shivank Diddi, Advocates

For the Respondents: Mr. Amit Mahajan, CGSC for Enforcement Directorate
Mr. Abhinav Srivastava, Advocate for Respondents 1 to 3.

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J.

CM APPLN. 12364/2020 (Directions)

1. The hearing was conducted through video conferencing.
2. Petitioner has filed the subject petition seeking initiation of contempt proceedings against the respondent-Axis Bank for failing to comply with the judgment dated 14.11.2019 in W.P. (C) No. 9566/2019.
3. By order dated 14.11.2019, this Court had directed that the freeze of the bank account, in exercise of powers under Section 102 of the

Prevention of Money Laundering Act, 2002 (in short 'PMLA'), could not be sustained and was quashed. However, it was held that said order would not affect the order dated 07.10.2019 passed by the authority under Section 5 of the PMLA.

4. Petitioner filed the subject petition contending that despite order dated 14.11.2019 quashing the freezing of the bank account, respondent Bank had not permitted the operations of the bank account.

5. Respondent no. 1 to 3 have filed reply to the petition contending that on 19.04.2018, Enforcement Directorate passed an order under 102 of Cr. PC directing 74 bank accounts of petitioner – Era Infra Engineering Pvt. Ltd. to be frozen including Bank Account No. 913020056551881, i.e. the account in question. Subsequently, on 08.05.2018, the National Company Law Tribunal, Principal Bench, New Delhi in CP IB No. 190 of 2017 appointed Mr. Rajiv Chakraborty, Petitioner herein as the Interim Resolution Professional (IRP) of Era Infra Engineering Pvt Ltd. (EIEL).

6. It is contended that on 31.08.2018, Petitioner preferred a WP. No.9566 of 2019 challenging order dated 19.04.2018 of the Enforcement Directorate freezing bank accounts before this Hon'ble Court to which the Bank was not a party. On 04.10.2018, the Adjudicating Authority under Prevention of Money Laundering Act, 2002 passed an order exercising powers under section 102 of Cr. PC and directed that bank accounts be remain frozen.

7. On 07.10.2019, Enforcement Directorate passed a Provisional Attachment Order under Section 5(1) of the PMLA provisionally attaching

49 bank accounts of EIEL including the account numbered 913020056551881 being maintained with Axis Bank.

8. It is contended that after the subject order dated 14.11.2019, on 17.03.2020, the Adjudicating Authority under PMLA passed an order confirming the Provisional Attachment Order dated 07.10.2019. At the time of attachment, balance in the said account was INR 80,64,056.49 (Rupees Eighty Lakhs Sixty Four Thousand Fifty Six and Forty Nine Paisa only). It is contended that the Provisional Attachment Order dated 07.10.2019 was challenged by the Petitioner before the National Company Law Tribunal, Principal Bench, New Delhi by an application, which is still pending.

9. It is contended that on 21.05.2020, the Income Tax Authorities credited an amount of INR 19,22,11,330 as income tax refund pertaining to assessment year 2015-16 in the subject bank account.

10. On 27.05.2020, the Enforcement Directorate directed the Nodal Officer, Axis Bank to immediately transfer and credit the attached amount in four different accounts including the account in question to the Directorate of Enforcement.

11. On 15.06.2020, the Respondents wrote to the Petitioner informing him about the receipt of letter dated 27.05.2020 from Enforcement Directorate and requested him to take up the matter with the concerned authority.

12. On 16.06.2020, Petitioner wrote back to the Axis Bank, Noida Branch intimating that they have challenged the provisional attachment order dated 07.10.2019 before the National Company Law Tribunal, and

the application was pending. Petitioner requested the Respondents to desist from taking any steps for transfer of the funds lying in the accounts without their specific instructions.

13. On 22.06.2020, the Enforcement Directorate again wrote to the Bank and directed the Bank to immediately transfer and credit the attached amount to the Directorate of Enforcement.

14. It is contended that on 26.06.2020, the respondent Bank remitted the amount of INR 80,64,056.49 to the bank account of the Enforcement Directorate

15. It is contended that on 07.07.2020, Respondent – Bank wrote an email to the Enforcement Directorate, requesting for confirmation or NOC for de-freezing (removal of the debit freeze of the account in question). Respondent Bank also requested the Petitioner to provide NOC from Enforcement Directorate for unfreezing of the accounts. However, Respondents did not receive any response from the Enforcement Directorate.

16. It is also contended that initially the Income Tax Department exercised a lien over the said account in question under Section 226 of the Income Tax Act. However, vide a subsequent communication dated 15.07.2020, Income Tax Department has requested the answering Respondents to release the Bank account in question from the said lien.

17. Respondent have explained that though there was quashing of the debit freeze order, however as there was a provisional attachment, the bank had requested the petitioner to obtain a NOC from the authorities.

18. It is contended by learned counsel for the respondent bank that they had sought for a clarification as they are not a party to the proceedings and they wanted to ensure that there was no other proceedings initiated by the parties and further that action taken by the bank was by way of abundant caution and they had no intention to wilfully disobey the orders of the Court.

19. It is further pointed out that even the Income Tax Department had exercised a lien over the said account under Section 226 of the Income Tax Act and it was only on 15.07.2020 that the Income Tax Department had permitted the respondent to release the bank account in question from the said lien. It is, in the above circumstances, that the respondent bank did not permit operation of the subject bank account.

20. It may be further noted that the Directorate of Enforcement has passed another provisional attachment order dated 05.08.2020 attaching the amount of Rs. 19,22,11,271/-, which is the credit balance in the subject account of the petitioner with the Axis Bank.

21. In view of the above, I find that there is no wilful default on part of the respondent bank in not permitting operation of the bank account for the period that they were seeking clarification from the Enforcement Directorate as well as the Income Tax Department. The bank seems to have acted only by way of an abundant caution in seeking a clarification from the Enforcement Directorate as well as from the Income Tax Department. The cautious approach of the bank seems justified in view of the fact that the Enforcement Directorate has passed a further provisional attachment order

attaching the amount of Rs. 19,22,11,271/-, which was the credit balance in the subject account.

22. I find no merit in the petition. The petition is accordingly dismissed.

23. It is, however, clarified that this would be without prejudice to the rights of the petitioners to impugn the provisional attachment order dated 05.08.2020 in accordance with law and this order would not amount to expression of any opinion on the merits of the said order.

24. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J

AUGUST 13, 2020
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