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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th August, 2020

+ W.P.(C) 5723/2020 & CM APPLS. 20679/2020, 20680/2020, 20681/2020, 20682/2020

MONEY MARKET SERVICES (INDIA) PRIVATE LTD.

..... Petitioner

Through: Mr. R. Subramanian, Advocate (M-9381288048)

versus

UNION OF INDIA REPRESENTED THROUGH: THE SECRETARY MINISTRY OF CORPORATE AFFAIRS

..... Respondent

Through: Mr. Rakesh Kumar, CGSC for UOI (M-9811549455)

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been held through video-conferencing.
2. The present petition has been filed by the Petitioner – M/s Money Market Services (India) Pvt. Ltd. challenging the order dated 25th October, 2019 by which the name of the Petitioner has been struck off from the Register of Companies.
3. Mr. Rakesh Kumar, Id. CGSC takes a preliminary objection of territorial jurisdiction on the ground that the impugned order striking off the name of the company has been passed by the Registrar of Companies (*hereinafter*, 'ROC') in Chennai and not in Delhi. He relies upon three orders passed by the Id. Division Bench in *Sanjay Agarwal & Anr. v. Union of India & Ors.*, [W.P.(C) 7480/2018, decided on 29th January, 2019], *Vishal Bhati v. Union of India & Anr.* [W.P.(C) 9932/2018, decided on 24th

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September, 2018] and *Prakash Chand Jain v. Union of India & Anr. [W.P.(C) 9975/2018, decided on 24th September, 2018]* under similar circumstances, where the petitions have been dismissed by the Id. Division Bench, with liberty to file appropriate petition before the Court having territorial jurisdiction over the matter.

4. Mr. R. Subramanian, Id. Counsel appearing for the Petitioner, however, refutes this position and submits that the case herein is distinct from the said cases, inasmuch as there is a Serious Fraud Investigation Office (*hereinafter*, 'SFIO') investigation, which has been ordered by the Ministry of Corporate Affairs (Central Government) located at Delhi, under Section 212 of the Companies Act, 2013. According to Id. counsel, once an SFIO investigation has been ordered, the name of the company cannot be removed under Sub-Rule 3(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 (*hereinafter*, 'Rules'). Ld Counsel submits that the SFIO investigation forms part of the bundle of facts constituting the cause of action.

5. This Court has considered the matter. There is no doubt that under Section 212 read with the said Rules, there is an investigation by SFIO. The SFIO investigation may have been directed by the Central Government and the authorities located in Delhi. However, the order by which the Petitioner is aggrieved is not the order directing investigation by SFIO, but the order dated 25th October, 2019 by which the name of the Petitioner has been struck off by the ROC at Chennai.

6. The legal position on cause of action and territorial jurisdiction as also *forum conveniens* is well settled. In *Alchemist Ltd. & Ors. v. State Bank of Sikkim & Ors.*, AIR 2007 SC 1812, the Supreme Court observed as under:-

“28. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action', nothing less than that.”

7. Issues of jurisdiction, cause of action and *forum conveniens* have also been raised from time to time before this Court. In ***Sterling Agro Industries Ltd. and Ors. v. Union of India & Ors., AIR 2011 Delhi 174***, a 5-judge bench of this Court held as under:-

“33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a)...

...

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).”

8. Thus, in order for the Court to have jurisdiction, the impugned action forming part of the cause of action, ought to have taken place within the

territorial jurisdiction of the Court. The various orders of the Ld. Division Bench passed in similar circumstances are clear to the effect that this Court would not have territorial jurisdiction if the striking off has been directed by the authority in a different state. In those cases, before the Ld. Division Bench, the striking off orders were passed by the ROCs located in Kanpur and in Maharashtra. For e.g., the order of the Division Bench in **Vishal Bhati (supra)** reads:

“Considering the fact that the issue pertains to action taken by the Registrar of Companies, Kanpur and under identical situation with regard to action taken by Registrar of Companies, Mumbai on account of lack of territorial jurisdiction, we had refused to interfere into the matter earlier. Accordingly, we dismiss this petition also with liberty to the petitioner to file an appropriate petition before the Court having territorial jurisdiction over the matter”.

9. In the present case the grievance of the Petitioner is not against the SFIO investigation. In fact, the Petitioner relies on the said investigation to argue that the name of the company cannot be struck off. Thus, the cause of action arose due to the act of the ROC in Chennai and not the Central Government's act of directing the SFIO investigation. The impact of Sub-Rule 3(1) on the striking-off of the name of the Petitioner-Company would be a legal argument which the Petitioner would have to raise before the appropriate forum. The said forum would be entitled to consider the effect of Sub-Rule 3(1) and also to examine the legality of the order dated 25th October, 2019. The mere fact that the Central Government may have directed the SFIO investigation, would not vest jurisdiction in this Court, especially when the

specific order impugned in this case has been passed by the ROC in Chennai. Accordingly, this Court is of the view that this Court lacks territorial jurisdiction to entertain the present writ petition.

10. Accordingly, the present petition is dismissed, with liberty to the Petitioner to approach the appropriate forum in accordance with law. All pending applications are also disposed of. Nothing said here would be construed as an opinion on merits.

**PRATHIBA M. SINGH
JUDGE**

AUGUST 27, 2020
Rahul/A

