IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2587 OF 2021

Avil Menezes
Liquidator of Parekh Aluminex
Limited, ...Petitioner
V/s.
1. The Central Bureau of Investigation
2. The State of Maharashtra ....Respondent

Mr. Rohan Rajadhyaksha a/w. Ms. Naveli Reshamwala i/by. Economic Laws Practice, Advocate for the petitioner.

Ms. Ameeta Kuttikrishnan, Advocate for CBI-respondent no.1.

Mr. S.S. Hulke, APP for State-respondent no.2.

CORAM : SANDEEP K. SHINDE, J.
DATED : 9TH SEPTEMBER, 2021.

JUDGMENT :

1. This petition under Article 227 of the Constitution of India, challenges the order dated 28th June, 2021 in Misc. Application No. 472/2021 in RC/05/E/2017/CBI/EOB/Mumbai whereby the learned CBI

Court declined to return original 'title' documents to the petitioner.

2. The petitioner is 'liquidator', of Parekh Aluminex Limited-accused no.1 (Corporate Debtor) appointed by National Company Law Tribunal, Mumbai Bench (NCLT) pursuant to the order dated 7th October, 2020 in Company Petition No. 1262/2017.

Factual Matrix :

3. Indian Overseas Bank had lodged a complaint against the, Corporate Debtor, with the Economic Offences Wing for the offences punishable under Sections 420, 467, 468, 471 read with Section 120B of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. It is prosecution case, that the Corporate Debtor in connivance/in furtherance of conspiracy with other co-accused availed

bank loan of Rs.292.20 Crores by submitting false and fabricated documents, thereby jeopardising bank's interests. Economic Offences Wing (EOW) conducted various raids on the premises of the Corporate Debtor and as a part of their investigation, it seized most of the files, documents, hard-disks, containing information, data, records etc. in relation to the Corporate Debtor's businesses and affairs. EOW filed a final report in the Special CBI Court on 29th December, 2020. It is the petitioner's case that, by virtue of the provisions of "The Insolvency and Bankruptcy Code, 2016" ("Code" for short), petitioner is duty bound to collect of information relating to assets, finances and operations of Corporate Debtor for determining the financial position of Corporate Debtor including information relating to its business, operations, list of Corporate Debtors, assets and liabilities, so as to ensure that Corporate Debtor continues as a going concern. However, since most of the documents, hard-disks containing information, data and records belonging to the Corporate Debtor were seized by the EOW, petitioner vide letter dated 1st February, 2021 requested the respondents to return the original title documents of assets, as same would be required by the prospective buyers for the purpose of conducting due diligence and/or consummation of the sale of the assets sold in accordance with the provisions of the Code and its applicable regulations. However, the respondents by letter dated 18th February, 2021 informed the petitioners that, original documents sought by the petitioner are in judicial custody of Special CBI Court. The petitioner therefore preferred Misc. Application No. 472/2021 before the Special CBI Court seeking return of original documents listed in Exhibit-G.

4. The Special CBI Court, vide order dated 28th June, 2021 declined to return the original documents,

sought by the petitioner. It is against this order, the petitioners have approached this Court under Article 227 of the Constitution of India.

5. Heard learned Counsel for the applicant and learned Counsel for the CBI.

6. It may be emphasized that, under the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulation, 2016, the petitioner being 'liquidator', is under obligation to liquidate the Corporate Debtor within a period of one year from the liquidation commencement date. Therefore, the petitioner has to complete the liquidation process in a time-bound manner. Obviously, for selling the assets during the liquidation process, the buyers would insist for original title documents either for purpose of availing credit facilities for purchasing the assets or

otherwise. If such documents are not provided, the purchaser/bidders may withdraw from their bids which will eventually cause loss to public-sector banks, besides hardship for bonafide purchasers. It is therefore essential that the original title documents seized by the CBI and presently in the custody of the Special Court are required to be returned to the purchaser.

7. Learned Prosecutor for the CBI, submits that if the documents are returned to the petitioner, the CBI may not be able to lead primary evidence in the subject trial.

8. In consideration of the facts of the case, the apprehension expressed by the CBI can be taken care of by directing the CBI to retain on record certified true copies of documents listed in Exhibit-G in return of original documents to the petitioners. The CBI shall

certify all the documents listed in Exhibit-G and shall place a set of certified documents on record of the subject case, which will form part of the chargesheet. It is clarified that, certified copies of the documents, shall be treated as "primary evidence" for all purposes in the subject trial. Thus, the following order :

(i) The impugned order dated 28th June, 2021 passed by the Special CBI Court in Misc. Application No. 472/2021 in RC/05/E/2017/CBI/EOB/Mumbai, is set aside.

(ii)The CBI Court shall handover the documents listed under Exhibit-G to the petitioners.

(iii). The CBI shall place on record of the CBI Court, certified copies of the documents listed ` under Exhibit-G in place of the original documents.

(iv). The certified copies of the documents listed at Exhibit-G shall form part of the chargesheet .

(v) Set of certified copies of documents shall be "primary evidence".

9. The petition is allowed disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)