IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.2594 OF 2018

Mr.Kabir Shiraj ... Petitioner

.Vs.

1. The State by
   The Additional Director,
   Hyderabad, in charge of Chennai,
   Serious Fraud Investigation Office.

2. The Senior Assistant Director,
   Serious Fraud Investigation Office,
   Government of India,
   Corporate Bhavan,
   Ground Floor, NO.29,
   Rajaji Salai,
   Chennai - 600 001.

3. The Secretary,
   Ministry of Corporate Affairs,
   'A' Wing, 5th Floor, Shastri Bhawan,
   Dr.Rajendra Prasad Road,
   New Delhi.

4. Rohit Rabindranath ... Respondents
   (impleaded by the order of the
   Hon'ble Supreme Court in Criminal
   Appeal No.1227-1230/2018
   dated 27.09.2018)

PRAYER:-

Petition filed under Section 482 of Cr.P.C., to direct the respondents 1 and 2 to investigate under Section 210(2) of the Companies Act, the petitioner's Complaint dated 05.10.2017 for the offences committed by the above accused and to take necessary action.

For petitioner	:	Mr.Gowthaman For Mr.C.P.R.Kamaraj
For R1	:	Mr.K.S.Jeyaganeshan Senior Panel Counsel
For R4	:	Mr.Balasubramanian For M/s.BFS Legal

O R D E R

The petitioner has filed this petition to direct the respondents 1 and 2 to investigate the petitioner's Complaint dated 05.10.2017, under Section 210(2) of the Companies Act, for the offences committed by the 4th respondent and other accused and to take necessary action.

2. The case of the petitioner is that in the month of July 2015, one Mr.Rohit Rabindranath, Managing Director and CEO/ 4th respondent and Mrs.Reenanath of M/s.Zynergey Solar Projects and Services Pvt. Ltd., who are doing solar power business, approached the petitioner and informed that they have three more subsidiary companies and induced the petitioner's Company to invest in their existing Solar Power business and represented that they have entered into a MoU with the Government of Tamil Nadu for assembly, procurement and supply of solar products to be distributed to local markets and the said business would give lucrative return for the investments made by the petitioner. Believing those words, the petitioner has invested about Rs.33 Crores in the accused Company.

3. Afterwards it came to the knowledge of the petitioner that the above accused persons, instead of using the funds for the business activities of their subsidiary companies, had siphoned off the funds and availed bank loans by creating false documents and fake invoices and formed shell companies. Further, without following the procedures laid down in the Companies Act, they illegally removed the Nominee Director of the petitioner Company with the sole intention of concealing the fraud committed by them. Aggrieved by the said illegal acts, the petitioner had lodged a Criminal Complaint against the above said accused persons on 05.10.2017 with the official respondents for necessary action for cheating and defrauding the petitioner and also submitted substantial documents to prove the offence committed by the above said persons. But so far, nothing has happened in the said complaint and the official respondents have not taken any action against the accused persons and did not investigate the case till today. Hence, the petitioner is constrained to approach this Court by filing this Petition to

investigate the petitioner's complaint dated 05.10.2017.

4. The learned counsel appearing for the petitioner submitted that on an earlier occasion, this Court, vide order dated 07.02.2018, had disposed of this Criminal Original Petition by giving direction to the official respondents to investigate the complaint in accordance with law laid under the relevant provisions of the Companies Act. Thereafter, the said order was recalled by the Hon'ble Supreme Court and it was remitted to this Court for re-adjudication. Hence, this Court may issue appropriate direction to the 3rd respondent to consider the petitioner's complaint dated 05.10.2017 within a reasonable time as fixed by this Court.

5. The learned counsel appearing for the 4th respondent submitted that several matters regarding the same issues are pending before the intelligence agencies and few ordered before NCLT, NCLAT, High Court, Supreme Court, Registrar of Companies, Enforcement Directorate, Commissioner of Police, New Delhi and Chennai. The petitioner suppressing those facts and filed the present petition before this Court, which was disposed of on 07.02.2018 and the application for recalling the same also stood dismissed on 03.09.2018. As a result, summons were received from the office of the Serious Fraud Investigation Office, against which, a Writ Petition was filed by the 4th respondent before this Court and the same was dismissed vide orders dated 15.06.2018. Against the said dismissal orders, a Writ Appeal was preferred, however it was withdrawn due to the previously proposed settlement. Thereafter, the 4th respondent has approached the Hon'ble Supreme Court by way of Criminal Appeal No.1227-1230 of 2018 and the same was allowed vide order dated 27.09.2018, wherein the order of this Court dated 07.02.2018 passed in this petition, was set aside and was remitted back to this Court. He further submitted that the various proceedings initiated by the petitioner simultaneously only shows his intent to harass the 4th respondent and therefore prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. Though very many grounds have been raised by the petitioner in the affidavit filed in support of the petitioner, however, considering the chequered history of the case and also the fact that a quietus needs to be given to the whole issue without unnecessarily multiplying the proceedings, and taking into consideration the limited prayer sought for by the petitioner, this Court, without going into the merits of the claim projected by the petitioner, either in his complaint or in this petition and further without expressing any opinion on the

merits of the case, directs the 3rd respondent to consider the petitioner's complaint dated 05.10.2017 and also the locus standi of the complaint, in terms of Section 210 of the Companies Act, 2013, and the said official before taking a decision, shall hear the petitioner and the 4th respondent and all other parties concerned, and pass orders on the said said complaint within a period of twelve weeks from the date of receipt of a copy of this order.

8. This Criminal Original Petition is disposed of with the above observations.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Director,
Hyderabad, in charge of Chennai,
Serious Fraud Investigation Office.

2. The Senior Assistant Director,
Serious Fraud Investigation Office,
Government of India, Corporate Bhavan,
Ground Floor, NO.29, Rajaji Salai,
Chennai - 600 001.

3. The Secretary,
Ministry of Corporate Affairs,
'A' Wing, 5th Floor, Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi.

4. The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.

+2ccs to Mr.C.P.R.Kamaraj, Advocate, S.R.No.46368
+1cc to Mr.Gowthaman, Advocate, S.R.No.46200
+1cc to M/s.BFS Legal, Advocate, S.R.No.46388

CRL.O.P.NO.2594 OF 2018

SJ(CO)
PBS/30/11/2021