IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 775 OF 2022

Zhudao Infotech Private Ltd ...Petitioner

Versus

The State of Maharashtra and Others ...Respondents

WITH
WRIT PETITION NO. 553 OF 2022

Alibaba.com eCommerce India
Pvt. Ltd ...Petitioner

Versus

The State of Maharashtra ...Respondent

WITH
WRIT PETITION NO. 323 OF 2022

Alibaba Cloud (India) LLP ...Petitioner

Versus

The State of Maharashtra ...Respondent

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Mr. Anil Anturkar, Senior Advocate a/w Mr. Shreyas Mehrotra, Ms. Anushree Jugade, Mr. Anoop Omkar, Ms. Rachita Krishnamurthy, Mr. Yatin Malvankar i/by Mani Prakash for Petitioner in WP/775/2022.

Mr. Ashwin Thool, a/w Mr. Ankosh Mehta, Ms. Sankia Gokhale for Petitioners in WP/553/2022 & 553/2022.

Mrs. S.D. Shinde, APP for Respondent – State.

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CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATED : APRIL 01,2022.

PER COURT :

1. As the above Petitions raise an identical issue namely, challenge to an action of Respondents whereby the bank accounts of the Petitioners were freezed and/or a lien is marked on their respective bank account, with the consent of learned Counsel appearing for the respective parties, matters are taken up for hearing and disposal, at the admission stage itself.

2. Writ Petition No. 775 of 2022 is treated as lead Petition so as to discuss the facts, submissions and merits of all the Petitions.

3. Mr. Anturkar, learned Senior Counsel appearing for the Petitioner in Writ Petition No. 775 of 2022 submitted that as the legal position involved in the Petitions reflecting through the judgments is very much clear, no emphasis is necessary on the factual aspects and there is also not much dispute on the factual aspects of the matter. Mr. Anturkar while making his submissions in so far as the role of the Petitioner is concerned, submitted that the Petitioner is payment aggregator and explained the role of the Petitioner by giving an example of day-to-day life, i.e., in the modern times, a consumer places an order by using a application for certain articles, for example, a food article from a restaurant; on receipt of order from the customer, the restaurant supplies the food article through a delivery provider, for example, Swiggy, Zomato, etc. The financial aspects like payment for article by the consumer, the charges borne by the service provider and the cost of delivery from the restaurant is arranged by the payment aggregator who invest the finances and earn certain commission for its role. Mr. Anturkar further submitted that this entire chain or system is now regulated by the Central Government under relevant laws, however till the year 2020 it was sort of a free field without there being any intervention of the Reserve Bank of India.

4. In the year 2020, certain guidelines were issued by the Reserve Bank of India vide circular dated 01.04.2020 and now the field is regulated by those guidelines. As per the guidelines issued by the Reserve

Bank of India, a pre-requisite for the payment aggregator is registration with the Reserve Bank of India. Under the guidelines of year 2021, there was a stipulated time limit for registration of the payment aggregator. However, by the subsequent Circular dated 21.03.2021, the Reserve Bank of India relaxed the said time limit.

5. The Petitioner company had applied for registration and as per the guidelines, the Petitioner company was expected to seek registration from the Reserve Bank of India. The application for registration was submitted on September 29, 2021. The Reserve Bank of India vide its communication dated 03.12.2021, informed the Petitioner that there were certain deficiencies and the Petitioner was directed to remove those deficiencies within 120 days. The system of placing order by consumer for articles and the supply from other end, was done by one mobile application namely, "Double Q".

6. Mr. Anturkar further submitted that as certain consumers had some grievances against the mobile Application, complaints were filed to the police authorities i.e., Tulinj Police Station. Respondent No. 2 is one of such aggrieved consumer and at her instance the FIR bearing Crime No. 1163/2021 is lodged on 18.09.2021. Mr. Anturkar then by inviting our attention to the copy of FIR submitted that even taking the contents of report on the face of it to be correct, the allegations are essentially against “Double Q” App. It is submitted in the report that one of the friends of daughter of Respondent No. 2 made a phone call to Respondent No. 2 and informed her that there was an advertisement issued by Double Q App and the membership was invited and on opening the Application, a form is displayed and one can seek membership by depositing an amount to the tune of Rs. 500 to Rs. 1,00,000/-. It is also submitted that one member was to act as admin of the group and by forming such group other persons were becoming member through admin. As per the advertisement, the admin who used to the advertisement promote other persons to become member, was receiving Rs. 25 per day as commission. Hence, Respondent No. 2 deposited certain amount and also invited other persons to have membership of the said app.

Suddenly, on 17.09.2021 at about 03.30 pm the said Double Q App was closed. Till that time, Respondent No. 2 had deposited an amount to the tune of Rs. 65,000/- and at the instance of Respondent No. 2, her husband and daughter and other persons had become member of that App and they were also subject to deceit. On receipt of the report, the police authorities invoked Section 420 read with 34 of IPC and Sections 66(c) and (d) of IT Act, 2008 against accused persons.

7. Perusal of this report shows that the management of Double Q App is made an accused. It is stated in the format of FIR that the details about the address of said app management are not known. Then PI of Tulinj Police Station forwarded a communication to Nodal Officer / Legal Head of Yes Bank, where Petitioner Company maintains its bank account.

Perusal of the said communication shows that in the first part of communication, a reference is made to the registration of FIR and the investigation being carried out by the PI attached to Tulinj Police Station and the second part reads thus:

> *In above mentioned crime accused used following Bank Account to get money from*

the victims. So you are directed by this notice to give details of following bank accounts
Account No 1) 017281300000462 Zhudao Infotech Pvt Ltd
2) 017261100000041 Zhudao Infotech Pvt Ltd

Please provide KYC details and debit freeze or lein mark Rs. 9,00,00,000/- for investigation

8. Mr. Anturkar vehemently submitted that in the entire report, neither there is reference to the Petitioner as an accused nor any overt-act is attributed to the Petitioner. He further submitted that on registration of FIR, the investigating agency completed the exercise of investigation by filing charge-sheet. Then there was another communication issued from the police inspector of Tulinj Police Station to the Nodal Officer / Legal Head of the Yes bank and again in this communication by referring to registration of crime, it was informed as follows:

In above mentioned crime we found that ***Zhudao Infotech Private Limited*** *is operating Payment Aggregators and Payment Gateways and running online gaming App. An inquiry into the company's Yes Bank account revealed that the account was in the name of a foreign national, Jian Li, from China.* ***Jian Li*** *has a current account with Yes Bank and is using it personally.* ***Zhudao Infotech***

> ***Private Limited*** *has sought permission from the RBI to operate the account of payment aggregator but company returned their application as they did not meet the eligibility criteria. However, the company is managing their payment aggregator account at Yes Bank.*
>
> *So you are directed by this notice to give details of following bank accounts*
>
> *Account No 1)* ***017261100000041 Zhudao Infotech Private Limited PAN No. AABCZ0209L 2) 017281300000462 Zhudao Infotech Private Limited PAN No. AFPPL9542L***
>
> *Please provide KYC details as debit freeze for investigation*
> *Please go through attachment*

9. Mr. Anturkar submitted that the Petitioner Company was not at all aware of any of these facts and suddenly after filing charge-sheet, was a bolt from the blues for the Petitioner. Mr. Anturkar further submitted that on receipt of the communication, a representative of the Petitioner Company immediately approached Yes Bank Official as well as Investigating Officer and assured to provide all necessary details to the investigating agency. It is also submitted to the investigating agency that as the Petitioner Company is in the process of receiving the sanction from the

Reserve Bank of India as a payment aggregator and payment gateway, the freezing of bank accounts of the Petitioner would cause delay in compliance of the Reserve Bank of India's guidelines and if the compliance is not made within the stipulated period, which would expire in near future, the Petitioner would be subjected to non-registration and ultimately, the Petitioner Company will have to suffer irreparable loss of reputation.

10. Mr. Anturkar then by inviting our attention to the copy of statements collected by the investigating agency during the process of investigation and which are forming part of charge-sheet, submitted that all these statements would show that the grievance is against "Double Q" App, which has closed its business midway. Mr. Anturkar further submitted that as per the investigating agency there are as many as 32 consumers including Respondent No. 2 of the said App who were subjected to alleged deceit and breach of trust and the amount involved is to the tune of Rs. 18,96,700/-.

11. Mr. Anturkar further submitted that firstly, the action of Respondents in freezing or marking of lien over the bank account is clearly unsustainable and secondly, keeping the contentions raised by the Petitioner open, the Petitioner company to show its *bona fide* is ready to create a separate bank account and deposit an amount of Rs. 25,00,000/- in that account subject to directions of this Court. Mr. Anturkar further submitted that initially only the offences under IPC were levelled however, at the time of filing charge-sheet, the investigating agency added the provisions of MPID Act. Mr. Anturkar further submitted that as the provisions of MPID Act were attracted, the police officer attached to concerned police station ought not to have proceeded further and instead the procedure of subject act i.e., MPID Act ought to have been followed.

12. The second submission of Mr. Anturkar is, assuming that the investigating officer was exercising his powers of investigation under the Code of Criminal Procedure, these powers could have been exercised by the Investigating Officer only during the course of investigation. However, admittedly, the process of investigation is now completed by filing charge-sheet.

As such, the communication forwarded to Yes Bank and in turn, freezing the bank account of Petitioner is clearly unsustainable.

13. The third submission is, the investigating officer has completely erred in directing Yes Bank to freeze the bank accounts of Petitioner Company when the Petitioner Company is not referred to as an accused in the crime. Mr. Anturkar in support of his submissions relied on following judgments: *The State of Maharashtra Vs. Tapas D. Neogy*[1], *R. Chandrasekar Vs. Inspector of Police, Fair Land Police Station, Salem and Another*[2], *Surinder Sandha Vs. State of U.P. and Others*[3], *Nevada Properties Pvt. Ltd. Vs. The State of Maharashtra and Others*[4], & *Opto Circuit India Ltd Vs. Axis Bank and Others*[5]. Thus, Mr. Anturkar prayed for allowing the Petition.

14. Mr. Ashwin Thool appearing for Petitioner in other two Petitions adopted the submissions of Mr. Anturkar, learned Senior Advocate and in support of his submissions that freezing of the bank accounts of the

1 (1999) 7 SCC 685
2 2002 (5) CTC 598
3 APPL u/s. 482 No. 18407 of 2017
4 2019 (20) SCC 119
5 2021 (6) SCC 707

Petitioners is clearly unsustainable, placed heavy reliance on the judgment in the matter of The State of Maharashtra Vs. Tapas D. Neogy (supra).

15. *Per contra*, learned APP opposed the Petitions and submitted that though at initial stage the role of the Petitioners was not revealed, during the course of investigation it revealed that the said Double Q App had accepted the amount from consumers and in turn, that amount was forwarded to the bank accounts of Petitioner Company. It is also submitted that the accused persons, namely, Dharmendra Govind Singh, Aditya Pande and Prakash Kumar Prajapati and others have accepted the amount and there were transactions in their respective bank accounts to the tune of Rs. 9,27,03,593.22 paisa and as the depositors were invited by issuing an advertisement and depicting a false picture and subsequently the said Double Q app stopped its operation midway causing huge loss to its members, the provisions of MPID Act were invoked. Thus, learned APP prayed that Petitions may be dismissed.

16. It would be useful for our purposes to refer to certain definitions in the MPID Act:

2(c) "electronic funds transfer" means any transfer of funds which is initiated by a person by way of instruction, authorisation or order to a bank to debit or credit an account maintained with that bank through electronic means and includes point of sale transfers; automated teller machine transactions, direct deposits or withdrawal of funds, transfers initiated by telephone, internet and, card payment;

(i) "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them, but does not include a stock exchange;

(p) "system participant" means a bank or any other person participating in a payment system and includes the system provider;
(q) "system provider" means a person who operates an authorised payment system;

17. Having heard learned Counsel appearing for respective parties at length, we find considerable merits in the submissions of Mr. Anturkar, learned Senior Counsel appearing for the Petitioner in WP/775/2022 and Mr. Ashwin Thool, learned Counsel appearing for the Petitioners in other Petitions.

18. The facts which are not in dispute that : i. considering the role of the Petitioner Company and the terminology used for the said role as payment aggregator, it can safely be said that the Petitioners are no way facilitators for a tripartite transaction involved i.e., the consumer, delivery provider system or product provider. ii. The grievance raised in the report was against the “Double Q” App. iii. Neither at the time of lodging report nor till the filing of charge-sheet, the Petitioners are referred to as accused or any overt-act is attributed to them and only after the filing of charge-sheet, the investigation officer forwarded the communication to banks for freezing the account of Petitioners. iv. Petitioner in WP/775/2022 submitted to the Investigating Agency assuring its cooperation in the investigation. v. While filing charge-sheet, the MPID Act provisions are invoked and admittedly the MPID Act is a special act. vi. It is also admitted fact that as the charge-sheet is already filed, no material is either to be collected or secured from the Petitioners. vii. Petitioner made a *bona fide* offer to create a separate account and deposit certain amount which is more than the amount of estimated loss caused to the members so as to secure the interest of members as well as the investigating agency.

On the backdrop of these facts, Mr. Anturkar was justified in placing reliance on the judgment in the matter of Opto Circuits (India) Ltd. Vs. Axis Bank (supra). For ready reference, we reproduce the relevant paragraph, which is as under:

> *11. Mr. S.V. Raju, learned Additional Solicitor General made a subtle attempt to contend that the power of seizure is available under Section 102 of the Code of Criminal Procedure, which has been exercised and as such the freezing of the account would remain valid. We are unable to appreciate and accept such contention for more than one reason. <u>Firstly, as noted, it has been the contention of Respondent No.4 that PMLA is a stand alone enactment. If that be so and when such enactment contains a provision for seizure which includes freezing, the power available therein is to be exercised and the procedure contemplated therein is to be complied. Secondly, when the power is available under the special enactment, the question of resorting to the power under the general law does not arise. Thirdly, the power under Section 102 CrPC is to the Police Officer during the course of investigation and the scheme of the provision is different from the scheme under PMLA.</u> Further, even sub-section (3) to Section 102 CrPC requires that the Police Officer shall forthwith report the seizure to the Magistrate having jurisdiction, the compliance of which is also not shown if the said provision was in*

> *fact invoked. That apart, the impugned communication dated 15.05.2020 does not refer to the power being exercised under the Code of Criminal Procedure.* **(Emphasis supplied)**.

19. There is also merit in the submissions of Mr. Anturkar that the freezing of bank account of Petitioners would create an hurdle for the Petitioners to comply with the formalities seeking permission from RBI to act as payment aggregator and payment gateway, and in case, the Petitioner fails to comply with the necessary formalities within the stipulated period, the Petitioner could be subjected to an irreparable loss.

20. For the afore-stated reasons, and considering all these aspects, we pass following order:

ORDER

1. Writ Petition No. 775 of 2022 is allowed in terms of prayer clause (a), subject to accepting an undertaking of the Petitioner to this Court that the Petitioner would create a separate account in a Nationalized Bank, preferably in State Bank of India and deposit an amount of Rs. 25,00,000/- (Rs. Twenty Five Lacs Only) in the said account,

and maintain that account without disturbing amount in the account for a period of six months.

2. In case further material is unearthed and the State is desirous of filing supplementary charge-sheet and the account maintained by the Petitioner under the directions of this Court, if having any bearing in view of the supplementary charge-sheet, the Respondent-State is at liberty to take appropriate proceedings including filing application in this Court

3. Writ Petition No. 553 of 2022 is allowed in terms of prayer clause (b).

4. Writ Petition No. 323 of 2022 is allowed in terms of prayer clause (c), accepting the statement of the Petitioner Company as an Undertaking to this Court made in communication dated 29th December 2021 that "without prejudice and without admitting to any liability whatsoever, if required during the investigation, Alibaba Cloud India is willing to get a lien placed on an amount equivalent to the amount as mentioned in the FIR, thereby making other funds available to it for the day to day operation of the company." Accepting the statement as an Undertaking to this Court on the background of the statement made before this Court that there is no material lodged against the Petitioner and that there is no allegation against the Petitioner that any amount is received by the Petitioner in their account.

(S.M. MODAK, J.) **(PRASANNA B. VARALE, J.)**