IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.15226 of 2022
and
Crl.M.P.No.8541 of 2022

1. M/s.South (India) Hotels Private Limited
   Rep. by its Director M.P.Purushothaman
   No., Kannet Lane, Egmore,
   Chennai - 600 008.

2. P.Purushothaman

3. Aruna

4. Shaji Purushothaman

5. Suresh raj Madhok

6. R.Rangachari

7. M/s.Goodyield Investments Pvt. Ltd.
   Rep. by its Director Sudhir Sankar
   No.2-D, Elcanso complex, Casa Major Road,
   Egmore, Chennai - 600 008. ... Petitioners/Accused

Vs.

1. The State Rep. by Inspector of Police
   Central Crime Branch - I,
   Chennai District
   Crime No.56 of 2022 ... 1st Respondent/Complainant

2. Jayamurugan
   Chairman and Managing Director
   M/s.SNJ Distillers Pvt. Ltd. and
   M/s.Empee Distilleries Pvd. Ltd.
   ... 2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records relating to first Information Report bearing crime No.56 of 2022 on the file of 1st respondent police and to quash the same as illegal.

For Petitioners : M/s.M.Sneha

For Respondent-1: Mr.Raj Thilak
Additional Public Prosecutor

For Respondent-2: Mr.N.R.Elango, Senior Counsel
for Mr.R.Vivekananthan

ORDER

This Criminal Original Petition has been filed seeking to quash the first Information Report bearing Crime No.56 of 2022 on the file of 1st respondent police as illegal.

2. The crux of the allegations in the FIR is that though proceedings have been taken place in the company board, although Rs.12.5 crores is said to have been disbursed on 02.03.2016 the balance sheet of M/s. South (India) Hotels Private Limited for the years ending 31.03.2016 (Financial year 2015 - 2016) did not disclose any such loan but instead, expressly asserted that no related party loans were given during this period. The Director's report for the financial year ending 31.03.2017 (FY 2016-17) also indicates the same. Similarly M/s.Empee Distilleries Private Limited, in its annual report for the financial year 2015 -2016 reported that no such loans were availed during the said period. The total borrowings, for the financial year 2015-2016 which clearly shows that no such borrowing existed during this period. In respect of the South India Hotels, the only entry in the books of the Empee Distilleries Ltd shows that the money due is Rs.49.13 lakhs only. Similarly the Empee Distilleries Ltd. in its annual reports for the year 2016-2017, reported that no such loans were availed during the said period. The total borrowings for the financial year 2016-2017 which clearly shows that no such borrowings existed during the financial year 2016-2017. In respect of South India Hotels Pvt. Ltd/South India Hotels, the only entry in the books of the Empee Distilleries Ltd shows that the money due is Rs.2,40,94,000/-. Similarly the annual report of the Emee distilleries Ltd for the year 2017-2018 being the previous year before the Empee distilleries Ltd. went into insolvency shows the total list of borrowings by the Empee Distilleries Ltd and as on 31.03.2018, the alleged loan from the South India Hotels Pvt. Ltd. is not reflected. Also, all related party loans are said to be “unsecured” and “interest free”. It is the contention of the defacto complainant that

with the false records Rs.125 Crores have been siphoned. Hence, the complaint has been given.

3. Heard the learned counsel for the petitioners, learned counsel for the 2nd respondent and the learned Additional Public Prosecutor appearing for the 1st respondent police.

4. The main ground taken by the petitioners to quash the FIR is that similar allegations were already pressed into before the NCLT.

5. The contention of the learned Senior Counsel for the 2nd respondent is that the allegations in the FIR would clearly indicate that there were fraudulent activities and Rs.125 Crores have been siphoned prior to the IBC Proceedings which is sought to be investigated.

6. At the outset, though NCLT proceedings took place whereas, the NCLT in its Judgement dated 24.12.2021 passed in MA/731/2019 and 769/2019 in CP/280/IB/2018 has clearly made a finding that;

> "in para 49
>
> thus, the adjudicating authority is vested with the scope of enquiry into the transactions which have happened prior to the insolvency Commencement date only in respect of transactions covered under Sections 43, 45, 49 and 66 of IBC, 2016. In so far as other transactions that has happened prior to the insolvency commence date, which have not been defined under the sections mentioned above, the RP is required to approach the appropriate forum to quash the same in terms of the Judgment of the Hon'ble Supreme Court in the matter of Embassy Property Developments Private Limited vs. State of Karnataka and Others (2020) 13 SCC 308 and cannot be sought to nullify the same before this Adjudicating authority ..."

7. The learned senior counsel appearing for the 2nd respondent submitted that the order of the NCLT was also appealed before NCLAT after which, the 2nd respondent also filed an Civil Appeal No.469/2022 before the Hon'ble Apex Court and the Hon'ble Apex Court also passed an order dated 04.02.2022 that any steps taken by the respondents, including sale of shares and assets if any, would be subject to further orders passed by the Hon'ble Apex Court. When the proceedings also seem to be before the Hon'ble Supreme Court and now the FIR is only

with regard to the period prior to the transactions which was not covered under the NCLT proceedings, hence it is a serious allegation of fraud and it is for the Investigating Agency to conduct proper investigation and to file investigation report with regard to the previous transactions. As such at this stage, this Court is not inclined to quash the FIR.

8. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

ksa-2

To

1. The Inspector of Police
   Central Crime Branch – I,
   Chennai District

2. The Public Prosecutor,
   Madras High Court,
   Chennai.

+2ccs to Mr.R.Vivekananthan, Advocate SR.No.47157

+1cc to M/s.M.Sneha, Advocate SR.No.47114

Crl.O.P.No.15226 of 2022
and
Crl.M.P.No.8541 of 2022

GJ(CO)
GMY(22/07/2022)