IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37083-2022
Reserved on: 06.09.2022
Pronounced on: 30.09.2022

Ashok Kumar Mittal ...Petitioner

Versus

CBI and another …Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikram Chaudhari, Sr. Advocate with
Ms. Hargun Sandhu, Advocate;
Mr.Sajal Bansal, Advocate and
Mr. Parvez Chaudhary, Advocate for the petitioner

Mr. R.S. Dhaliwal, Advocate for
Mr. Rajeev Anand, Standing counsel for CBI

Mr. Satya Pal Jain, Additional Solicitor General of India alognwith
Mr. Lokesh Narang, Sr. Panel Counsel for respondent No.2.

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ANOOP CHITKARA, J.

ECIR/CDZO-II/01/2019	Dated 05.09.2019	Police Station CBI, BS & FC, New Delhi	Sections 3 punishable under Section 4 of Prevention of Money Laundering Act 2002
Arising out of			
FIR No.	Dated	Police Station	Sections
RCBD1/2018/E/0009	08.05.2018	CBI, BS & FC, New Delhi	420, 467, 468, 471 r/w 120B IPC and Sections 13(2) r/w 13(1)(d) of P.C. Act

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) .

2. The allegations against the petitioner Ashok Kumar Mittal and siphoning off a massive sum of Rs. 155.21 crores to purchase properties in the name of his wife Nisha, and subsequently she gifted a few properties to their daughter.

3. After arriving at its satisfaction, the Directorate of Enforcement arrested the petitioner.

4. The petitioner's wife had filed a petition for quashing of FIR and all subsequent proceedings by filing a petition under section 482 CrPC, which was registered as CRM-M-49427-2021. Based on the petitioner's contentions, vide order dated 18th July 2022, this court had stayed the further proceedings beyond the stage of cognizance qua his wife and not against the petitioner. It means that even her arrest had not been stayed, Thus, there is no impediment to decide the petitioner's case without waiting for the vacation of stay in the quashing petition of his wife.

5. Reply on behalf of respondent No.2-Directorate of Enforcement, has been filed in the bail petition and the aforesaid observations are made:-

> *1. That on the basis of written complaint dated 10.08.2017 of Mr. Rajbir Singh Dhankar, Assistant General Manager, Oriental Bank of Commerce, Cluster Monitoring Head, CMO-Haryana, an FIR No. RCBD/1/2018/E/0009 dated 08.05.2018 was registered against M/s Mahesh Timbers Private Limited having its registered office at Timber Market, Sadar Bazar, Karnal and office address at Plot No. 8, Survey No. 250/1, Golpada Road, Gandhidham, Gujarat, its directors namely Ashok Kumar Mittal R/o H.No. 2143, Sector-13, Urban Estate, Karnal, Haryana 132001, Nisha Mittal (also W/o Ashok Kumar Mittal), Surender Kumar Ranga, Senior Manager, Oriental Bank of Commerce (terminated from services), R/o A-1/61, Sector-4, Rohini, New Delhi 110085 and unknown public servants and private persons U/S 120B read with section 420, 467, 468 & 471 of IPC and U/s 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988 for Criminal conspiracy, cheating, forgery of valuable security for the purpose of cheating, using forged documents as genuine and criminal misconduct of public servant by Central Bureau of Investigation (Bank Securities and Fraud Cell), New Delhi.*
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> *[1.2 That M/s Mahesh Timber Pvt. Ltd. (hereinafter referred to as MTPL/Mahesh Timber) was engaged in trading and sawing of imported timber of various varieties of hardwood and softwood. Various credit facilities were granted under consortium/multiple banking arrangement to the company with State Bank of India (hereinafter referred to as SBI) as lead bank having 52.50% share, Oriental Bank of Commerce (hereinafter referred to as OBC, the complainant bank) share being 23.75% and Bank of Baroda (hereinafter referred to as BoB) share being 23.75% on pari passu basis. The total exposure of the consortium of banks was Rs. 242.09 Crores and last consortium documents were executed on 17.12.2013.*
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> *1.3 That, M/s Mahesh Timber Pvt. Ltd. (MTPL) had established its wholly owned subsidiary (WOS) namely M/s. Mahesh Timber (Singapore) Pte Ltd. (MTSPL), at Singapore int Aug 2007. MTSPL was availing credit facilities from SBI Singapore Branch, BOB Singapore & UCO Bank Singapore Branch and the credit facilities were backed by Standby Letter of Credit (SBLC) availed by parent company i.e. MTPL from State Bank of India, Karnal, Oriental Bank of Commerce, Karnal and Bank of Baroda, Karnal.*
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> *1.4 That FIR alleged the company in criminal conspiracy with Surender Kumar Ranga, the dealing officer of the OBC, Maharana Pratap Chowk, Karnal, has defrauded the bank by opening Foreign Letter of Credits (FLC/LC) in the Bank's book through Finacle and sending SWIFT messages to the corresponding bank. Subsequently, the dealing officer (Surender Kumar Ranga) without having any authority, fraudulently increased the amount of FLC by sending amendment through SWIFT without increasing the amount in Bank's book (i.e Finacie). Bills lodged by the overseas bank against these LCs were confirmed for payment on due date in the SWIFT message. On receiving the claim for payment on due date, it came to notice of Branch that 38 documents were incomplete where confirmation to make the payment by*

the bank has been sent to overseas. bank in Singapore through SWIFT but no entry was passed in the Finacle. The amount relating to these documents claimed by foreign banks was remitted to them by debiting CC account (Cash Credit Account)of the borrower which resulted in increase of outstanding to the extent to Rs. 155.21 Crores (principal outstanding) against the sanctioned limit of Rs. 12 Crores including vehicle loan limit of Rs. 0.23 Crores. The above facts make it amply clear that the company cheated the complainant bank (OBC) in a very planned manner, thereby causing wrongful gain to themselves and wrongful loss to complainant bank to the tune of Rs. 155.21 Crores (Principal Outstanding).

1.5 That the bank had declared M/s Mahesh Timber Pvt Ltd (AACCM5526G) as suspected fraud for the reason of "Irregularities in Foreign Exchange Transactions" and the same was reported to the RBI on 21.09.2016 amounting Rs. 106.64 Crores. The account was declared Non Performing Asset (NPA) on 26.09.2016 and the recovery action has been filed by the bank in DRT-II, Chandigarh on 02.11.2016.

1.6 That, after completion of investigation, CBI has filed a charge-sheet dated 10.08.2020 (copy submitted by accused Ashok Kumar Mittal through letter dated 28.02.2022 & enclosed as Annexure-3) in the FIR No. RCBD/1/2018/E/0009 dated 08.05.2018 U/s 120B read with section 409, 420, 467, 468 & 471 of IPC, U/s 63 C 63D & 43 of IT Act, 2000 and U/s 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988, before the court of the Ld. Special Judge-CBI, Panchkula against M/s Mahesh Timber Pvt Ltd, registered office at Timber Market, Sadar Bazar, Karnal, Ashok Kumar Mittal, Director of M/s Mahesh Timber Pvt. Ltd, Nisha Mittal, Director of M/s Mahesh Timber Pvt. Ltd. and Surender Kumar Ranga, Senior Manager (Forex Incharge), OBC, Karnal.

2.1 That the PMLA, 2002 is an Act to prevent money laundering as defined under section 3 of PMLA, 2002. Since, offences under section 120 B read with U/s 420, 467 and 471 of Indian Penal Code (IPC) Act and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988 (PC Act) are the scheduled offence under the Prevention of Money Laundering Act (PMLA), 2002 (here-in-after referred to as PMLA), enquiries were initiated under PMLA against the accused persons after recording brief facts of scheduled offence in the ECIR (Enforcement Case Information Report) No. CDZO-II/01/2019 dated 05.09.2019.

2.2 That investigation under PMLA has, inter alia, revealed that various documents pertaining to immovable properties were seized during the search belonging to guarantors of M/s Mahesh Timber Pvt Ltd and related persons of Ashok Kumar Mittal. The source of acquisition of these immovable properties acquired by the above-said persons was needed to be ascertained as the same appeared to be the proceeds of crime, which are liable to be attached under the provisions of PMLA, 2002.

2.3 That investigation under PMLA has, inter alia, revealed That M/s Mahesh Timber Pvt. Ltd. has succeeded in fraudulently transferring the amount of INR 195,02,91,713/- to M/s Amazon Exports Pte Ltd, Singapore against the six (06) original Foreign Letter of Credits amount INR 21,38,66,722.40/- during the period from 07.12.2015 to 12.04.2016, thus making wrongful gain to themselves and corresponding wrongful loss to Oriental Bank of Commerce to the tune of Rs. 155.21 Crores. The amount fraudulently transferred to overseas is Proceeds of Crime (Rs. 155.21 Crores) in the said matter. It is also evident from the reporting of Oriental Bank of Commerce, Karnal mail dated 17.03.2020 and statement dated 05.05.2022 of Surender Kumar Ranga, Sr. manager, OBC Bank, M.P. Chowk Karnal, recorded under section 50 of PMLA, 2002.

2.4 That, the property situated at Mansa (Punjab) was purchased by Nisha Mittal w/o Ashok Kumar Mittal, Director of M/s Mahesh Timber Pvt. Ltd. on

05.08.2016 in cash for Rs. 76.50 Lakhs (Rs. Seventy Six Lakhs and Fifty Thousand only) and further (Part of the said property purchased) transferred to Ashok Kumar Mittal, on 09.08.2016 as GIFT without any consideration through transfer deeds for value Rs. 26,42,80,000/-(as stated in deeds).
2.5 That, Nisha Mittal and Ashok Kumar Mittal, both both directors of Mahesh Timber have failed to provide the documents substantiate their claim with respect to source of funds regarding purchase the said property at Mansa (Punjab) and the said property situated at Mansa (Punjab) was further transferred to Shweta Mittal Dhingra D/o Ashok Kumar Mittal on 30.08.2019 by Ashok Kumar Mittal and Nisha Mittal through gift deed.
2.6 That, Ashok Kumar Mittal in his statement dated 10.09.2021 recorded u/s 50 of PMLA, 2002 has inter-alia stated about the above said properties as "Property is mine" revealing that he is beneficial owner in the said property and he had transferred the said property to his daughter to isolate the property from clutches of the law and frustrate the proceedings with respect to the said property……"

6. There is prima facie evidence which points out embezzlement and laundering of massive sum of money and there is clear cut evidence of the gift amount of around Rs.26.42 crores. The statement made in the reply mentioned above corroborated by the digital and documentary evidence.

7. The frauds of crime are approximately Rs.155.21 crores.

8. Given the fact that there is prima facie sufficient evidence connecting the petitioner with the aforesaid amount and also considering the massive amount involved, the petitioner is not entitled to bail.

9. With the aforesaid observations, the petition is dismissed.

10. Trial expedited. It is clarified that the Court shall not adjourn the matter unless there are very special reasons to do so. Any further discussions would prejudice the petitioner's case and as such, this Court refrains from doing so.

11. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition dismissed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

30.09.2022
anju rani
Whether speaking/reasoned: Yes
Whether reportable: No.