IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Moushumi Bhattacharya

W.P.A. 8041 of 2023

M/s. Modello Ventures LLP
Versus
The Indian Overseas Bank and others

For the petitioner	:	Mr. Suman Dutt, Adv. Mr. Shaunak Mitra, Adv. Mr. Jit Roy, Adv. Mr. Anil Choudhury, Adv.
For the respondent nos.1 to 4	:	Mr. Narayan Debnath, Adv. Mr. Saswata Chatterjee, Adv. Ms. Tanima Debnath, Adv.
For the private respondent	:	Mr. Nikunj Berlia, Adv. Mr. Varun Kothari, Adv. Ms. Sonali Pal, Adv.
Last Heard on	:	12th May, 2023
Delivered on	:	17th May, 2023

Moushumi Bhattacharya, J.

1. The petitioner before the court is a Limited Liability Partnership Firm(LLP) comprising of 4 partners. The petitioner seeks a direction on the

respondent/Indian Overseas Bank to lift the debit-freeze of the 3 bank accounts of the petitioner in the Ballygunge Park Road and the Kamalghazi Branches of the Bank. The debit-freeze was done on a complaint made by the respondent. The dispute is between the three partners of the petitioner and the 4th partner who is the private respondent no.5 before the court.

2. The petitioner, through learned counsel, submits that the action of the Bank in debit-freezing the bank accounts of the petitioner and that too on a complaint made by the private respondent no.5 on 13th March, 2023 is contrary to law. Counsel submits that the petitioner/three partners were not given a hearing before the impugned action of debit-freezing was taken by the Bank.

3. Learned counsel appearing for the respondent Bank submits that the Bank acted in terms of the complaint dated 13th March, 2023 and communicated the decision to debit-freeze the petitioner's accounts to the petitioner on that day itself. Counsel submits that the Bank is not concerned with the dispute *inter se* the partners.

4. Learned counsel appearing for the private respondent no.5 (the 4th partner) submits that the petitioner and the remaining three partners have withdrawn Rs.1.7 crores as on 13th March, 2023 which was not consented to by the private respondent no.5 or disclosed to the court. Counsel further points to a minutes of meeting dated 10th March, 2023 of the LLP

and to Agenda nos.5 and 6, in particular, to submit that the entire income tax liability for the Assessment Year 2020-21 of about Rs.1.50 crores was resolved to be recovered from the private respondent no.5. Counsel submits that this and other acts on the part of the remaining three partners constrained the respondent no.5 to write to the Bank on 13th March, 2023 seeking debit freeze of the petitioner's bank accounts.

5. The law with regard to a unilateral debit freeze of a bank account is well-settled. A Division Bench of this court considered the issue in *FMA 74 of 2020 (Rina Habiba Vs. The Bank of India and others)* and specified the circumstances in which an account may be debit-freezed by a bank. The circumstances include an instruction from the Reserve Bank of India or a lien which the Bank proposes to exercise on the funds lying to the credit of the said constituent. The Division Bench was of the view that a freezing order can only be obtained from an appropriate forum and not at the instance of a constituent of the bank.

6. In the present case, the respondent Bank admittedly proceeded to debit-freeze the account of the petitioner on the complaint made by the respondent no.5. There is no evidence of the Bank acting in terms of a lien exercised on the fund of the petitioner's accounts or at the behest of the Reserve Bank of India. The act was done in pursuance of the instructions received from the respondent no.5. The respondent Bank is unable to

satisfy the court of the existence of any of the conditions which were mentioned in the order of the Division Bench.

7. Whatever be the dispute between the partners, as would be evident from the minutes of meeting referred to above, the respondent no.5 must approach the proper adjudicatory forum for an appropriate order of injunction on the petitioner/remaining three partners. The bank accounts of the petitioner cannot be freezed on the strength of a solitary complaint without the order of an adjudicatory forum.

8. The issue of maintainability raised on behalf the respondent no.5 as to whether the petitioner can carry the writ petition, is answered by The Limited Liability Partnership Act, 2008 whereunder Section 3(1) contemplates that LLP is a body corporate formed and incorporated under the Act and is a legal entity separate from that of its partners.

9. W.P.A.8041 of 2023 is accordingly disposed of with a direction on the respondent Bank to permit the petitioner to operate the bank accounts after a period of eight weeks from the date of communication of the order to the Bank. The respondent no.5 may obtain an order from a competent forum in the meantime. If the respondent no.5 is not in a position to do so, there shall be no further fetters on the petitioner from operating the bank accounts after expiry of eight weeks as directed above. It is made

clear that there shall be no restraint on amounts being deposited in the said accounts in the petitioner's ordinary course of business.

10. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)