Ct. 36
Item No.12-14
05.07.2023
(Suvendu)

WPA 20930 of 2021
With
CAN 1 of 2023

Magma HDI General Insurance Company Ltd. & Anr.
Vs.
Enforcement Directorate & Ors.

With
WPA 21011 OF 2021
With
CAN 1 of 2023

Sanjay Chamria
Vs.
Enforcement Directorate & Ors.

With
WPA 21014 OF 2021
With
CAN 1 of 2023

Mayank Poddar
Vs.
Enforcement Directorate & Ors.

Mr. P. Chidambaram, Sr. Adv.,
Mr. Ratnanko Banerji, Sr. Adv.,
Mr. Deepan Sarkar
Mr. Aman Raj Gandhi
Ms. Iran Hassan
Mr. Sanket Sarawgi
Ms. Mahima Cholera
…………for the petitioners

Mr. Billwadal Bhattacharyya, Ld. DSG,
Mr. Arijit Chakrabarti
Mr. Deepak Sharma
……for the ED

1. Learned Counsel appearing for the petitioners and the learned DSG appearing for the

Enforcement Directorate have finally handed up a suggested order which is taken as on date.

2. The learned DSG has also handed up a letter dated 22nd June, 2023 from the Enforcement Directorate to the counsel appearing for the ED which notes, inter alia, that the three petitioners are liable to pay the amount of penalty imposed upon them for discharging the obligations under the Adjudication Order dated 24th November, 2021 for the contraventions stated in the said order. Paragraph 2 of the letter further records that the obligations arising out of the order dated 24th November, 2021 may be considered to be discharged resulting in closure of the proceedings in question under the Foreign Exchange Management Act, 1999 against the three petitioners.

3. Both the final version of the suggested order and the aforesaid letter are taken on record.

4. Although the learned DSG has expressed his discomfort to the suggestions made to the order handed up to the Court, the content of paragraph 2 of the letter of the ED is found in at least two of the paragraphs of the order handed up to the Court.

5. This Court accordingly sees no difficulty in passing the order, the final version of which has

been handed up to the Court today. The order is hence as follows:-

> "The petitioners herein being Magma HDI General Insurance Company Ltd. and its directors Sanjay Chamria and Mayank Poddar have filed these writ petitions challenging Show Cause Notices issued on 21st January, 2020 and an Order dated 24th November, 2021 ("Impugned Order") passed by the Enforcement Directorate. The gravamen of the petitioners in these writ petitions, inter alia, is that the ED had no jurisdiction to pass the Impugned Order and that the same has been passed by usurping the jurisdiction of the IRDAI i.e. the sectoral regulator for petitioner No. 1 which had cleared the transaction.
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> While this Court has heard the writ petitions in part, the writ petitioners have now filed identical applications stating therein that despite the stay of the Impugned Order by this Court, the proceedings with the ED are proving to be an impediment in the conduct of the regular business by the petitioners, and they are unable to raise capital in the ordinary course and transfer their existing shares to new investors. Accordingly, one of the promoters of petitioner No.1 viz. Celica Developers Pvt. Ltd. has stepped forward to broker peace and offered to pay the amount of Rs. 80 Crores to the ED, without the writ petitioners or Celica admitting to the allegations in the Impugned Order of violation of law or the exercise of jurisdiction by the ED.

On the other hand, the Ld. DSG appearing for the ED submits that the ED has no difficulty in accepting the said amount of Rs. 80 Crores towards penalty and upon such payment of penalty by Celica, the writ petitioners shall be discharged of their obligations under the Impugned Order, resulting in closure of the proceedings in question under FEMA, 1999 against them.

Considering the peculiar facts involved, in the interest of justice, leave is granted to the writ petitioners to pay to the ED the amount of Rs. 80 Crores as penalty through Celica. Upon payment by Celica of the aforesaid amount, the Writ Petitioners shall stand discharged of all obligations under the Impugned Order and all allegations of violation of the FEMA Act, the Rules and Regulations framed thereunder shall stand closed.

With these directions the writ petitions and all pending applications are disposed of. It is further clarified that the payment of Rs. 80 crores by Celica shall not amount to any admission or acceptance of violation of any law by the writ petitioners and/or Celica. It is clarified that upon the writ petitioners being discharged, the said order shall not be treated as being prejudicial to the interests of the writ petitioners by any regulatory/ statutory authorities in the course of conducting their business and/or seeking any regulatory compliances /approval."

6. The petitioners shall accordingly pay Rs. 80 crores by way of a demand draft to the Directorate of Enforcement within fifteen days from today.

7. The three writ petitions namely WPA 20930 of 2021, WPA 21011 of 2021 and WPA 21014 of 2021 along with all connected applications are disposed of in terms of the above.

8. At the insistence of the learned DSG it is recorded that the ED did not participate in the framing of the suggested order.

9. The submission of learned counsel appearing for the petitioners is also recorded that the petitioners will withdraw all the appeals which are presently pending before the Appellate Tribunal upon payment of Rs. 80 crores as directed above.

10. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(**Moushumi Bhattacharya, J.**)