IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2023

CORAM:

The HONOURABLE MS.JUSTICE R.N.MANJULA

Crl OP No.15049 of 2021
and Crl MP No.8214 of 2021

M/s.ISPT India Private Limited
Rep. By its Vice President,
Mr.Venkateshwaralu Parthasarathy,
No.1/490R, SF No.186/2,
Anna Nagar Road, Near Kathir College,
Neelambur, Coimbatore – 641 026.
Tamil Nadu, India. .. Petitioner

vs

1.K.Jagadeesan

2.The Registrar of Companies,
Ministry of Corporate Affairs,
No.7, Phase – II, First Floor,
AGT Business Park, Civil Aerodrome Post,
Avinashi Road, Peelamedu,
Coimbatore – 641 014. .. Respondents

Petition filed under Section 482 of Cr.P.C to set aside the order passed by I Additional District Judge, Coimbatore in C.M.P.No.2622 of 2021 dated 13.07.2021 as ultra vires against the Rule of Law, Equity and Principles of Natural Justice.

For Petitioner : Mr.M.L.Ganesh

For Respondents : Mr.R.Vidhya Shakar
for R1
Mr.K.Subbu Ranga Bharathi
for R2

ORDER

1. This petition has been filed seeking to set aside the order passed by I Additional District and Sessions Court, Coimbatore in C.M.P.No.2622 of 2021 dated 13.07.2021 as ultra vires against the Rule of Law, Equity and Principles of Natural Justice.

2. Heard Mr.M.L.Ganesh, learned counsel for the petitioner; Mr.R.Vidhya Shakar, learned counsel for the first respondent and Mr.K.Subbu Ranga Bharathi, learned counsel for the second respondent.

3. The petitioner is the second respondent in the complaint given by the first respondent. On perusing the complaint, the Special Court considered the same as a complaint suitable for giving direction and accordingly, issued the following directions:-

"a) One set of certified copies of Original complaint and documents to be detained by the Registry, till final report is filed.

b) the original complaint along with documents to be forwarded to Registrar of Companies, for suitable follow up action in line with the direction of this Court.

c) The Registrar of Companies is directed to conduct an 'enquiry' into the allegations levelled as against the respondents.

d) In consonance with the powers conferred to this Court under Section 210(2) and more so under Section 213 of Companies Act, the Registrar of Companies shall make an enquiry in to the allegations levelled as against the respondents and if credible then refer to Central Government and request for investigation to be conducted by 'SFIO' and thereafter on receipt of SFIO investigation report, the Central Government after examining the said report can direct the SFIO to initiate prosecution as against the respondents and as against any person directly or indirectly connected with the affairs of the same and the investigation report to be filed before this Court for framing charges, shall be deemed to a report filed by police officer under Section 173 of Cr.P.C.

e) If SFIO is able to collect materials sufficient to prosecute the respondents then a final report to be filled through the Registrar of Companies to take it as a specified final report by this Tribunal."

4. The learned counsel for the petitioner submitted that in the impugned order, the above directions have been given by presuming that there are grounds to suspect some serious fraud committed, but actually no investigation need to be done on such doubt. Since the order has been made without giving a fair opportunity to the petitioner to make his submissions, the impugned order should be set aside.

5. The learned counsel for the first respondent would submit that the complaint of this nature would empower the Courts under Section 438 of the Companies Act to give directions similar to the directions given by the Criminal Court under Section 156(3) Cr.P.C. The Court has not come to any conclusion that there is any serious

fraud committed by any one and hence the petitioner is not prejudiced any way.

6. On perusal of the order, it is seen that the Court has made certain observations about the serious allegations made in the complaint. Since the Courts cannot conduct any roving inquiry and investigation has to be done on technicalities of perusing statement of accounts, verifying the signatures by sending them to Special Agencies, scrutiny on the accounts and auditing setting all other intricate facts connected to the allegations, the Special Court has directed the second respondent to take up the task of making inquiry into the allegations and if materials available to suspect serious fraud committed by the petitioner or by any one, to get approval from the Central Government for involving the Serious Fraud Investigating Team to do investigation, by considering the case as a serious fraud on the company.

7. The learned counsel for the petitioner submitted that in the order passed by the National Company Law Tribunal, Division Bench – I, Chennai dated 31.03.2022 in IBA/820/2020 it is stated that the corporate debtor had raised disputes much prior to issuance of Form 3

Demand Notice and hence the application filed before the National Company Law Tribunal, Division Bench – I, Chennai is liable to be dismissed.

8. However, the learned counsel for the second respondent submitted that the order has been passed by the National Company Law Tribunal is in a different context and that is not relevant for the purpose of this case.

9. Whatever may be the case, there will not be any harm on the part of the second respondent to scrutinize the documents filed by both the parties, including the order of National Company Law Tribunal for the consideration of the Registrar of Companies .

10. In fact, the Special Court has given directions to the second respondent to get the materials submitted by both the parties and scrutinize the same in order to find out whether any serious fraud appears to have been committed by any quarters. Since the order of the Special Court is neutral and it was not based on any presumption that some one has committed any fraud, this Court is of the view that, the impugned order does not require any interference. In the order

passed by National Company Law Tribunal, it is made clear that the Registrar of Companies is required to take action only if it comes to his knowledge after thorough scrutiny of the documents that there are grounds to suspect any serious fraud. In that case, no one can deny the power of the second respondent to refer the mater to the Central Government and by requesting the investigation to be conducted by the Serious Fraud Investigation Officer.

11. The petitioner has got the liberty to provide all the materials which he wishes to produce, before the relevant authority.

12. With the above observation, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

11.01.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

1.The I Additional District Judge,
Coimbatore.

2.The Registrar of Companies,
Ministry of Corporate Affairs,
No.7, Phase – II, First Floor,
AGT Business Park, Civil Aerodrome Post,
Avinashi Road, Peelamedu,
Coimbatore – 641 014.

3.The Public Prosecutor,
High Court, Madras.

R.N.MANJULA.,J

ssm

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