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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 22nd November, 2022**
Decided on: 22nd February, 2023

\+ **CRL.M.C. 6163/2019, CRL.M.A. 41630/2019 (stay), 43663/2019 & 12184/2021(for directions)**

NATIONAL AGRICULTURAL CO-OPERATIVE MARKETING FEDERATION OF INDIA LIMITED (NAFED)

..... Petitioner

Through: Ms. Nitya Ramakrishnan, Senior Advocate with Mr. Shivam Batra, Mr. Akhil Ranganathan and Mr. Ankit Bhushan, Advocates.

v

CENTRAL BUREAU OF INVESTIGATON & ORS

..... Respondents

Through: Mr. Anupam S. Sharrma, Special Counsel with Mr.Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Anurag Aggarwal, Mr.Ripudaman Sharma and Mr.Abhishek Batra, Advocates for CBI/R-1.
Mr. M. Dutta, Mr. Jalaj Aggarwal and Mr. Aditya Guha, Advocates for R-2.
Mr.Kushal Mangal, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. CBI registered FIR bearing no. RC/BD1/2006/E/009 at P.S. CBI/BS/FC Delhi under sections 409/420/467/468/471/120B of the Indian Penal Code, 1860 (hereinafter referred to as **"IPC"**) on the basis of the complaint made by the petitioner/National Agricultural Co-operative Marketing Federation of India Limited (hereinafter referred to as **"NAFED"**) through Alok Ranjan, Managing Director vide D.O. letter No. HO/BIG/81/3RDCLC/2006-07 dated 07.08.2006 against the respondent no.3, O.P. Aggarwal and others for causing wrongful loss to NAFED to the extent of more than Rs. 250 crores.

2. The charge-sheet, as per section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **"the Code"**), was filed on 24.12.2019 and the trial is pending before the concerned Court. The charges were ordered to be framed vide order dated 08.08.2018 for offences as detailed in order dated 08.08.2018. The respondent no.2 was not implicated as one of the accused in the FIR and there was no direct or indirect allegation made against the respondent no.2 in the charge sheet. The respondent no.3 and O.P. Aggarwal were charged for commission of offences punishable under section 420 IPC read with section 120B IPC, offences punishable under sections 468/471 IPC read with 120B IPC and for the substantive offence of section 120B IPC.

3. The CBI (hereinafter referred to as **"respondent no.1"**), during the investigation, conducted a search on 18.01.2007 at the office of M/s

Earthtech Enterprises Limited (hereinafter referred to as **"the respondent no.3"**) bearing no. 39, Sadhna Enclave, New Delhi and seized certain documents including documents pertaining to M/s Bayswater Enterprises Limited (hereinafter referred to as **"the respondent no.2"**) which included the D-MAT accounts bearing no. 10025232 with M/s Star Finvest Limited & 10612215 with M/s Religare Securities Limited. It was also revealed that the respondent no.2 and the respondent no.3 were having their offices at the same premises bearing no. 39, Sadhna Enclave, New Delhi. The respondent no.1/CBI also recorded the statement of Mahaveer Prasad Mishra under section 161 of the Code who stated that he was looking after the accounts of the respondent no.3 and its sister concern i.e., the respondent no.2 and was shown as one of the directors of the respondent no.3. It was also stated that O.P. Aggarwal, who is one of the accused in the above mentioned FIR, was looking after the work of the respondent no.3 and his son was the authorized signatory of the respondent no.2. It was also found that the respondent no.2 and the respondent no.3 were having their accounts at HDFC Bank, Panchsheel Park. It appeared that there was a direct nexus between the respondent no.2 and the respondent no.3.

4. The respondent no.1/CBI vide communication dated 19.01.2007 addressed to M/s Star Finvest Limited had directed the said agency not to allow any operation/withdrawal from the D-MAT account pertaining to the respondent no.2. The respondent no.2 on 19.01.2007 received information from M/s Religare Securities Limited regarding receipt of notice under section 102 of the Code from the respondent no.1/CBI and in pursuance of said notice, the D-MAT account no. 10612215 of the respondent no.2 was frozen. The respondent no.1/CBI vide communication dated 22.01.2007 also asked M/s Religare Securities Limited to keep 2,09,91,600 security shares of the respondent no.2 with M/s Religare Securities Limited as case property of the present FIR under section 102 of the Code.

4.1 M/s Religare Finvest Limited filed an application before the court of Shri Rakesh Pandit, ACMM-I/EAST/KKD wherein it was stated that the respondent no.1/CBI has frozen the D-MAT accounts bearing nos.10025232 & 10612215 of the respondent no.2 and these accounts were having certain financed outstanding money of M/s Religare Finvest Limited and due to the freezing of the said account, M/s Religare Finvest Limited could not recover its due amount due from the respondent no.2. The Court of Shri Rakesh Pandit, ACMM-I/EAST/KKD vide order dated 04.02.2009 observed that a major part of the investment in the D-MAT account of the respondent no.2

is made by M/s Religare Finvest Limited. It was also noticed that Rs. 1,06,20,384,09/- was outstanding as on 26.01.2009 towards the full and final settlement of the account of the respondent no.2 with M/s Religare Finvest Limited. The Court of Shri Rakesh Pandit, ACMM-I/EAST/KKD vide order dated 04.02.2009 had allowed the D-MAT account bearing no. 10025232 to be defrozen and M/s Religare Finvest Limited was allowed to transact shares lying in the said D-MAT account up to the limit of Rs.1.06 crores on certain conditions as mentioned in the order dated 04.02.2009. It was further ordered that after realization of Rs.1.06 crores, the D-MAT account bearing no. 10025232 shall be frozen. The applications of the respondent no.2 and others for defreezing of their D-MAT accounts were also rejected vide order dated 04.02.2009 due to the pending investigation and by observing that the alleged money appears to be ill-gotten money.

5. The respondent no.2 filed an application under section 451 of the Code for release of shares seized during the investigation of the present FIR. The respondent no.2 pleaded that the respondent no.1/CBI had registered FIR bearing no. RC/BD1/2006/E/009 against the respondent no.3 and others in pursuance of the complaint made on behalf of NAFED. The respondent no.2 is neither an accused nor is there any direct or indirect allegation made against the respondent no.2.

5.1 The said application was contested by NAFED as well as by the respondent no.1/CBI. The respondent no.1/CBI alleged that the respondent no.2 is the sister concern of the respondent no.3 which has committed a fraud of Rs. 250 crores with NAFED. The respondent no.1/CBI during the search conducted at the office of the respondent no.3 bearing no. 39, Sadhna Enclave seized documents and it was also found that the respondent no.2 and the respondent no.3 are having the common office. O.P. Aggarwal has diverted the proceeds of the NAFED to the respondent no.2 and other companies such as M/s Firstcorp International Limited, M/s Shilpa Holdings Limited and M/s KamakhyaImpex Limited.

5.2 NAFED also opposed the application and it was argued on behalf of NAFED that NAFED has been cheated to the tune of Rs. 250 crores by O.P. Aggarwal, Chairman of the respondent no.3 along with other co-accused and had diverted the said amount to various companies wherein he was having direct or indirect stake; the respondent no.2 and the respondent no.3 were having the common office at Sadhana Enclave and directors of these companies were related to each other.

5.3 The Court of Shri Amit Arora, ACMM(E), KKD vide order dated

31.10.2018 has dismissed the application of the respondent no.2. It was held as under:-

> **Accused M/s Earthtech Enterprises ltd. O.P. Aggarwal alongwith various other accused are facing trial in the present case. Charges have already been framed against the accused M/s Earthtech Enterprises ltd and O.P. Aggarwal for commission of offences u/S 420/409/471/468 read with 120 B IPC.**
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> **During the course of arguments the applicant was asked to show the source of funds through which it has purchased the share in question. It is not out of place to note here that the shares which are sought to be released by the applicant are more than 2 crores of rupees which is huge amount. In these circumstances the applicant company ought to have atleast placed on record the source of fund through which such huge amount of share were purchased. There is no merit in the contention of the ld. Counsel for the applicant that CBI has no jurisdiction in such cases and it is only the Income Tax authority which can seize unaccounted money. Rather there is sufficient evidence to prima facie show that the money defrauded by M/s Earthtech Enterprises ltd. was diverted in various companies. Here this court cannot ignore the fact that the applicant company as well as M/s Earthtech Enterprises ltd. are having their offices at 39, Sadhna Enclave. Besides that there are various other companies which were found operating from the same address. It cannot be simply termed as a co-incidence. As already noted above NAFED was allegedly duped by M/s Earthech Enterprises ltd. and O.P. Aggarwal regarding which the present RC was registered. After filing of charge-sheet, charges have been framed against M/s Earthtech Enterprises ltd and O.P. Aggarwal and various other accuse as it was prima facie found that they have diverted the cheated amount.**
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> **I have gone through the statement of one Mahavir Prasad Mishra recorded u/s 161 Cr.P.C. Sh. Mahavir Prasad Mishra was working with M/s Earthtech Enterprises ltd and was looking at the accounts of M/s Earthtech Enterprises ltd and its sister concern namely M/s Bayswater enterprises. He had stated u/s 161 Cr.P.C. that he is one of the Directors of M/s Earthtech**

Enterprises ltd. and was looking the accounts of the company and was shown as the Director, whereas the work of the company was being looked after by O.P. Aggarwal and he was only an employee in the company. He had further stated that his son is the authorized signatory of Bayswater Enterprises. Now it cannot be termed as a co-incidence that the applicant company as well as M/s Earthtech Enterprises ltd are having their account at HDFC Bank, Panchsheel Park. He has also stated that he was earlier the sole authorized signatory of M/s Earthtech Enterprises ltd. and his son (Vijay Mishra) has been made an authorized signatory of Bayswater Enterprises and earlier he was the authorized signatory. Thus, it somehow prima facie shows a nexus between the applicant company and the accused i.e. M/s Earthtech Enterprises ltd. His statement shows that O.P. Aggarwal appointed him as a cashier, made him Director and he was the authorized signatory of the both the companies and now his son has been substituted in his place as authorized signatory. Moreover both the companies i.e. applicant company and accused company are having their registered office at the same address.

Thus at this stage I find no merit in the application as applicant company has failed to prove its source of purchasing the shares and moreover, there is a strong reason to believe that both the above companies are being managed by O.P. Aggarwal, who is main accused in this case and against him there are allegations of cheating NAFED. Application is accordingly dismissed.

6. The respondent no.2, being aggrieved by the order dated 31.10.2018, filed the Criminal Revision bearing no. 01/2019 titled as **M/s Bayswater Enterprises Limited V State/through CBI & others** which was adjudicated upon by the court of Shri Inderjeet Singh, Additional Sessions Judge/Special Judge (PC Act), CBI-17, Delhi (hereinafter referred to as **"the revisional court"**) and disposed of the said revision petition vide order dated 24.09.2019 (hereinafter referred to as **"the impugned order"**). The relevant portion of the impugned order is reproduced as under:-

> **4.5. As introduced the beginning that Section 451 Cr.P.C has limited application while dealing with the custody and disposal of the property pending trial and the same are to be dealt expeditiously and judiciously, as held in Amba Lal Desai Vs. State of Gujarat & C Muddaliar AIR 2003 SC .638. The ratio of law laid down in DN Upadhyay Vs. CBI (supra) is also applicable to the situation in hand. However, the impugned securities and D-MAT accounts (no. 10025232 of M/s Bayswater Enterprises Limited with M/s Star Finvest Limited and account no. 10612215 of Bayswater Enterprises Limited with M/s Religare Securities Limited) were freezed on the instructions of CBI, vis a vis in view of the factual position and status of petitioner, as well as the seizure memo has been cited as search list at serial no. 509 in the list of documents, which is as a prima facie view depriving the petitioner to utilize the funds to channelize in the business, the purpose may be served by dealing with the securities in a manner it was dealt while realising the same to M/s Religare Securities Limited.**
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> **4.6 Therefore, by taking into consideration facts and features appearing, the provisions of law and the ratio of law laid down in precedent and case law presented, the impugned order dated 31.10.2018 is liable to the set aside to the extent to release the 29,04,000 shares as well as to de-freeze the D-MAT accounts so that the petitioner may operate the D-MAT accounts, however, it is subject to furnishing the superdaginama/bond in the sum of Rs. 1 crore or equivalent value to the satisfaction of Ld. Chief Metropolitan Magistrate, Rouse Avenue Court Complex/trial court being application u/s 451 Cr.P.C pending conclusion of trial. The trial court will be at liberty to keep on record the documentary record of securities/D-MAT accounts or their up-to-date position so that during trial it will not be treated as a hurdle in proceeding in the case.**
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> **4.7 Accordingly, this revision petition is disposed off, however any expression given while discussing the merits of application and**

disposing the contentions of parties, it will not be treated any reflection on the merits of the case.

7. The petitioner, being aggrieved, filed the present revision petition and challenged the impugned order on the grounds that there are substantial glaring errors and omissions on the face of the impugned order passed by the revisional court. The impugned order is illegal both on facts and law and is, therefore, liable to be set aside. The respondent no.2 has not brought out any illegality, infirmity and has not challenged the propriety of any finding of the order dated 31.10.2018. The revisional court has not appreciated the order dated 31.10.2018 in the right perspective which was passed after giving cogent reason. The revisional court has not appreciated the facts and material on record particularly the relationship between the respondent no.2 and O.P. Aggarwal and has overlooked the interconnection between the respondent no.2 and the respondent no.3. The charges have already been framed against the respondent no.3 and O.P. Aggarwal as such the defreezing of the shares should not have been allowed. O.P. Aggarwal, Chairman of respondent no.3 along with other accused has diverted and siphoned off the huge amount of NAFED. The revisional court has not appreciated the statement of PW 63 Mahaveer Prasad Mishra who stated that the respondent no.2 and the respondent no.3 are having the common registered office and are also having their bank account in the same branch of HDFC Bank. NAFED also raised various other grounds to challenge the impugned order.

8. The learned Senior Counsel for NAFED advanced oral arguments and written submissions were also submitted on behalf of NAFED. The learned Senior Council argued that the respondent no.3 and O.P. Aggarwal, who is accused no.2 before the concerned trial court, have caused wrongful loss to NAFED and wrongful gains to themselves to the tune of Rs. 250 crores. The funds of NAFED were siphoned off by the O.P. Aggarwal to the companies wherein the accused O.P. Aggarwal and other accused are having direct or indirect interest including the respondent no.2. There is a direct nexus and relationship between the respondent no.2, respondent no.3 and O.P. Aggarwal as the respondent no.2 is the sister concern of the respondent no.3. The respondent no.2 and the respondent no.3 are having the same registered office and the directors and the signatories of the respondent no.2 are the relatives and servants of O.P. Aggarwal, who is in charge of the affairs of the respondent no.3. During the search conducted at the premises of the respondent no.3 situated at 39, Sadhna Enclave, New Delhi, documents pertaining to the respondent no.2 and other companies owned and controlled by O.P Aggarwal were recovered which clearly indicated that the respondent no.2 is the sister concern of the respondent no.3. The statement of PW 63 Mahaveer Prasad, under section 161 of the Code, was not appreciated in the right perspective. The Trial Court vide order dated 04.09.2009 also dismissed the application of the respondent no.2 for defreezing of the D-MAT account. The respondent no.2 and the respondent no.3 could not explain the source of funds for acquiring the shares in question. The respondent no.2 is another face of the respondent no.3 and O.P. Aggarwal. It was argued that the impugned order be set aside and the order dated 31.10.2018 passed by the court of ACMM be restored.

9. The counsel for the respondent no. 2 advanced oral arguments and also submitted written submissions. He argued that the charge-sheet was filed on 24.12.2009 after the completion of the investigation in pursuance of FIR bearing no. RC/BD1/2006/E/009. The respondent no.2 was not charged for any offence. The respondent no.2 is not an accused in the complaint dated 07.08.2006, FIR dated 20.11.2006 and the charge-sheet dated 24.12.2009. The respondent no.2 has already complied with the directions given by the impugned order. The present petition is beyond the scope of the section 482 of the Code. It was argued that the petition be dismissed.

10. The respondent no.1/CBI also filed a Status Report under the Signature of Vishal, Inspector of Police, CBI, BSFB, New Delhi wherein it was stated that the CBI registered a case vide FIR bearing no. RC/BD1/2006/E/0009 in pursuance of the complaint made by NAFED against the respondent no.3 and others on 20.11.2006. The respondent no.1/CBI conducted a search at the office of the respondent no.3 bearing no.39 Sadhna Enclave, New Delhi and seized the documents pertaining to the respondent no.2 including the D-MAT accounts. It was also found during the search that the respondent no.2 and the respondent no.3 are having an office at the same premises. The statement of Mahavir Prasad Mishra was also recorded under section 161 of the Code which reflects that the respondent no.2 and the respondent no.3 are controlled and managed by the accused/O.P. Aggarwal. The charge-sheet has already been filed and the trial is pending before the concerned Court. The application filed by the respondent no.2 for release of shares was dismissed vide order dated 31.10.2018. The respondent no.1/CBI has already issued letters on 19.11.2019 directing M/s Religare Securities Ltd. & M/s Star Finvest Ltd. to defreeze/release of the D-MAT accounts/shares. The Special Counsel for the respondent no.1/CBI advanced arguments on the basis of factual position as stated in the Status Report.

11. Section 102 of the Code deals with power of police to seize property. Section 102(1) reads as under:-

> **102. Power of police officer to seize certain property.**
> **(1) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.**

12. It is reflecting from the perusal of the record that the respondent no 1/CBI registered a FIR bearing no. RC/BD1/2006/E/0009 dated 07.08.2006 under sections 409/420/467/468/471/120B IPC on the basis of the complaint made by NAFED wherein the respondent no. 3, O.P. Aggarwal and others were implicated for causing wrongful loss to NAFED to the extent of more than Rs. 250 crores. The respondent no.1/CBI, during the investigation, conducted a search on 18.01.2007 at the office of the respondent no.3 and seized documents pertaining to the respondent no.2 including the D-MAT accounts bearing no. 10025232 with M/s Star Finvest Limited and 10612215 with M/s Religare Securities Limited. The respondent no.1/CBI also recorded the statement of PW63 Mahavir Prasad Mishra under section 161 of the Code which reflects that the respondent no.2 is the sister concern of the respondent no.3 and both are being controlled by the accused/O.P. Aggarwal. It appears that there was a direct nexus between the respondent no.2 and the respondent no.3 as the respondent no.2 and the respondent no.3 were found to be having their offices at same premises bearing no.39, Sadhna Enclave, New Delhi and their accounts in HDFC Bank, Panchsheel Park and the son of O.P. Aggarwal was found to be the authorized signatory of the respondent no.2. There is factual force in arguments advanced by learned Senior Counsel for the NAFED that the respondent no.2 is directly connected with the respondent no.3 and there is a direct nexus between the respondent no.2 and the respondent no.3. The shares/securities subject matter of present judicial consideration may be the outcome of proceeds of crime but the trial is still pending and this issue would be decided at appropriate stage during trial or after conclusion of trial.

12.1 The respondent no.1/CBI vide communication dated 19.01.2007 addressed to M/s Star Finvest Limited had directed not to allow any withdrawal from the D-MAT account bearing no. 10025232 pertaining to the respondent no.2. The account bearing no. 10612215 of the respondent no.2 with M/s Religare Securities Limited was also ordered to be frozen. However, M/s Religare Finvest Limited vide order dated 04.02.2009 passed by the Court of Shri Rakesh Pandit, ACMM-I/EAST/KKD was allowed to transact shares lying in the D-MAT account bearing no. 10612215 to the tune of Rs.1.06 crores. The application of the respondent no.2 for defreezing of the D-MAT accounts was also rejected vide order dated 04.02.2009. The respondent no.2 also filed an application under section 451 of the Code for release of shares seized during the investigation which was dismissed vide order dated 31.10.2018. The respondent no.2, being aggrieved, filed the Criminal Revision bearing no. 01/2019 which was allowed by the revisional court vide their impugned order dated 24.09.2019.

12.2 The respondent no.2 was not charged for any offence and was not implicated as an accused either in the FIR dated 20.11.2006 or in the charge-sheet dated 24.12.2009.

13. The perusal of the impugned order also reflects that 29,04,000 shares out of 2,09,91,600 shares have been left in the D-MAT account of the respondent no.2 with M/s Religare Securities Limited. The D-MAT accounts of the respondent no.2, as detailed hereinabove, were frozen on the instructions of the respondent no.1/CBI. The revisional court has taken the view that freezing of the D-MAT account and the securities/shares has deprived of the respondent no.2 to utilize the fund to channelize in the business. The revisional court, after taking into consideration the factual position as well as relevant law, has set aside the order dated 31.10.2018 to the extent of release of 29,04,000 shares as well as to defreeze the D-MAT accounts so that the said accounts can be operated by the respondent no.2. The revisional court also protected the interest of NAFED by asking the respondent no.2 to furnish *supurdginama*/bond in the sum of Rs. 1 crore or an equivalent value to the satisfaction of the concerned Trial Court. The revisional court has also passed other necessary directions such as to keep on record the documentary record of the securities/D-MAT accounts or their up-to-date position during the trial. The subject matter of the present litigation is the shares/securities which are having the fluid/fluctuating values in the market. The D-MAT accounts of the respondent no. 2 as well as shares therein were ordered to be frozen in 2009 and to continue with the said directions, would not serve any purpose particularly when the interest of NAFED is reasonably protected by the revisional court in the impugned order. No useful purpose would be served by freezing the D-MAT accounts of the respondent no.2 with M/s Star Finvest Limited and M/s Religare Securities Limited and freezing of the shares therein. The arguments advanced on behalf of contesting parties are considered in right perspective. There is no infirmity and illegality in the impugned order which does not call for any interference. Hence, the present petition is dismissed.

14. The present petition along with pending application, if any, stands disposed of. Nothing in this judgment shall be taken as opinion on merits of the case and shall not in any manner influence the trial.

15. The copy of this order be sent to the concerned revisional court as well as the Trial Court for information.

SUDHIR KUMAR JAIN
JUDGE

FEBRUARY 22, 2022/j/pj