



Neutral Citation Number 2023:DHC:4031

\$~

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

% *Judgment pronounced on : 31.05.2023*

+ **W.P.(CRL) 1800/2022**

SOMA ENTERPRISE LTD.

..... Petitioner

Through: Mr. Arvind Nigam, Senior Advocate with Mr. Arunabh Chowdhari, Senior Advocate with Mr. Manu Sharma, Mr. Vaibhav Tomar, Mr. Kartik Khanna, Mr. Abhyuday Sharma, Mr. Kartikay Masta, Mr. Gyanendra Kumar & Mr. Madhulak Bhardwaj, Advocates.

versus

CBI

..... Respondent

Through: Mr. Anupam S. Sharma, SPP/CBI, with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner company has filed this writ petition under Article 227 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 (herein after referred to as the 'Code'), invoking the supervisory writ jurisdiction of this Court and has made the following prayer:

“a) Issue an appropriate writ/order/direction calling for the records of the case in CBI Case No.25/2019 titled State vs. Dheeraj Kumar and Ors.

Signature Not Verified

Digitally Signed
By: AANCHAL KAGGAR

Signing Date: 02.06.2023 16:36 W.P.(CRL) 1800/2022

Page 1 of 16



Neutral Citation Number 2023:DHC:4031

pending before the Court of Shri Balwant Rai Bansal, Special Judge (PC Act), CBI-17, Rouse Avenue Courts, New Delhi and after perusing the same, this Hon'ble Court may be pleased to set aside/quash the order framing charge dated 02.07.2022 (ANNEXURE-P/1) read with the Order dated 14.07.2022 (ANNEXURE-P/2) passed by the Court of Sh. Balwant Rai Bansal, Ld. Special Judge (PC Act), Rouse Avenue Courts, New Delhi in CBI Case No. 25/2019 arising out of FIR RC No. 01(A)/2019/AC-III/New Delhi, under Section 120B read with Sections 7A/8/9/10 & 12 of the PC Act, 1988 (as amended in 2018) and separate charge for the offences punishable under Sections 9 & 12 of the PC Act, 1988 (as amended in 2018) against the Petitioner and all proceedings emanating thereunder in respect of the Petitioner M/s Soma Enterprise Ltd.; and

b) Pass any such other similar order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case and in the interest of justice.”

2. In brief facts, it is mentioned that a Preliminary Enquiry (herein after referred to as 'PE') was registered against a company named M/s Isolux Corsan India Engineering and Construction Pvt. Ltd., bearing No. PE2172018A0002/CBI/ACU-V/AC-II/New Delhi on 29.11.2018, in which one of the allegation was regarding paying bribes to Government officials during execution of two projects of National Highway Authority of India (herein after referred to as 'NHAI'). The parent company, M/s Isolux Corsan (a Spanish Company) had become bankrupt in Spain and all the offices in India of the said company and its Indian subsidiary were closed, so a notice was issued to the petitioner company to provide certain details as it had two joint ventures (JVs) with the said company.

2.1 There were allegations against the said company and a complaint was received from Central Vigilance Commission (CVC), that formed the basis of the PE, which was marked to Shri Kuldeep Singh, Sub-Inspector of Police, CBI/ACU-VI/AC-II, New Delhi, for enquiry. The said IO, on 17.01.2019, issued a notice to the present petitioner in respect of the said

Signature Not Verified

Digitally Signed
By: AANCHAL AGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

enquiry and called for certain documents along with details of the officials of the petitioner company, who were dealing with M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. and with NHAI officials.

2.2 The petitioner company and M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. had entered into two joint ventures regarding Kishangarh-Ajmer-Beawar project in the State of Rajasthan and Surat-Hazira Port project in the State of Gujarat. The petitioner company authorised Mr. P.R. Rao, Vice-President, to represent the company before the Investigating Officer, CBI, New Delhi, vide authorisation letter dated 29.04.2019. On 30.04.2019, Mr. P.R. Rao replied to the letter of the Investigating Officer dated 17.01.2019 and supplied the requisite documents and details. Again on 14.06.2019, a letter was addressed by SI Kuldeep Singh (IO) of CBI to the petitioner and the authorised signatory of the company was requested to appear before the IO. The authorised signatory of the petitioner company again supplied the requisite details to the IO vide letter dated 18.06.2019. Thereafter, no further communication was received from the IO, CBI, New Delhi. On 12.07.2019, Mr. P.R. Rao appeared before the CBI officer and he was examined.

3. It is further the case of the CBI that on 11.09.2019, a complaint was received from Mr. Asra Garg, Head of Branch/DIG, CBI, ACB, New Delhi, to the effect that he was contacted by one Shri Dheeraj Kumar Singh, Section Officer, Ministry of Home Affairs, New Delhi, who wanted to meet him along with one person and both of them met him a few days back. The person who accompanied Mr. Dheeraj Kumar Singh was one Mr. Dinesh Chand Gupta, a representative of the office bearers of the present petitioner

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.R.(CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

company and both of them informed the complainant, Mr. Asra Garg, that some enquiry was being conducted against M/s Soma Enterprise Ltd. in CBI and he sought Mr. Asra Garg's help to settle the matter in favour of the petitioner company.

3.1 Subsequently, Mr. Dheeraj Kumar Singh again contacted Mr. Asra Garg and offered a bribe of Rs. 2 crores and he had also informed that they had taken approval of senior management/office bearers of the petitioner company for proposed payment of illegal gratification. So, it was requested that necessary legal action be taken in this regard as there was an attempt to bribe a public servant.

4. On 12.09.2019, the verification was carried out, and thereafter, the RC of the even date was registered against Ms. Dheeraj Kumar Singh (A1), Mr. Dinesh Chand Gupta (A2), Mr. P.R. Rao (A3) and M/s Soma Enterprise Ltd. (A4) along with unknown others. The said FIR was registered under Section 120B Indian Penal Code (herein after referred to as 'IPC') read with Section 7A, 8, 9, 10 and 12 of the Prevention of Corruption Act, 1988. This case was assigned to Shri RVS Lohmor, Deputy Superintendent of Police, CBI, AC.III, New Delhi, for investigation.

4.1 The statement of Shri Kuldeep Singh, Investigating Officer of the earlier PE against M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. was recorded in the present case on 07.10.2019, wherein he had stated that M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. had become insolvent and one IRP (Interim Resolution Professional) was appointed under Insolvency and Bankruptcy Code. Two projects were awarded to consortium of M/s Isolux Corsan India Engineering and

Signature Not Verified

Digitally Signed
By: AANCHAL KAGGAR

Signing Date: 02.06.2023 16:36 W.R.(CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

Construction Pvt. Ltd. and M/s Soma Enterprise Ltd. and both of them had 50% part of the project. Since, no office of M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. was existing in India, so he had contacted M/s Soma Enterprise Ltd. to get some lead in the PE and sent requisition letter dated 17.01.2019 to provide details. He had also requested the Managing Director of the Company 4-5 times to provide the details at the earliest.

4.2 IO further stated that on 30.04.2019, certain documents were provided through one of the officials of M/s Soma Enterprise Ltd. The said documents were submitted along with forwarding letter signed by one Mr. P.R. Rao, Vice President of M/s Soma Enterprise Ltd., who was an authorised representative. The MD of M/s Soma Enterprise Ltd. was again requested to visit CBI office. Mr. P.R. Rao attended CBI office on 12.07.2019 and he was examined on the points pertaining to the allegations of the case. Construction sites were visited by the IO along with Mr. P.R. Rao 3-4 times but Mr. P.R. Rao was not in a position to tell the names of the officials from the joint venture partners, who were posted at the construction sites of the projects and he had sought a week's time to give the details but even after lapse of 10-15 days, Mr. P.R. Rao did not provide any details, although he was contacted 3-4 times over phone. As per the IO, he had met Mr. P.R. Rao only once in the office premises of the CBI on 12.07.2019, when he had attended CBI office to answer certain queries in relation to the case.

4.3 The enquiry was completed in the present case and charge sheet was filed against A1-A4 on 08.11.2019 under Section 7A, 8, 9, 10 and 12 of the Prevention of Corruption Act, 1988 read with Section 120B of the IPC. The

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.R.(CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

role of the petitioner company is mentioned as under:

“16 (A)38: Role of M/s Soma Enterprise Ltd. (Company):

i. The company M/s Soma Enterprise Ltd., through its Vice President Shri Ramchandra Rao Patri @ PR Rao (A-3) and its contractor Shri Dinesh Chand Gupta (A-2) alongwith another person Shri Dheeraj Kumar Singh (A-1), offered bribe of Rs. 2 crores to the complainant to get relief from the ongoing PE of CBI.

ii. In furtherance of the said offer, bribe of Rs. 16 lacs were paid to the complainant and in connection with the same, Shri Dheeraj Kumar Singh (A-1), Shri Dinesh Chand Gupta (A-2) and Shri Ramchandra Rao Patri @ PR Rao (A-3) were arrested by the CBI after disclosure of their incriminating roles in the offer and payment of aforesaid bribe.”

5. The PE registered on 29.11.2018 against M/s Isolux Corsan India Engineering and Construction Pvt. Ltd., culminated in registration of FIR No. RC2172022A0002 dated 29.03.2022 in which there are 22 known accused along with unknown Government officials and unknown persons. List of the said accused is as under:

- “Accused 1:** Mr. L P Padhy (1), **Designation:** the then General Manager (DK II) NHAI
- Accused 2:** Mr. C K Sinha (2), **Designation:** the then GM (Tech) & Project Director NHAI
- Accused 3:** Mr. Vibahv Mittal (3), **Designation:** the then GM (Tech) & Project Director NHAI
- Accused 4:** Mr. D P Soni (4), **Designation:** the then Project Director, NHAI
- Accused 5:** Mr. Anil Kumar (5), **Designation:** the then Manager (Technical) NHAI
- Accused 6:** Mr. S K Gupta (6), **Designation:** the then Project Director, NHAI
- Accused 7:** Mr. Suraj Prakash (7), **Designation:** the then Project Director, NHAI
- Accused 8:** Mr. K M Sharma (8), **Designation:** the then Manager

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031
(Technical) NHAI

- Accused 9:** Mr. Neeraj Gaur (9), **Designation:** the then Manager (Technical) NHAI
- Accused 10:** Mr. Gulllmero Garcia Moliz (10), **Designation:** the then CFO, M/s ICIEPL
- Accused 11:** Mr. Jose Luis Murillo Esteban (11), **Designation:** the then Chief General Manager (Construction), M/s ICIEPL
- Accused 12:** Ms. Eva Garrido Roda (12), **Designation:** the then Project Administration Manager (Cost Controller – Surat), M/s ICIEPL
- Accused 13:** Mr. Manuel Merino Gomez (13), **Designation:** the then Dy. Project Head, M/s ICIEPL
- Accused 14:** Mr. Gustavo Munoz Lopez (14), **Designation:** the then Head-Administration, M/s ICIEPL
- Accused 15:** Mr. Javier Hidalgo (15), **Designation:** the then Dy. Project Head, M/s ICIEPL
- Accused 16:** Mr. Alberto Lorenzo (16), **Designation:** Cost Controller, M/s ICIEPL
- Accused 17:** Mr. Chhedi Ram Bhavan Yadav (17), **Designation:** Proprietor, M/s Karnal Construction, Surat
- Accused 18:** Partner(s) M/s Goyal Construction Co, Jaipur (Partnership firm) (18)
- Accused 19:** M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. (Under Construction) (19)
- Accused 20:** M/s Soma-Isolux Surat-Hazira Tollway Private Limited Through its director Shri P. R Rao (20),
- Accused 21:** M/s Soma-Isolux Varanasi-Aurangabad Tollway Private Limited Through its director Shri P. R Rao (21)
- Accused 22:** M/s Mahadeo Construction Co. Varanasi, through its Managing Director Shir Anoop Kumar (22)
- Accused 23:** Unknown Officials of NHAI and other Unknown Public Servants (23)
- Accused 24:** Unknown Person(s)”

Signature Not Verified

Digitally Signed
By: AANCHAL KAGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

5.1 It is pertinent to note here that the present petitioner, i.e., M/s Soma Enterprise Ltd. is not an accused in the said FIR. All the allegations regarding bribery had been made against the officials of M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. There is no allegation whether the petitioner company is in criminal conspiracy with M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. and there is no other allegation of any kind, against the petitioner company except that the petitioner company had two joint ventures with M/s Isolux Corsan India Engineering and Construction Pvt. Ltd.

6. The learned Special Judge, *vide* impugned order dated 02.07.2022 had ordered for framing of charges in the present case against the petitioner company. It was held that the substantive charge is made out under Section 9, 10 and 12 of the Prevention of Corruption Act, 1988. However, on 14.07.2022, it was clarified that offence under Section 10 of the Prevention of Corruption Act, 1988 is not made out against the petitioner company. Pursuant thereto, formal charges were framed against the petitioner company (A4) and other accused persons. Thereafter, the petitioner company has challenged the impugned order dated 02.07.2022 read with order dated 14.07.2022, ordering framing of charge against the petitioner company by filing the present writ petition.

7. In August, 2022, notice was issued.

8. Status report has been filed by the CBI.

9. An interesting development has taken place in the intervening period.

In the earlier charge sheet, the CBI had kept the further investigation open as



Neutral Citation Number 2023:DHC:4031

mentioned in Para 16(B)4. The said paragraph is reproduced here under:

“**16(B)4.** As already submitted above, further investigation is also kept open as investigation has revealed that, before meeting the complainant on 11.09.2019, Shri Dinesh Chand Gupta (A-2) spoke to some senior government officials. Further, the accused were also in possession of the notice of CBI issued to CVO, NHAI, New Delhi. The role of senior management of M/s Soma Enterprise Ltd. also needs further investigation. A further report u/s 173(8) will be filed in this Hon'ble Court after conclusion of further investigation if so required.”

10. In furtherance to the further investigation carried out by CBI, a supplementary charge sheet has been filed before the learned Sessions Judge on 30.12.2022, naming Shri Lambodar Prasad Padhy (herein after referred to as Shri L.P. Padhy), Chief General Manager (Technical) of NHAI, as an accused in the present case. The gist of the supplementary charge sheet is that L.P. Padhy had applied for the post of Member, NHAI. The copy of the PE Registration Report (PE-RR) of PE-02(A)/2018/AC-II was sent to CVO, NHAI, containing many names and designations of bribe receivers and name of Shri L.P. Padhy figured thrice in the said list. The IO of the earlier PE, namely Shri Kuldeep Singh had visited office of CVO, NHAI to get the details of the enquiry and as directed, he had met Mr. L.P. Padhy, Chief General Manager (Technical) and discussed about the issued in hand. So, Mr. L.P. Padhy gained knowledge about an ongoing PE in CBI (M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. PE), in which his role was also under scanner.

11. On 19.08.2019, Mr. L.P. Padhy was called to join for investigation. However, he expressed his inability to attend the CBI office. The exact allegation against Shri L.P. Padhy is described in paragraph Nos. 3,4 and 5 of the supplementary charge sheet. The said paragraphs are reproduced here

Signature Not Verified

Digitally Signed
By: AANCHAL KAGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031
under:

“3. Investigation also revealed that Shri Kuldeep Singh, SI, AC-II had sent an e-mail dtd. 19-08-2019 to CVO, NHAI to direct Sh L P Padhy for examination (**D-45**). In reply to this mail, Sh. L.P. Padhy had sent an e-mail dtd. 05-09-2019 to Sh. Kuldeep Singh expressing his inability to attend CBI office (**D-45**). Sh. L.P. Padhy conspired with Sh. Dinesh Chand Gupta and Sh. Dinesh Chand Gupta approached Sh. Dheeraj Kumar Singh and a bribe of Rs. 2 Crore was offered to the complainant. This incident of brobery occurred within a week after the said email was sent by Sh. Kuldeep Singh to Sh. L.P. Padhy. Thus, Shri L.P. Padhy tried to buy some time before making efforts to scuttle the PE of AC-II in conspiracy with Shri Dinesh Chand Gupta (A-2).

4. Investigation has revealed that Sh. L.P. Padhy had applied for the post of member in NHAI. Therefore, it was not advisable to have any impediment to his vigilance clearance in respect of his application. Therefore, Sh. L.P. Padhy conspired with Sh. Dinesh Chand Gupta for approaching the complainant in order to scuttle the PE-02(A)/2018 of AC-II/CBI in which role was also under probe. Investigation also revealed that upon conclusion of the enquiry in PR-02(A)/2018/AC-II, a Regular Case has been registered in AC-II, CBI (RC2172022A0002) on 29.03.2022 and the name of Shri L P Padhy, the then General Manager (DK-II), NHAI figures at Sr. No. 01 in the FIR (**D-46**).

5. Investigation has revealed that on the intervening night of 11.09.2019 and 12.09.2019, Shri Dinesh Chand Gupta (A-2) was talking to Shri P.R. Rao (A-3) through WhatsApp calls and during that time, he was also in touch with the mobile no. 8448242712 pertaining to Sh. L.P. Padhy, GM (Technical), NHAI, Hqrs, Dwarka, New Delhi (**D-10** of original chargesheet Observation memorandum dtd. 27.09.2019 for data extraction).”

12. Paragraph 10 of the supplementary charge sheet also gives the details of the close connection between Mr. L.P. Padhy and Shri Dinesh Chand Gupta. The said paragraph is reproduced here under:

“10. During investigation, searches were conducted at the residential premises (Flat no 1052, C1 block, Vasant Kunj, New Delhi) and office of Sh. L.P. Padhy (at NHAI Headquarters, G 5&6, Sector 10, Dwarka, New Delhi) (**D-48**). During searches at the office of Sh. L.P. Padhy, few visiting cards including that of Shri Dinesh Chand Gupta (**D-48**) were seized. This fact along with visitor details obtained from the NHAI Head office (**D-47**)

Signature Not Verified

Digitally Signed
By: AANCHAL AGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

indicates that Sh. Dinesh Chand Gupta used to meet Shri Padhy at the latter's office.”

13. The supplementary charge sheet makes the following final allegations against Shri L.P. Padhy, titled as “Charge”:

“All the evidences and circumstances indicate that Sh. L.P. Padhy conspired with Sh. Dinesh Chand Gupta to bribe the complainant Sh. Asra Garg in order to scuttle the ongoing PE-02(A)/2018/AC-II in which his role was also under enquiry. Thus, from the facts and circumstances of the case and materials on record, a case is made out for prosecution of accused Sh. Lambodar Prasad Padhy for commission of offences punishable under section 120-B, 201, 204 of IPC read with Section 8 and 12 of PC Act, 1988 (as amended) and the substantive offences thereof. Hence, this Supplementary Charge sheet is submitted against the said accused Sh. Lambodar Prasad Padhy under Section 173(8) Code of Criminal Procedure. The said accused person may be tried as per the procedure of Law.”

14. A copy of the supplementary charge sheet was filed by CBI in this Court. An opportunity was granted to both the sides to comment upon effect of the supplementary charge sheet on the case of CBI against the present petitioner, i.e., M/s Soma Enterprise Ltd.

15. I have heard the learned Senior Counsel appearing on behalf of M/s Soma Enterprise Ltd. and the learned counsel appearing on behalf of the CBI in detail.

15.1 Learned Senior Counsel appearing on behalf of petitioner has submitted that the supplementary charge sheet filed by CBI against Mr. L.P. Padhy on 30.12.2022 has a direct bearing on the charge framed against the petitioner company and if the outcome of the further investigation had been before the learned Special Judge at the time of consideration of charge against the petitioner company, the result could have been something else. He has specifically pointed out that the complainant remains the same, i.e.,

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

Mr. Asra Garg; the amount of bribe offered remains the same, i.e., Rs. 2 crores; if the main charge sheet and the supplementary charge sheet are read together, both of them contradict each other as the allegation in the main charge sheet is that Rs. 2 crores bribe was offered on behalf of M/s Soma Enterprise Ltd., whereas the supplementary charge sheet, after due and further investigation alleges that the bribe of Rs. 2 crores was offered by Mr. L.P. Padhy in conspiracy with Shri Dinesh Chand Gupta to the complainant, Shri Asra Garg, an official of CBI.

15.2 It is further submitted that supplementary charge sheet also, although *prima facie*, assigns a clear-cut motive to Mr. L.P. Padhy as he was interested in becoming Member in NHAI and if an FIR would have been registered against him after culmination of the PE pending against M/s Isolux Corsan India Engineering and Construction Pvt. Ltd. and others, his candidature for the post of Member in NHAI would have come under jeopardy.

15.3 The time, when the bribe is alleged to have been offered by Mr. L.P. Padhy, is most crucial as the enquiry in the PE registered by the CBI against M/s Isolux Corsan India Engineering and Construction Pvt Ltd. and others was still underway, which finally culminated in registration of an FIR dated 29.03.2022 (the offer of bribe is in the month of September, 2019, when the PE registered on 29.11.2018 was being investigated by the IO from CBI).

16. The learned Senior Counsel appearing on behalf of the petitioner company has also submitted that the source of cash has not been established as being the petitioner company; Mr. P.R. Rao was only authorised to hand over the documents to the IO in the enquiry against M/s Isolux Corsan India

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.R.(CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

Engineering and Construction Pvt Ltd.; the said IO in his statement recorded in the present case has not uttered even a single word against M/s Soma Enterprise Ltd. and this fact has been fortified by filing of the FIR against M/s Isolux Corsan India Engineering and Construction Pvt Ltd. and others on 29.03.2022, after painstaking investigation spread over a period of more than three years; even if it is presumed that Mr. P.R. Rao had offered some gratification to the complainant, Mr. Asra Garg, there may be a personal motive in the same as Mr. P.R. Rao is an accused in the M/s Isolux Corsan India Engineering and Construction Pvt Ltd. case along with two joint ventures, but M/s Soma Enterprise Ltd., which is a distinct juristic person, is neither an accused, nor it was being investigated in the said case against M/s Isolux Corsan India Engineering and Construction Pvt Ltd. and others and its role was only to supply the requisite documents. It has been further submitted that a company cannot be held liable for the alleged criminal acts of its employees unless and until the company has authorised the said acts and in the present case, the investigating agency has failed to establish the said link between the petitioner company and the alleged instance of offering of Rs. 2 crores bribe to Mr. Asra Garg, an official of CBI.

16.1 It has been also submitted that, in case there are two versions of the same incident, i.e., offering of bribe of Rs. 2 crores to the complainant, the version favouring the accused is to be considered and in the present case, if one weighs the two versions; the version described in the supplementary charge sheet alleging that Mr. L.P. Padhy had offered a bribe of Rs. 2 crores to Mr. Asra Garg as he had direct involvement in the M/s Isolux Corsan India Engineering and Construction Pvt Ltd., case, being an accused there

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.R.(CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

and his desire to become Member – NHAI, would have been in jeopardy if the PE against M/s Isolux Corsan India Engineering and Construction Pvt Ltd. which was being investigated by the investigating agency in 2019, would have culminated in registration of an FIR against him, seems more believable than the version in the main charge sheet alleging that when in November, 2018, the PE was registered against M/s Isolux Corsan India Engineering and Construction Pvt Ltd. and Government officials and it was being investigated and certain documents were called from the present petitioner, which were supplied through one Mr. P.R. Rao, then suddenly the petitioner company feared for its reputation and its future Government business and had offered bribe to Mr. Asra Garg, a CBI official, who was nowhere connected to the said PE being investigated. The averment made in the charge sheet that M/s Soma Enterprise Ltd. had feared for its reputation and loss of Government work is not supported by any cogent evidence on record.

16.2 On the other hand, learned counsel appearing on behalf of CBI has submitted that the charges against the petitioner company of offering bribe of Rs. 2 crores and subsequent payment of Rs. 16 lacs on its behalf can stand together with allegations against Mr. L.P. Padhy of offering a bribe of the same amount, i.e., Rs. 2 crores through the same conduit to the same complainant.

17. In my considered view, the supplementary charge sheet filed by CBI on 30.12.2022 was admittedly not before the learned Special Judge, when he passed an order on charge on 02.07.2022, amended by an order dated 14.07.2022 in the present case. Had the supplementary charge sheet been

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

before the learned Special Judge on an earlier date, he would have come to know about two versions of the same incident, i.e., offering of bribe of Rs. 2 crores to Mr. Asra Garg on behalf of the present petitioner company, i.e., M/s Soma Enterprise Ltd. and offering of the same amount of bribe through the same alleged conduit, i.e., Mr. Dinesh Chand Gupta by Mr. L.P. Padhy, and then the learned Special Judge would have an occasion to weigh both the versions of the same incident and he would have been in a better position to take a call as to which person, i.e., the juristic person being M/s Soma Enterprise Ltd. or a human person, i.e., Mr. L.P. Padhy had offered the bribe of Rs. 2 crores to Mr. Asra Garg, a CBI official, through the same conduit, Mr. Dinesh Chand Gupta.

17.1 It is pertinent to mention here that it is not the case of CBI that a bribe of Rs. 4 crores, i.e., Rs. 2 crores by the present petitioner and further Rs. 2 crores by Mr. L.P. Padhy was offered to Mr. Asra Garg. The amount of the offered bribe remains the same, i.e., Rs. 2 crores. If the present charge against the petitioner company, i.e., M/s Soma Enterprise Ltd. and the charge against Mr. L.P. Padhy remain as it is, then one fails to understand as to how CBI will lead evidence in two diametrically opposite directions to prove its allegation that a bribe of Rs. 2 crores was offered by two different persons/entities. The situation cannot be allowed to remain fluid, without taking final call at the stage of framing of charge itself with a view to charge the person (juristic or human), who is alleged to have offered a bribe of Rs. 2 crores to Mr. Asra Garg, which prompted him to lodge a complaint with CBI. The best course in the present circumstances is to set aside the order(s) on charge against the petitioner company and remand back the matter.

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022



Neutral Citation Number 2023:DHC:4031

18. In view of the above, I hereby set aside the order framing charge against the present petitioner, M/s Soma Enterprise Ltd. dated 02.07.2022, further amended by an order dated 14.07.2022 and the charge framed against the petitioner company under Section 120B IPC read with Section 7A, 8, 9, 10 and 12 of the PC Act and separate substantive charge under Section 9 and 12 of the PC Act, 1988.

19. The parties shall appear before the learned Special Judge on 10.07.2023 and shall address arguments on charge. Both the parties may address arguments on all the grounds raised before this Court.

20. The learned Special Judge is requested to consider the allegations in the original charge sheet on 08.11.2019 and the supplementary charge sheet filed on 30.12.2022 as well as arguments on the grounds raised in the present petition and pass a detailed reasoned order on charge.

21. It is imperative to mentioned here that this Court has not expressed any opinion regarding the merits of the case *qua* the present petitioner as well as Mr. L.P. Padhy and the learned Special Judge shall not get influenced by anything stated herein above.

22. A copy of this order be sent to the learned Special Judge for information and further action.

23. The present writ petition is disposed of with the above directions.

TALWANT SINGH, J

MAY 31, 2023/pa

Signature Not Verified

Digitally Signed
By: AANCHAL K AGGAR

Signing Date: 02.06.2023 16:36 W.P. (CRL) 1800/2022