

\$~

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

%

Reserved on: 14th February, 2023

Pronounced on: 24th March, 2023

+ **CRL.M.C. 3173/2021**

DBS BANK INDIA LIMITED

..... Petitioner

Through : Mr.Jayant Bhushan, Senior Advocate with Mr.Arshdeep Singh Khurana, Mr.Amit Jajoo, Ms.Sushmita Gandhi, Mr.Bhargav Kosuru, Mr.Harsh Srivastava, Mr.Amartya Bhushan, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through : Mr.Mukesh Kumar APP for the State with ACP Manoj Kumar, PS EOW.

Mr.Mohit Mathur, Senior Advocate with Mr.Sandeep Das, Mr.Lakshya Dheer and Mr.Harsh Gautam, Advocates for R2

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition has been filed seeking quashing of the supplementary chargesheet dated 12.02.2021, summoning order dated 16.02.2021 arising out of FIR No.189/2019 registered by EOW, Mandir Marg under Section 409/120B IPC and the consequential proceedings arising therefrom.

2. The petitioner is a banking company incorporated under the Companies Act, 2013 having its registered office at Connaught Place, New Delhi, a wholly owned subsidiary of foreign entity i.e., DBS

Singapore Limited. The Government of India on 25.11.2020, while exercising its powers under Section 45 of the Banking Regulations Act, 1949 directed non-voluntary amalgamation of the petitioner with *erstwhile* Laxmi Villas Bank (LVB) owing to the precarious financial condition of LVB, in order to safeguard the interests of the customers, depositors, creditors, employees of LVB. The respondent no.1 registered an FIR No.189/2019 on 23.09.2019 at the behest of the complainant/respondent no.2 under Section 409/120B IPC pertaining to misappropriation of certain fixed deposits, deposited with the *erstwhile* LVB as security against short term loans availed by the group companies of the respondent no.2, RHC Holding Pvt. Ltd. and Ranchem Private Limited. The said fixed deposits were allegedly appropriated by *erstwhile* LVB upon default in repayment of the outstanding loans by the group companies of respondent no.2.

3. The learned APP for the State however argued in November, 2016 RFL placed an amount of Rs.400 crores in two fixed deposits (FDs) with LVB. These FDs were created by RFL for short term tenor with intention to keep them free from all and any encumbrance. In January 2017, RFL placed an additional amount of about Rs.350 crore in another couple of FDs with LVB. Like with the first 2 FDs, these 2 FDs were also created by RFL for short term tenor with the intention to keep them free from all and any encumbrance. These were short term FDs, and were renewed by RFL from time to time till its maturity dated July, 2017. However, on 31.07.17, RFL was shocked to receive an email from LVB with a statement of accounts *qua* RFL's current account. RFL discovered that LVB had credited the proceeds of the FDs to RFL's current account and

subsequently debited from *RFL* 's current account a cumulative amount of Rs.7,23,71,50,920/- without prior intimation to *RFL*. It is alleged *LVB* and the other accused person came to an understanding for onward lending of *RFL* 's funds and *LVB* would have made huge gains from such lending since it got the FDs/funds @4.5% interest and they had purportedly lent the money @ 10% interest.

4. During the course of investigation, the complainant company, through Manpreet Singh Suri, its authorised representative, had filed a representation citing Final Report dated 21.03.2020 filed by the EOW in FIR No.189/2019. From this final report it is understood *LVB* was not been made an accused by the EOW in the Final Report. It is alleged from the documents available with the Final Report, there is evidence to show that *LVB* has benefitted from the entire fraud and should have been made an accused along with its promoters, and accordingly, further investigation was carried out. Based on review of transactions in deposit loan account statements of *RHC* and *Ranchem*, it was noted total interest income of INR 1,15,93,63,273.07 was charged from November, 2016 till February, 2018. It was observed out of total interest of INR 1,15,93,63,273.07; INR 39,30,59,049 was paid by the borrowers to *LVB* and balance INR 76,63,04,227.07 was recovered from fixed deposit at the time of final set off. Thus it is seen *LVB* acted on the premise of three companies i.e., *RFL*, *RHC Holding* and *Ranchem*, the group companies under the same promoters and created security against FDs of *RFL* without ensuring proper authorization by *RFL*. As has been discussed above, the loans given by *LVB* to *RHC Holding* and *Ranchem* against FDs of *RFL* were ultimately utilized by *RHC Holding* and on non-

repayment of the said loans to *LVB*, the FDs of *RFL* were adjusted by *LVB* against the outstanding loan amounts. Hence, it is concluded that the beneficiary of the funds of *RFL* to the tune of Rs.729.13 crores were actually RHC Holding and in the absence of adequate documentation to support express authorization by *RFL* in this regard, it is concluded that *LVB* aided the promoters of *RFL* to divert funds for their own benefit. In this manner, bank has revoked the FDs to the tune of Rs.729 crores and also benefited with interest to the tune of Rs.115 crores approx.

5. The learned APP further argued from the investigation conducted so far, supplementary chargesheet was prepared against LVB Bank (Now DBS Bank India Limited) and bank officials namely (1) Anjani Kumar Vermam; (2) S.Venkatesh; (3) Pradeep Kumar and (4) Parthsarathi Mukherjee (without arrest) and accused persons Malvinder Mohan Singh, Shivinder Mohan Singh, Sunil Godhwani, Hemant Dhingra, Kavi Arora and company RHC Holding Pvt. Limited, M/s.Ranchem Pvt. Limited as they acted in connivance with each other, being members of a well planned conspiracy and interacted with each other and committed acts of commission and omission in furtherance of the conspiracy to cheat the complainant company, hence, this charge sheet against the accused person, company and Bank under Section 409/120B IPC was prepared by putting their names in column no.11.

6. The learned senior counsel for petitioner argues the LVB was amalgamated through a non-voluntary scheme of amalgamation, sanctioned by the Central Government, however later, the *impugned* supplementary chargesheet was filed to implead the petitioner as an accused. It is alleged the learned ACMM without any application of

mind, took on record the impugned chargesheet and *vide* impugned summoning order dated 16.02.2021 had issued summons dated 09.04.2021 to the petitioner.

7. It was argued the impugned FIR was only against certain *officers* of the LVB, but the *LVB* itself *was never made an accused*. It is alleged only pursuant to sanction of mandatory scheme of amalgamation, the respondent no.1 at the behest of respondent no.2 *vide* an impugned supplementary chargesheet, seek to implead the petitioner as an accused by applying the principle of *alter-go*.

8. Reference was made to summoning order annexure-P2 to say no reasoning is given to summon the petitioner. The notification dated 25.11.2020 is annexed at annexure P5 and it talks about amalgamation of the *LVB* with the *DBS Bank India Ltd.* and clause 3(3) of the notification read as under:

“3. Transfer of assets and liabilities and general effect thereof.-

(1)-(2) xxxxxxxx

*(3) If on the appointed date, any cause of action, suit, decrees, recovery certificates, appeals or **other proceedings of whatever nature** is pending by or against the transferor bank before any court or tribunal or any other authority (including for the avoidance of doubt, an arbitral tribunal), the same shall not abate, be discontinued or be ill any way prejudicially affected, but shall, subject to the other provisions of this Scheme, be **prosecuted and enforced by or against** the transferee bank:*

Provided that where a contravention of any of the provision of any statute or of any rule, regulation, direction or order made thereunder has been committed by or any proceeding for a criminal offence has been instituted against, a director or secretary, manager, officer or other employee of the transferor bank before the appointed date, such director, secretary, manager, officer or other employee shall, without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), be liable to be proceeded against under such law and punished accordingly, as if the transferor bank, being a banking company had not been dissolved.”

9. It is argued only civil liability was transferred and there was no clause *qua* criminal proceedings *if* to be continued against the transferee company though such proceeding may continue against the erstwhile employees of LVB. It is argued criminal proceedings *cannot be transferred by way of a contract or by a statute*. References were made to *Nicholas Piramal India Ltd. vs. S.Sundaranayagam* in CRL.M.C.5392/2005 decided on 23.08.2007; *Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and Others* (2014) 15 SCC 263; *M.Abbas Haji vs. T.N.Channakeshava* (2019) 9 SCC 606; and *Sham Sunder and Others vs. State of Haryana* (1989) 4 SCC 630. It was argued aforesaid judgments squarely cover the case of the petitioner.

10. Heard.

11. Admittedly, LVB Bank was amalgamated with DBS Bank by RBI. It was argued by respondent since the amalgamation had come into effect from 27.11.2020, DBS Bank is used interchangeably with LVB, as allegedly there is no provision of abatement of criminal proceedings against DBS Bank, merely on account of amalgamation.

12. In *Brooke Bond Lipton India Ltd. vs. State of Assam* 2004 LawSuit (Guwahati) 405, the Court held:

“(22) On analysis of the submissions made and on perusal of the various decisions as quoted above, we hold as below:

(i) a criminal proceedings **shall not abate ipso facto on merger or amalgamation** of a company; (ii) the question against whom the prosecution would continue **shall depend upon the terms and conditions of merger/ amalgamation**; (iii) a pending criminal prosecution cannot be thrown overboard by subsequent dissolution/amalgamation or merger of a firm. We, therefore, hold that the petitioner company is not entitled to the benefit of abatement of proceedings against it on the ground of the amalgamation.

(25) In the result, we hereby quash the charges against the said company. The trial shall, however, proceed against the other accused persons. Send down the records.”

13. Similarly in *Speed Line Agencies vs. T.Stanes and Company Limited* (2010) 6 SCC 257, the Court held:

*“33. As per Clause 1.7 of the Scheme, all assets vest in the transferee company. As per **Clause 6**, any suit, petition, appeal or other proceedings in respect of any matter **shall not abate or be discontinued** and shall not be prejudicially affected by reason of the transfer of the said assets/liabilities of the Transferor Company or of anything contained in the scheme but the proceedings may be **continued, prosecuted and enforced by or against** the transferee company in the same manner and to the same extent as it would be or might have been continued prosecuted and enforced by or against the Transferor company as if the scheme has not been made. In view of the same, by virtue of the provisions in the Scheme of Amalgamation and operation of Order 21 rule 16 of C.P.C., the decree holder is deemed to execute the decree.”*

14. Further in *LA Reine C.Black & Decker Manu. Co.* (1975) 1 SCR 411, the Supreme Court of Canada held as under:

“.....such as criminal responsibility, must be regarded as severed from the amalgamating companies and outside the amalgamated company. What happens to these vestigial remnants? Are they extinguished and if so, by what authority? Do they continue in a state of ethereal suspension? Such metaphysical abstractions are not, in my view, a necessary concomitant of the legislation. The effect of the statute, on a proper construction, is to have the amalgamating companies continue without subtraction in the amalgamated company, with all their strengths and their weaknesses, their perfections and imperfections, and their sins, if sinners they be. Letters patent of amalgamation do not give absolution.”

15. Now, if one peruse sub clause 3 of Clause 3 of Scheme of Merger, it may appear there is no impediment to *prosecute* the petitioner company as the proviso of the said Scheme specifically says any cause of action or any other proceedings *of whatsoever nature*, against the transferee bank, the same *shall not abate* but shall be *prosecuted* by or *against* the transferee bank. The proviso to sub clause 3 appears to be only *qua*

Director, Secretary, Manager, officer or other employee of the transferee bank who has actually committed criminal offence.

16. Section 45 of the scheme is also relevant to note viz.:

“45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstruction] or amalgamation.—

(1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or [any agreement or other instrument], for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of [a banking company].

(2) to (4) xxx

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:—

(e) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the [reconstruction or amalgamation]”

17. Now, *per* clause 13 of the notification if there exists any dispute *qua* interpretation of any of the clauses, the parties need to approach the RBI to sort out such differences and filing of this petition would not be an answer. Clause 13 of the Scheme specify:-

*“13. Interpretation of provisions of this Scheme. – If any doubt arises in the **interpretation** of the provisions of this Scheme, the matter shall be **referred** to the Reserve Bank and its views on the issue shall be final and **binding** on all concerned.”*

18. In view of the submission of the parties, it is clear *prima facie* issue of the current petition is an interpretation of Clause 3(3) of the Scheme [G.S.R. 731(E)] notified by the Ministry of Finance, Department of Financial Services, Banking Division on 25th November, 2020 *qua* criminal proceedings constituted against the transferor bank before the non-voluntary amalgamation owing to the precarious financial condition of LVB, in order to safeguard the public interests, particularly the interest

Crl.MC.No.3173/2021

Page 8 of 11

of the depositors will be carried forward to transferee bank or not. Based on the submissions made and on perusal of the various decisions viz. *Brooke Bond Lipton India Ltd* (supra) and others it is reasonable to assume interpretation(s) of the clause(s) must be examined *in terms of* the scheme of amalgamation.

19. Considering the facts and circumstances of the present case especially clause 3(3) and 45(5)(e) (supra) and where the very object of the scheme is to safeguard the public interest, particularly the interest of the depositors and according to the status report submitted by the State, the said fraud benefited the erstwhile bank, therefore, in my opinion, quashing of summoning order against the petitioner *at this stage* may hamper the very purpose of the scheme, as there is no explicit provision for abatement of criminal proceedings against the DBS Bank in the scheme sanctioned by RBI.

20. Thus, in light of the spectrum of facts, as the scheme provides a specific clause in case of interpretation of provisions, it will be appropriate for the parties to refer to the Reserve Bank for clarification of Clause 3(3) of Scheme *qua* criminal proceedings constituted against transferor bank *if be carried forward to transferee bank or not after the amalgamation under the current scheme*. After the Reserve Bank clarifies, parties be directed to approach the Court for requisite remedy and till then impugned summoning order dated 16.02.2021 against the DBS Bank India Limited shall remain stayed.

21. With respect to the petitioner's submission, *Nicholas Case* (supra) may not be applicable as amalgamation in the said case was voluntary where companies themselves formulated the terms and conditions of the

said mergers; similarly, *Mcleod Russel* (supra) will not apply as the regulatory authority did not sanction the merger to safeguard the public interest, but in this case the court held damages would be recoverable jointly and severally from the erstwhile and current management, even after the MOU of the merger clearly states the exclusive liability of the erstwhile company only. Further, *M. Abbas Haji* (supra) will also not be applicable; the said case discusses the liability of legal representatives of the deceased for conviction of a natural person, whereas in the present case question is of transfer of criminal proceedings in the case of non-voluntary amalgamation of two artificial legal entities and lastly, *Shyam Sunder's* (supra) question discussed in the said case was the criminal liability of the firm's partner for the acts committed by a firm and the knowledge of partners pertaining to that act committed.

22. Now the issue *if* a transferee company can entail criminal liability, the following decisions would also be relevant. In Ruling No.2333 of 25.11.2010 in Cour de cassation (Court of Cassation)-Criminal Chamber, it was held:

*“1. Article 121-1 of the Criminal Code, interpreted in the light of Council Directive 78/855/EEC of 9 October 1978 on the mergers of public limited liability companies, last codified by Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 and Article 6 of the European Convention on Human Rights infers that in the case of a merger where a company is acquired by another company falling within the scope of the above mentioned Directive, the **acquiring company may be sentenced to a fine or to seizure measures for acts constituting an offence committed by the company being acquired prior to its acquisition.**”*

23. In *United States of America vs. Alamo Bank of Texas*, No.88-6112 United States Court of Appeals, Fifth Circuit decided on 07.08.1989, held:

*“Under the federal bank statute, CNB continues to exist, albeit now as part of Alamo. “[T]he resulting state bank shall be considered the same business and corporate entity as the national banking association. . . .” 12 U.S.C. 214b. Thus, Alamo is CNB, and it is CNB now named Alamo which is responsible for CNB's actions and liabilities. **This includes criminal responsibility.** See *Melrose Distillers, Inc. v. United States*, 359 U.S. 271, 274, 79 S.Ct. 763, 765, 3 L.Ed.2d 800 (1959).”*

24. Thus, with directions contained in para No.20 above, the petition stands disposed of along with pending application(s).

YOGESH KHANNA, J.

MARCH 24, 2023

DU

