$~**S-37**

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

\+ **LPA 359/2024 & CM APPL.26691/2024**

JAGJIV KUMAR ARORA & ANR. ..... Appellants

Through: Mr.Manohar Malik, Advocate with Mr.Prateek Chauhan and Ms.Astha Gumber, Advocates.

versus

PUNJAB NATIONAL BANK & ANR. ..... Respondents

Through: Mr.Hashmat Nabi, Advocate (through VC).

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% **06.05.2024**

CM APPL.26692/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Accordingly, the application stands disposed of.

LPA 359/2024 & CM APPL.26691/2024

3. Present appeal has been filed by the Appellants challenging the order dated 29th April, 2024 passed by the Learned Single Judge of this Court in WP(C) 5876/2024 whereby an interim stay was not granted to the Appellants.

4. Learned Counsel for the Appellants states that the Learned Single Judge failed to quash the arbitrary and illegal declaration of the bank account of the Appellants and the Respondent No. 2 Company as '*fraudulent*'.

5. He submits that the action of the Respondent No. 1 bank is contrary to the law laid down by the Supreme Court in ***"State Bank of India vs Rajesh Agarwal, Civil Appeal No. 7300 of 2022".*** He emphasizes that the impugned order has been passed in violation of the principles of natural justice. He points out that no criminal proceedings are pending either against the Appellants or the Respondent No. 2 company.

6. He further states that the impugned order has been passed on the wrongful and deceptive submission of the Respondent No. 1 Bank that the One Time Settlement ('OTS') proposal submitted by the Appellants has no bearing on the ongoing criminal case/investigation against the Appellants.

7. He lastly states that the continuity of the *"fraud'* status is causing immense harassment, undue hardship and prejudice to the Appellants as they are unable to open a new bank account.

8. During the course of hearing, this Court had put a pointed question to the learned counsel for the Appellants as to whether Respondent No.1-bank had issued any prior notice to the Appellants before declaring bank account of the Appellants as fraud. He candidly admits that such a notice had been issued. However, he emphasises that the relied upon documents had not been furnished. A perusal of the paper book reveals that the Appellants had even filed a reply before the Respondent No.1 bank prior to being declared as a fraud account. Consequently, this Court is of the prima facie view that principles of natural justice have been complied with in the present case.

9. This Court has also perused the OTS offered by the Punjab National Bank vide letter dated 20th April, 2024. From the said letter, it is apparent that OTS was offered on the following relevant terms:-

"

1. *Entire OTS amount of Rs.23.00 Crore shall be paid within 3 months as under:*
   - *Rs. 0.10 cr deposited as upfront amount (kept in no lien account) to be appropriated simultaneously upon approval of OTS.*
   - *Rs. 0.40 cr to be paid immediately at the time of conveying of sanction of OTS.*
   - *Rs. 2.25 cr to be paid within 4-6 weeks from the date of Conveying sanction to make up the 10% of the OTS amount.*
   - *Balance amount of Rs. 20.25 crore to be paid within 3 months of conveying of sanction of OTS to the borrower.*
2. *Post-dated cheques for the balance OTS amount shall be provided at the time of acceptance.*
3. *Statutory liabilities towards governments dues, if any are to be paid by the party/borrower over and above of the settlement amount."*

10. Admittedly, the Appellants have not even paid the first two installments for commencement of OTS. No post-dated cheques have been tendered by the Appellants till date. Consequently, the reliance of the appellant's on the OTS is misconceived.

11. In any event OTS and the challenge to the bank account as fraud can proceed simultaneously in accordance with June 8, 2023 circular issued by the Reserve Bank of India.

12. Further, if the OTS culminates in a final settlement, the declaration of the bank account as fraud would cease to operate.

13. Harassment and undue hardship that the Appellants complain of, is of their own making.

14. At this stage, learned counsel for the Appellants states that OTS package would not be acted upon by the Appellants as the banks are insisting on prior approval from the aforesaid official liquidator.

15. However, perusal of the offer of OTS clearly indicates that permission for official liquidator was the responsibility of the borrower.

16. Since this Court is informed that winding up petition filed under Section 433 of the Companies Act, 1956 in Co.Pet. 587/2014 has been adjourned sine die and the factum of the pendency of the said petition is being relied upon by the Appellants in various proceedings, this Court directs the Registry to list the aforesaid company petition before Company Court forthwith.

17. Accordingly, the present appeal along with application is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 6, 2024
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