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

Reserved on: 27th August, 2021

Pronounced on: 2nd September, 2021

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CRL.M.C. 1372/2021

CRL.M.A. 8423/2021

RAVINA AND ASSOCIATES PVT
LTD & ANR.

..... Petitioners

Represented by: Mr. Kapil Sibal, Senior Advocate
with Mr. Sandeep Kapur, Mr. Shivek
Trehan, Mr. Vivek Suri,
Mr. Abhimanshu Dhyani, Mr. Sahil
Modi, Mr. Pranay Govil,
Mr. Adit Pujari, Advocates

Versus

CENTRAL BUREAU OF
INVESTIGATION & ANR.

..... Respondents

Represented by: Mr. Anupam S Sharma, SPP for CBI
with Mr. Prakarsh Airan and
Ms. Harpreet Kalsi, Advocates for
respondent No.1.
Mr. Ruchir Bhatia, Sr. Standing
Counsel for respondent No. 2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

JUDGMENT :

1. Aggrieved by the impugned order dated 17th May 2021 passed by the learned Special Judge, P.C.Act, CBI-03 in RC 6(A)/2006(CC/R.

No.82/2019) titled as ‘CBI Vs. FGUP VO TECHNOPROMEPORT’, ‘State Vs.C.P.Jain etc.’ and ‘Ravina & Associates Pvt. Ltd. & Anr. Vs. CBI & Anr.’ whereby the two applications; one filed by the petitioners under Sections 451/457 CrPC and the other filed by the Income Tax Authorities under Section 226(4) of the Income Tax Act 1961 were dismissed, the petitioners prefer the present petition.

2. A brief factual narration resulting in filing of the two applications is that the above-noted FIR was lodged on 6th March 2006 by the CBI on a reliable information that certain officials of the National Thermal Power Corporation Ltd. (NTPC) entered into a criminal conspiracy with the GRUP VO TECHNOPROMEXPORT RUSSIA (in short, ‘M/s.T.P.E.Russia’) and its associate companies in the years 2002 to 2005, in pursuance whereof, in the year 2005 an amount of US\$ 20 million was paid/received against illegal gratification/kickbacks in the bank account of the petitioner M/s. Ravina & Associates Pvt. Ltd. (in short ‘RAPL’) in U.K. Pursuant to the Letters Rogatory issued, an order was issued freezing the accounts of the two petitioners i.e. RAPL and Ravina Khurana. Initially, the CBI filed a closure report. However, the same was not accepted by the learned trial court, which directed further investigation. Pursuant to the further investigation conducted, CBI filed a charge sheet against M/s. T.P.E. Moscow Russia, Mr.Sergei Mukhin, Mr.Alexander V. Schegolev representative Director of M/s. T.P.E. and the petitioners herein under Section 420 read with 120B IPC. No officer of the NTPC was found involved and no charge sheet for offence punishable under the provisions of the Prevention of Corruption Act was filed. No cognizance on the report filed by the CBI after carrying out further investigation has been taken by the learned Special Judge which has

directed the CBI to conduct further investigation, which order of the learned Special Judge has been challenged by the CBI before this Court as the case of CBI is that it has carried out the investigation.

3. According to the CBI, investigation revealed that M/s. TPE Russia on receiving the funds from NTPC, paid illegal gratifications to petitioner No. 1 RAPL which have been detailed in the additional affidavit filed by the CBI, as under:-

Sl. No.	Amount of Invoice raised by M/s Ravina & Associates Pvt. Ltd.	Amount transferred by TPE to M/s RAPL	Date of Transfer	Place of receipt by M/s RAPL
1	US\$ 762,686.83 (0.195% of total contract price of \$391,121,452 of Contract No. CS-9558-102-2- FC-COA-4520)	Rs.3,33,06,123.61	20.04.05	Deutsche Bank, India
2	US\$ 20,748,993.03 (5.305% of total contract price of \$391,121,452 of Contract No. CS-9558-102-2- FC-COA-4520)	US\$10,373,771.06	05.05.05	National Westminster Bank, London
		US\$10,372,591.07	19.05.05	National Westminster Bank, London
3	Rs.36,445,020 (5.305% of total contract price of	US\$825,481.77	21.02.06	National Westminster Bank

4. An application was filed under Section 226(4) of the Income Tax Act by the Income Tax Department for recovery of the tax demand due

towards the two petitioners and according to the Income Tax Department, the total outstanding dues against the two petitioners were as under:-

“Ms.Ravina Khurana

Asstt. Year	Total Tax outstanding
2000-01	3,63,96,009
2001-02	86,61,167
2002-03	21,00,216
2003-04	6,70,811
2004-05	54,78,261

Ravina & Associates Pvt. Ltd.

Asstt. Year	Total Tax outstanding
2004-05	5,66,83,083
2005-06	2,07,98,454
2006-07	34,08,03,384

Note: The above tax outstanding does not include interest u/s 220(2)”

5. Thus, according to the Income Tax Department, since the petitioners were maintaining accounts with National Westminster Bank, London which has been frozen by the order of the Special Court and could not be operated, the Income Tax Department sought recovery of the outstanding tax demand from the amounts lying deposited.

6. The earlier applications filed by the Income Tax Department Authority and the petitioners were dismissed vide order dated 26th November 2009 which order was challenged before this Court and vide order dated 6th August 2012 in Crl.Rev.P.128/2010, this Court disposed of the petition setting aside the order passed by the learned Special Judge, directing the learned Special Judge to pass appropriate orders for bringing back the amount lying in the Natwest Bank, London bearing Account Nos. 1400103368092, 44259816, 1400021000 and 18009336. The learned

Special Judge was also directed that while passing the orders to the aforesaid effect, the learned Special Judge shall direct the money to be remitted in the SBI, Tis Hazari Branch in the name of the Court of Special Judge and once the money is received, the Special Judge would be then at liberty to deal with the same in any way if thinks appropriate after taking into consideration the rival claims of the petitioners, CBI and the Income Tax Department.

7. This amount so frozen at the National Westminster Bank, London was transferred to Account No. 33629397157 opened on 31st January 2014 in the name of Special Judge CBI-01 at the Tis Hazari Branch of State Bank of India and the three overseas remittance in the said account are detailed, as under:-

DATE	AMT IN USD / GBP	CONVERSION @	CONVERTED AMT IN INR
01/07/14	USD 20830987.93	@ 60.05	₹ 125,09,00,825
01/07/14	USD 2165701.83	@ 60.05	₹ 13,00,50,395
07/07/14	GBP 48234.77	@ 102.4	₹ 49,43,702
Total			1,38,58,94,922

8. The above amount was converted into Special Term Deposit Receipt for ₹138,58,81,245/- and as on date, the total in principal amount of Special Term Deposit Receipt is ₹192,02,26,514/-, the interest accrued thereon is ₹58,39,592.95/- and the FDR is in auto renewal mode.

9. Thereafter, again an application was filed by the Income Tax Department which was again objected to by the CBI. As per the application filed under Section 226(4) of the Income Tax Act, the Income Tax

Department sought recovery of income tax penalty and interest of ₹3,18,16,029/- for the assessment years 2000-2001 to 2004-2005 payable by Ms. Ravina Khurana and of ₹87,22,74,197/- for the assessment years 2003-2004 to 2006-2007 upto 31st July 2012 by RAPL. The CBI thereafter filed its closure report under Section 173 CrPC which was rejected by the learned Special Judge and directions were issued for a further investigation vide order dated 18th April, 2015. The application filed by the Income Tax Department was kept pending to be decided after the decision on the closure report of the CBI is taken.

10. Assessment of the income tax demand qua the petitioners was carried out and vide order dated 7th January, 2010 a total demand of ₹55,16,66,015/- was made, out of which ₹25,50,518/- had been recovered through attachment of bank accounts and the balance demand of ₹54,91,15,497 is pending. Challenging the assessment order, the petitioners filed an appeal before the Commissioner Income-Tax seeking stay of the demand which was rejected. The stay application filed by the petitioners before the Commissioner taking one of the grounds that the bank accounts of the assesses maintained at NatWest Bank, London were under restraint by the order of the Special Judge, CBI Court, Delhi and hence assessee is not in a position to deposit the demanded income-tax, was also rejected noting that the petitioners have other assets to pay the amount. The petitioners thereafter filed WP(C) 328/2010 and WP(C) 340/2010 respectively seeking stay of recovery of the outstanding demand of ₹54,91,15,497 for the assessment years 2004-05, 2005-06 and 2006-07 in the case of petitioner No.2 or in the alternative the outstanding amounts be recovered from the accounts of petitioners in the NatWest Bank, London. Challenge was also

laid to the order dated 7th January, 2010 passed by the Commissioner of Income Tax rejecting the application for stay of demand.

11. Vide judgment dated 20th April, 2011, the Division Bench of this Court held that the petitioners were not entitled to the protection or benefit under Section 220(7) of the Income-Tax Act and held that the money in NatWest Bank, London is subject matter of the restraint order passed by the Court of U.K. on the letter of rogatory of the Special Judge, Delhi. The petitioner may not have any right to claim the said money, if it is corruption or bribe money. The said money may be forfeited under the foreign exchange law or Prevention of Corruption Act or Prevention of Money Laundering Act.

12. In the meantime, petitioner RAPL filed a writ petition being W.P.(Crl.) 783/2021 before this Court with the prayer that the application dated 23rd August 2012 of the Income Tax Authorities for release of the amount to the tune of ₹41,13,73,732/- be heard expeditiously in the wake of the settlement reached between the Income Tax Authorities and the petitioner RAPL, on the Income Tax Authorities launching the scheme 'Vivad se Vishwas'. In W.P.(Crl.) 783/2021 filed by the petitioners seeking early disposal of the application of the Income Tax Authorities, this Court vide order dated 16th April 2021 directed the learned Special Judge, CBI who was seized of the proceedings in RC 6(A)/2006 (CC/R.No.82/2019) to dispose of the application filed by the Income Tax Authorities under Section 226(4) of the Income Tax Act by 26th April 2021. Subsequent thereto, the petitioners filed an application for taking on record the order dated 16th April 2021 passed by this Court in W.P.(Crl.) 783/2021 and also the documents and for passing appropriate orders. Thereafter, on a

clarification sought by the learned Special Judge, the petitioners filed an application under Section 451/457 CrPC which was heard and decided vide the impugned order.

13. By the impugned order, the learned Special Judge apparently was of the view that it was not for the Income Tax Department to espouse the cause of the petitioners and as to from where, the petitioners who are accused pay the income tax dues. The learned Special Judge vide the impugned order held that neither Sections 451/457 CrPC nor Section 226(4) of the Income Tax Act were applicable and thus, the two applications neither showed any credit nor merit and were dismissed.

14. As is evident from the facts noted above, after registration of the RC-DAI-2006-A-0006 dated 6th March 2006, CBI sought freezing of the accounts in London, however, thereafter, filed a final report which was not accepted by the learned Special Judge and on further investigation, a charge sheet under Sections 420/120B IPC only has been filed and not under the provisions of the Prevention of Corruption Act, whereas, after the assessment was conducted, the Income Tax Authorities filed an application before the learned Special Judge, CBI, Tis Hazari seeking de-freezing of the accounts under Section 226(4) of the Income Tax Act so as to enable it to recover the tax demand on 20th December 2008 itself.

15. The issue before this Court is that whether the entire amount frozen in London and transferred to India is the case property or alleged proceeds of the crime and may be liable for confiscation in case the petitioner's are convicted and thus cannot be utilized for fulfilling the tax demands due against the petitioners.

16. Learned Senior Counsel for the petitioners contends that despite the

investigation pending since 2006, no cognizance of the offence has been taken, much less, framing of any charge against the petitioner even for the offences punishable under Section 420/120-B IPC. The CBI had filed the closure report and only on the directions of the learned Special Judge, CBI, further investigation was carried out and charge-sheet for offences punishable under Section 420/120-B IPC has been filed on which also no cognizance has been taken as the learned Special Judge has directed further investigation which order has been challenged by the CBI itself, according to which investigation is complete. It is contended that even though this Court will not go into the merits of the allegations against the petitioners, however, it is necessary to point out that prima facie no offence of cheating is made out against TPE and the petitioners as the tender was awarded to the TPE after calling for the bids and the TPE's bids were L-1, hence accepted. Thus there can be no element of cheating in an open tender. Further, the allegations of cheating are against TPE and it is alleged that the petitioners are the conspirators, however, no accounts of TPE have been frozen and ultimately if both are convicted, entire recovery will not be made from the petitioners alone. In case the petitioners do not deposit the amount before the Settlement Commissioner, the petitioners' liability towards the tax will be very high and in case in future the petitioners are discharged or acquitted, the serious loss caused to the petitioners cannot be compensated. It is further contended that even as per this charge-sheet, the entire amount received which was frozen and received in India lying deposited in the name of learned Special Judge at SBI, Tis Hazari is not the amount transferred by TPE in relation to this transaction only. Even as per the CBI there was one more transaction between TPE and the petitioners. Therefore, the amount

which does not relate to the impugned transaction alongwith the interest accrued thereon be directed to be released to the income-tax authorities and in respect of the further amount of tax liability, the petitioner is willing to furnish an affidavit that in case the petitioners are convicted and the amount liable to confiscation, the same will be deposited by the petitioners.

17. Hon'ble Supreme Court in the decision reported as (1999) 7 SCC 685 State of Maharashtra Vs. Tapas D.Neogy, dealing with the case property and affirming the decision of the Madras High Court in Bharath Overseas Bank Vs. Minu Publication 1988 Madras Law Weekly (Crl.) 106, held as under:-

“9. In Bharath Overseas Bank v. Minu Publication, [1988 MLW (Cri) 106] a learned Single Judge of the Madras High Court considered the same question and came to the conclusion that the expression "property" would include the money in the bank account of the accused and there cannot be any fetter on the powers of the police officer in issuing prohibitory orders from operating the bank account of the accused when the police officer reaches the conclusion that the amount in the Bank is the outcome of commission of offence by the accused. The Court considered the fact as to how in modern days, commission of white-collar crimes and bank frauds are very much on the increase and banking facilities have been extended to the remotest rural areas and, therefore the expression "property" may not be interpreted in a manner so as to exclude the money in a bank which in turn would have the effect of placing legal hurdles, in the process of investigation into the crimes. According to the learned Judge, such literal interpretation of the expression "property" could not have been the intent of the framers of the Criminal Procedure Code. In para 11 of the said judgment, the learned Judge referred to the object behind investing the police with powers of seizure. It will be appropriate to extract the same in extenso:

"It would now be useful to refer to the object behind investing the police with powers of seizure. Seizure

and production in court of any property, including those regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence or any other property will have a twofold effect. Production of the above property may be necessary as evidence of the commission of the crime. Seizure may also have to be necessary, in order to preserve the property, for the purpose of enabling the court to pass suitable orders under Section 452 of the Criminal Procedure Code at the conclusion of the trial. This order would include destruction of the property, confiscation of the property or delivery of the property to any person claiming to be entitled to possession thereto. It cannot be contended that the concept of restitution of property to the victim of a crime, is totally alien to the Criminal Procedure Code. No doubt, the primary object of prosecution is punitive. However, Criminal Procedure Code does contain several provisions, which seek to reimburse or compensate victims of crime, or bring about restoration of property or its restitution. As Section 452 Cr.PC itself indicates, one of the modes of disposing of property at the conclusion of the trial, is ordering their return to the person entitled to possession thereto. Even interim custody of property under Sections 451 and 457 Cr.PC recognizes the rights of the person entitled to the possession of the properties. An innocent purchaser for value is sought to be reimbursed by Section 453 Cr.PC. Restoration of immovable property under certain circumstances, is dealt with under Section 456 Cr.PC. Even, monetary compensation to victims of crime or any bona fide purchaser of property, is provided for under Section 357 Cr.PC, wherein when a court while convicting the accused imposes fine, the whole or any part of the fine, if recovered, may be ordered to be paid as compensation to any

person, for any loss or injury, caused by the offence or to any bona fide purchaser of any property, after the property is restored to the possession of the person entitled thereto. This twofold object of investing the police with the powers of seizure, have to be borne in mind, while settling this legal issue."

10. This judgment of the learned Single Judge of the Madras High Court was followed in a later decision in the case of *Bharat Overseas Bank Ltd. v. Prema Ramalingam*, [1991 MLW (Cri) 353] wherein the learned Judge agreeing with *Padmini Jesudurai, J.* in *Bharat Overseas Bank* case [1988 MLW (Cri) 106] came to hold that money in a bank account is "property" within the meaning of Section 102 of the Criminal Procedure Code, which could be seized by a prohibiting order. In the aforesaid case, the learned Judge has also noticed the fact that the judgment of *Padmini Jesudurai, J.* in *Bharat Overseas Bank*, [1988 MLW (Cri) 106] was upheld by the Division Bench subsequently.

11. In the case of *Gurcharan Singh (Dr) v. State of Punjab*, [(1978) 80 Punj LR 514 (DB)] a Division Bench of the Punjab & Haryana High Court differing with the view taken by the Allahabad High Court in *Textile Traders*, [AIR 1960 All 405 : 1960 Cri LJ 871] came to hold that the bank account would be "property" and as such would be capable of being seized under Section 102 of the Code of Criminal Procedure.

12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein,

inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

18. As per the status report filed by the CBI, the amounts transferred by

TPE to RAPL in the NatWest Bank, London account, in relation to the impugned transaction are mentioned in entries 2 and 3 above, totalling to a sum of USD 2,15,71,843.90. However, the amount which was frozen and received in India is beyond the amount in relation to impugned transaction with TPE. The amount received in excess of the amount received from TPE by RAPL qua the impugned transaction cannot be prima facie termed as case property or the proceeds of the crime liable to be confiscated or for compensation in case the petitioners are charged and convicted. Consequently the learned Special Judge is directed to retain the amount received in lieu of the frozen amount of USD 2,15,71,843.90 alongwith the interest accrued thereon from the date of receipt till date and transfer the balance amount alongwith the interest accrued thereon received in the account at SBI, Tees Hazari, to the income-tax department.

19. Petition is accordingly disposed of.

**MUKTA GUPTA
(JUDGE)**

SEPTEMBER 02, 2021/akb