

**IN THE HIGH COURT OF KARNATAKA, BENGALURU**

**DATED THIS THE 19<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**BEFORE**

**THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT**

**WRIT PETITION NO.11532 OF 2023 (GM-RES)**

BETWEEN:

PIGEON EDUCATION TECHNOLOGY  
INDIA PRIVATE LIMITED.,  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 2013  
HAIVNG ITS REGISTERED OFFICE AT  
INDIQUBE ALPHA, NO.19/4, 27, ORR  
KADUBEESANAHALLI, BENGALURU – 560 103.  
REPRESENTED BY ITS DIRECTOR  
MR.VEDANT HAMIRWASIA.

...PETITIONER

(BY SRI.ADITYA SONDHI., SENIOR COUNSEL A/W  
SRI. KARAN JOSEPH., ADVOCATE)

AND:

1. DIRECTORATE OF ENFORCEMENT,  
BANGALORE ZONAL OFFICE, 3<sup>RD</sup> FLOOR,  
B BLOCK, BMTc SHANTINAGAR TTMC,  
K H ROAD, SHANTINAGAR,  
BENGALURU – 560 027.

2. THE ASSISTANT DIRECTOR,  
DIRECTORATE OF ENFORCEMENT,  
BANGALORE ZONAL OFFICE, 3<sup>RD</sup> FLOOR,  
B BLOCK, BMTc SHANTINAGAR TTMC,  
K H ROAD, SHANTINAGAR,  
BENGALURU – 560 027.

...RESPONDENTS

(BY SRI.A R L SUNDARESAN., ASGI A/W  
SRI.MADHUKAR DESHPANDE., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, CALLING FOR ALL OF THE RECORDS FROM THE RESPONDENTS IN CONNECTION WITH F NO T-3/BGZO/112/2023 AT ANNEXURE-A THAT PERTAIN TO THE PETITIONER AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

Petitioner, a Private Limited Company incorporated on 30.08.2019 under the provisions of the Companies Act, 2013, is complaining before the Writ Court against the Seizure Order dated 18.05.2023 issued by the respondents at Annexure-A, whereby the operation of the bank accounts in question have been stalled. The operative portion of the order reads as under:

**"ORDER**

***Therefore, I hereby order the seizure of the following movable properties in the name of Pigeon Education Technology India Private Limited as detailed below***

<b>Name of Bank/payment Gateway</b>	<b>Bank Account Number/ Merchant ID/Deposit</b>	<b>Type of account</b>	<b>Closing Balance as on 18<sup>th</sup> May, 2023 (in Rs.)</b>
ICICI Bank	142205002450	Current Account	43,53,789
CITI Bank	0557902007	Current Account	2,48,72,299
HSBC	073-439176-001	Current	15,06,816

		Account	
	073-439176-051	Term Deposit	5,00,000
Razorpay	DXM32kpsdkE9m	Merchant ID	5,18,96,891
Paytm (One 97 Communication Limited)	Pigeon52297800 147260	Merchant ID	1,667
	Pigeon63540778 692651	Merchant ID	3,157
	Pigeon30965440 091182	Merchant ID	1,964
	<i>Total</i>		8,31,36,583

*Issued under my hand and seal on this 18<sup>th</sup> day of May, 2023.*

*Sd/-  
18.05.2023  
(Dileep Mangawa)  
Assistant Director"*

2. Learned Sr. Advocate appearing for the petitioner sought to falter the impugned order on the grounds of malafide (factual & legal), abuse of power, non-application of mind, unbecoming of Article 12 entity, unfair & unreasonable, etc. He argued that the petitioner has not violated any extant norm, be it under the Foreign Exchange Management Act, 1999 and a set of Rules promulgated thereunder. He passionately submitted that at least in respect of monies required for defraying the public levies, periodical rentals and salaries, petitioner

needs to be permitted to operate the bank accounts in question; hence, the impugned order is made without opportunity of hearing. In support of his submission, he pressed into service a few Rulings.

3. After service of notice, respondents have entered appearance through the learned CGC and have filed the Statement of Objections resisting the petition. Learned ASG appearing for the respondents contended that: petition is not maintainable in view of availability of alternate remedy u/s 37A(5) of the 1999 Act; petition is premature; the impugned order is placed before the competent authority u/s 37A and petitioner can take its stand there; no sufficient legal injury as would warrant indulgence in constitutional jurisdiction is demonstrable; the impugned order is in aid of the final outcome of main proceedings; there is *prima facie* material to demonstrate that the petitioner has made foreign remittances despite not availing any advertising services in the course of business; more than 90% of its revenue has been remitted to the so called advertisement expenses *sans* vouching;

that amount itself is more than Rs.83 crore. All the disputed facts may not be adjudicated in the writ jurisdiction. So contending, he sought for dismissal of the Writ Petition.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this court is inclined to grant a limited indulgence in the matter as under and it is for the following reasons:

(a) AS TO THE CONTENTION OF ALTERNATE REMEDY AND RELEGATION OF PETITIONER THERETO:

The preliminary issue as to the maintainability of Writ Petition raised by the respondents needs to be answered in favour of the petitioner inasmuch as the alternate remedy suggested by the learned ASG does not appear to be efficacious in the fitness of things. It hardly needs to be stated that the rule of alternate remedy is not a Thumb Rule to non-suit every litigant approaching the Writ Court. It all depends upon facts & circumstances of each case and the requirement of doing justice to the aggrieved. This view gains support from the Apex Court decision in *GODREJ SARA LEE LTD. vs. EXCISE & TAXATION OFFICER,*

2023 SCC OnLine SC 95 wherein it is observed that availability of alternative remedy does not operate as an absolute bar to the 'maintainability' of a writ petition and that the rule, which requires a party to pursue such remedy provided by a statute, is a rule of policy, convenience and discretion evolved by the judiciary rather than a rule of law. Therefore, in all cases, the entities answering Article 12 of the Constitution of India cannot press into service the doctrine of alternate remedy as the China Wall against the invocation of writ jurisdiction.

**Justice Oliver Wendell Holmes** of U.S. Supreme Court in *DAVIS vs. MILLS*, 194 U.S. 451 (1904) had observed:

*"Constitutions are intended to preserve practical and substantial rights, not to maintain theories..."*

This view gains support from the decision of a Coordinate Bench in *XIAOMI TECHNOLOGIES vs. UNION OF INDIA*, 2023 SCC OnLine KAR 24. The said question is being debated before the Division Bench in Writ Appeal No.697/2023, arising from an order of another learned Single Judge, does not come to the rescue of respondents

in the absence of any interim order of stay or the like being shown.

(b) The above being said, the limited indulgence of this court is eminently warranted at least to the extent of permitting the petitioner to operate the bank accounts for making payment of statutory dues such as the taxes, levies, etc., in view of Apex Court decision in *OPTO CIRCUIT INDIA LTD vs. AXIS BANK*, 2021 SCC OnLine SC 55, which had almost identical fact matrix and the Apex Court has permitted the petitioner therein to operate its bank account that was freezed so that the remittances to be made would go to the Public Exchequer. At para 15, it is observed: *"...What has also engaged the attention of this court is with regard to the plea put forth on behalf of the appellant regarding the need to defreeze the account to enable the appellant to pay the statutory dues..."* It is not that by virtue of this concession, one can siphon off the funds to the foreign entities. In fact, in his Written Submissions dated 21.8.2023 (at para 8.8) and in the petitioner's affidavit dated 18.7.2023, Petitioner has undertaken not to make any remittances to any foreign

entities. The apprehension of the respondents thus stands addressed.

(c) Subject to what is said above, there is force in the vehement contention of learned ASG that the case involves disputed fact matrix that cannot be adjudged on the evidentiary material on record and therefore, Writ Court should decline interference. The amount involved is huge i.e., about Rs.83 crore admittedly remitted to foreign entities; that constitutes arguably about 90% of the revenue of the petitioner-Company. Whether this amount was paid for defraying the advertisement expenditure undertaken in the course of business, is a pure question of fact on which parties are at loggerheads. Hence this court should abstain from adjudicating on such pure questions of facts since it involves a host of intricacies of facts, which ordinarily the Judges are not much familiar with. After all, what the Writ Courts address is the decision making process and not the decision itself vide *SUSHIL KUMAR vs. STATE OF HARYANA*, AIR 1988 SC 419. Ordinarily, the Writ Courts should not undertake adjudication of hotly disputed questions of facts, subject to all just exceptions.



Case of the petitioner fits into one of the exceptions only to the extent of relaxing the account freezer for the payment of public levies, as indicated in the immediately preceding paragraph above. In respect of the rest, case of the petitioner answers the Rule. There is an added reason for declining indulgence: as rightly submitted by learned ASG, the Parliament in its legislative wisdom has enacted the provisions like section 37A by way of Amendment to the 1999 Act with effect from 9.9.2015 and special machinery and the process are created for considering disputes of the kind. There is a lot of support for this view in the observations of the Apex Court in *RAJ KUMAR SHIVHARE vs. ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT*, (2010) 4 SCC 772, wherein paragraph 19 reads as under:

*"It is thus clear that Chapter V of FEMA, read with the aforesaid rules, provides a complete network of provisions adequately structuring the rights and remedies available to a person who is aggrieved by any adjudication under FEMA."*

The 2015 Amendment made after the said decision gives added weightage to the submission of learned ASG. Already, the matter is placed at the hands of the

Confirmation Authority which is bound to accomplish its disposal in a statutory time bound manner after giving a reasonable opportunity to the petitioner to ventilate its grievances, with all the contentions as are urged in this petition.

5. There is force in the submission of learned ASG that if the money lying in the bank accounts in question are allowed to be drawn, the very purpose of proceedings instituted under the provisions of 1999 Act may be defeated. However, no prejudice would be occasioned to be respondents nor to the public interest should be petitioner be permitted to operate the subject accounts by furnishing the Bank Guarantee for a sum of money to the satisfaction of the concerned authorities. Such an arrangement would do justice inasmuch as petitioner has to make payment periodically accruing by way of salary dues, rentals & the like.

In the above circumstances, this petition succeeds in part:

[i] a Writ of Certiorari issues quashing the impugned order of account freezing only to the extent it prevents the petitioner from drawing the amounts from the subject Bank Accounts for paying the taxes & levies (as comprehensively meant), without furnishing any security for the same; and

[ii] a Writ of Mandamus issues to the respondent-authorities to permit the petitioner to operate the subject Bank Accounts to the extent of the value of Bank Guarantees it furnishes to their satisfaction as a pre-condition.

Nothing observed in the course of judgment shall be construed as expressing anything on the merits of the matter that is being considered at the hands of the Competent Authorities/Tribunal under the provisions of 1999 Act.

Costs made easy.

Sd/-  
**JUDGE**

Snb/