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

Date of Decision: 28th March, 2023

+ **W.P.(C) 10382/2022 and CM APPL. 29948/2022, 33958/2022**

VIVO MOBILE INDIA PVT. LTD.

..... Petitioner

Through: Mr Siddharth Aggarwal, Senior Advocate with Mr Divyam Agarwal, Mr Pranav Tanwar & Mr Chirag Basu, Advs. (M: 8700925031)

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain and Mr. Vivek Gurnani, Advs.

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WITH

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W.P.(C) 12650/2022 and CM APPL. 38392/2022

M/S GRAND PROSPECT INTERNATIONAL COMMUNICATION PVT LTD

..... Petitioner

Through: Mr. Aashul Agarwal (Adv.), Ms. Priyadarshini Dewan (Adv.), Mr. Kunal Dewan (Adv.), Ms. Aaro Mikkilineni (Adv.) And Mr. Rishi Gupta (Adv.) (M: 9650290474)

versus

DIRECTORATE OF ENFORCEMENT & ANR. Respondents

Through: Mr. Zoheb Hossain and Mr. Vivek Gurnani, Advs.

Mrs. Amrita Prakash CGSC with Mr. Vishal Ashwani Mehta Advocate for UOI.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petitions have been filed challenging the impugned orders F No. -ECIR/STF/02/2022 dated 5th July, 2022/ 6th July, 2022 by which a debit freeze was ordered on the various bank accounts of the Petitioners i.e. M/s Vivo Mobile India Pvt. Ltd. (hereinafter 'Vivo') and M/s Grand Prospect International Communication Pvt. Ltd.(hereinafter 'GPICPL').
3. The following direction was issued as an interim order on 13th July 2022 in **WP(C) 10382/2022-**

“Pursuant to the last order passed, the Enforcement Directorate in terms of a communication of 9 July 2022 had called upon the petitioner to provide requisite details in support of its assertion that payments totalling to Rs. 2826/- crores were to be made under various heads including in respect of direct and indirect taxes, employees benefits and operating expenses. In response to the aforesaid communication the petitioner is stated to have addressed a letter of 11 July 2022 to the Directorate and has also subsequently provided supporting data as required on a pen drive which has been duly received by the Directorate. Mr. Hossain, learned counsel appearing for the Enforcement Directorate, submits that since the data itself is voluminous the respondents would require a week to duly analyse the same and to attend to the prayers made by the petitioner referable to Section 17(1A) of the Prevention of Money-Laundering Act, 2002. Let the Enforcement Directorate proceed in this regard accordingly.

Notice. Since the respondent is duly represented by learned counsel, let a counter affidavit be filed within a period of one week. The petitioner may file its response thereto within a period of 48 hours of service.

The Court takes note of the submission of

*Mr. Agarwal, learned senior counsel who contends that the debit freeze orders impugned here would not sustain since the details of the bank accounts which were maintained by the petitioner were known to the respondents. Referring the Court to the powers conferred by Section 17 on the Enforcement Directorate, Mr. Agarwal would submit that details of accounts which were otherwise available could not have been subjected to a debit freeze in the exercise of powers conferred by Section 17(1A). Learned senior counsel has in this behalf placed reliance on the decisions rendered by a Division Bench of the Allahabad High Court in **Motilal & Ors. vs. Preventive Intelligence Officer, Central Excise and Customs, Agra & Ors.** [(1971) 80 ITR 418] as well as of this Court in **Shri Lal Gupta & Ors. vs. Union of India & Ors.** [1992 (22) DRJ 1]. It was further pointed out that the decision in **Motilal** also stands affirmed by the Supreme Court in **Commissioner of Income Tax vs. Tarsen Kumar** [161 ITR 505].*

Mr. Hossain, on the other hand, would submit that the ambit and scope of Section 132 of the Income-tax Act, 1961 is clearly distinct and different from the powers which are exercised by the Enforcement Directorate under the PMLA. Learned counsel referring to the unambiguous recitals as appearing in the impugned debit freeze orders would submit that it was only material which was found and gathered during the search that forms the basis for action taken under Section 17(1A). Learned counsel further contends that the search revealed material on the basis of which it came to light that proceeds of crime had been “secreted” in the mentioned bank accounts. Matter requires consideration.

Mr. Agarwal, learned senior counsel on

instructions had apprised the Court that the respondents have already debit frozen accounts which held a sum of Rs. 251 crores approximately to their credit. Bearing in mind the contention of the respondent that the proceeds of crime is presently quantified at Rs. 1200 crores, it was submitted that the petitioner are ready and willing to furnish a bank guarantee to the extent of Rs. 950 crores without prejudice to their rights and contentions in the writ petition. The statement so made is recorded and accepted.

The Court notes that the bank guarantee which is proffered together with the amount which stands to the credit of the frozen accounts would safeguard the interest of the respondent during the pendency of the writ petition.

Consequently, let the petitioner furnish a bank guarantee to the extent of Rs. 950 crores to the satisfaction of the respondents within seven working days from today. Subject to the submission of that bank guarantee, the petitioner may be permitted to operate the bank accounts which form subject matter of the orders under Section 17(1A) to the extent that a sum of Rs. 251 crores which was standing in credit in those accounts on the date of the passing of the impugned orders shall be maintained at all times. Additionally the petitioner shall also furnish to the Enforcement Directorate all details of remittances that may be made from the concerned bank accounts every 48 hours.

As jointly prayed let this petition be listed on 28.07.2022 for final disposal.

Order dasti under the signatures of the Court Master ”

4. This interim order by which the bank guarantee has been furnished to the tune of Rs.950 crores and the credit balance of Rs.251 crores which is

required to be maintained in the bank accounts are continuing till date.

5. The following interim order dated 1st September 2022 was passed in **WP(C) 12650/2022** –

“CM APPL. 38393/2022 (for exemption)

Allowed, subject to all just exceptions.

The application shall stand disposed of.

W.P.(C) 12650/2022 and CM APPL. 38392/2022(Interim Stay)

Notice. Since the respondents are duly represented, let a counter affidavit be filed on or before the next date fixed. Bearing in mind the issues raised here and which emanate from the principal challenge which was raised in W.P.(C) 10382/2022 [Vivo Mobile India Pvt. LTD. versus Directorate of Enforcement], let this writ petition stand tagged with the aforesaid matter to be called on 20.09.2022.

In the meanwhile and bearing in mind the interim directions which were passed on the aforesaid writ petition as well as the orders passed on the writ petitions preferred by other dealers of Vivo Mobile, the Court provides in the interim that while the petitioner shall be permitted to operate the bank accounts which stand freezed pursuant to the impugned orders, it shall ensure that a credit balance of Rs. 10,45,94,868.9/- is maintained at all times.

Additionally, the petitioner shall furnish statement of accounts of all the bank accounts forming subject matter of the freezing order every 48 hours to the Enforcement Directorate. The Court further restrains the petitioner from repatriating any proceeds which may come to be credited to the subject bank accounts outside the country till the next date of listing.”

6. As per the interim order dated 1st September 2022, a credit balance of Rs.10,45,94,868.9/- was required to be maintained.

7. In the meantime, the Adjudicating Authority has, vide its order dated 21st December, 2022, has confirmed the debit freeze order in the following terms.

“7. CONCLUSION:

What is required to be seen at this juncture is interest of the investigation, where prima facie allegations exist regarding commission of the offence of money laundering. The background stated in the OA sufficiently indicates that the proceeds of crime are involved. The investigation of money laundering is going on. The role of each Respondent with reference to seized material and its involvement in money laundering has also been brought on Para III page 127-151 of this order. Having considered the submissions in response to notice u/s 8(1), rejoinders thereto by the Applicant and having heard their oral arguments followed by written submissions from page 191 to 228 of this order there is justification for retention of currency/cash, gold bullions, digital devices/ data, electronic items, records, documents seized and bank accounts mentioned in OA. Hence the Original Application for continuation of retention of currency/cash, gold bullions, digital devices/ data, electronic items, records, documents seized and bank accounts mentioned in OA deserves to be allowed and is hereby allowed. The material shown in OA is sufficient to arrive at the satisfaction by this Authority that the retention of currency/cash, gold bullions, digital devices/ data, electronic items, records, documents seized and bank accounts as mentioned in OA is required for the purpose of Adjudication under Section 8 of PMLA.

8. In the said order, the Adjudicating Authority has also noted the various orders passed by this Court in these two petitions. as also in the

batch of matters in ***W.P.(C) 11661/2022*** titled '***Rui Chuang Technologies Pvt. Ltd. v. Directorate of Enforcement & Anr.***' After having considered the interim orders passed by this Court, the Adjudicating Authority has observed as under:

“The Applicant is directed to take into account the aforesaid directions of the Hon'ble High Court of Delhi and the present order under section 8(3) is subject to the aforesaid direction of the Hon'ble High Court of Delhi.”

9. This order of the Adjudicating Authority dated 21st December, 2022 has now been appealed by the Petitioner under Section 26 of the Prevention of Money Laundering Act, 2002 (hereinafter '***PMLA***'). The appeal has been filed before the Appellate Tribunal under the PMLA in February, 2023 and is now pending in the Appellate Tribunal. Insofar as the Petitioner in ***W.P.(C) 12650/2022*** is concerned, Id. Counsel for the Petitioner submits that the appeal is in the process of being filed.

10. Considering the fact that the writ petitions itself were directed against the initial debit freeze orders, which have now merged with the final order passed on 21st December, 2022 and the Petitioner has already availed of the appellate remedy, it is deemed appropriate to relegate both the Petitioners to pursue their appellate remedies before the Appellate Tribunal, under the PMLA, in accordance with law.

11. Accordingly, the following directions are being issued in the matter.

- (i) The Petitioners in both the writ petitions shall, along with their appeals, prefer interim applications before the Appellate Tribunal. The said interim applications, if not already listed, may

be taken up by the Appellate Tribunal within 4 weeks and shall be adjudicated expeditiously.

(ii) The interim arrangements, which have been directed by this Court vide order dated 13th July, 2022 and 1st September, 2022, shall continue till the time the Appellate Tribunal decides the interim applications or till the final decision in the Appeals, in terms of the orders that may be passed by the Tribunal.

(iii) The Petitioner in ***W.P.(C) 12650/2022*** is permitted to file the appeal along with the interim application within 4 weeks.

12. The interim applications as also the final adjudication may be conducted expeditiously before the Appellate Tribunal within 4 weeks either from filing of the appeal or from first listing of the appeal along with the interim applications.

13. Mr. Zoheb Hossain, Id. Counsel submits that since the Petitioner - Grand Prospect International Communication Pvt. Ltd., has not filed the appeal, the limitation having already elapsed, no appeal would be maintainable. This issue shall be raised before the Appellate Tribunal and shall be adjudicated in accordance with law.

14. Both the petitions are disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 28, 2023

ldk/rp