



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

**DATED THIS THE 5<sup>TH</sup> DAY OF JANUARY, 2024**

**R**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 14764 OF 2023 (GM-RES)**

**BETWEEN:**

M/S. OWNPATH LEARNING PRIVATE LIMITED,  
10/2, SHANKARI,  
SEVEN HILLS LAYOUT,  
B/H KOMARALA FEEDS,  
CHIKKALASANDRA,  
BANGALORE - 560 061,  
REPRESENTED BY ITS DIRECTOR  
MR. SHREYAS SATISH,  
A PRIVATE LIMITED COMPANY  
REGISTERED UNDER COMPANIES ACT 2013.

...PETITIONER

(BY SRI. SIDDHARTH SUMAN, ADVOCATE)

**AND:**

1. STATE BY INTELLIGENCE OFFICER,  
NARCOTICS CONTROL BUREAU ,  
BANGALORE ZONAL UNIT,  
YELAHANKA,  
BENGALURU - 560 064
2. THE BRANCH HEAD,  
KOTAK MAHINDRA BANK,  
BANASHANKARI BRANCH,  
BENGALURU - 560 085.

...RESPONDENTS

(BY SMT. SHRIDEVI BHOSALE MARUTI, ADVOCATE FOR R1)





THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-2 TO DEFREEZE THE BANK ACCOUNTS OF THE PETITIONER-COMPANY IN THE R-2 BANK BEARING NO. 6145157210, 6146012129, 614935818 WITH A BALANCE OF RS. 1,00,775/- (RUPEES ONE LAKH SEVEN HUNDRED AND SEVENTY FIVE ONLY), RS. 50,078/- (RUPEES FIFTY THOUSAND AND SEVENTY EIGHT ONLY) AND RS. 1,07,230/- (RUPEES ONE LAKH SEVEN THOUSAND TWO HUNDRED AND THIRTY ONLY) THAT WERE FROZEN/ MARKED DEBIT FREEZE BASED ON THE LEGAL NOTICE AND ORDER DATED 08.12.2022, REF.BM/956982, I.E., ANNEXURE-A AS THE SAME IS ARBITRARY, ILLEGAL AND UNJUST AND HAS NO EFFECT IN TERMS OF SECTION 68F OF THE NDPS ACT.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of *mandamus* directing the 2<sup>nd</sup> respondent / Kotak Mahindra Bank ('the Bank' for short) to de-freeze the account of the petitioner/company held with the Bank.



2. Heard Sri Siddharth Suman, learned counsel appearing for the petitioner and Smt. Shridevi Bhosale Maruti, learned counsel appearing for the 1<sup>st</sup> respondent.

3. Facts, in brief, are as follows:

The petitioner is a company which is a registered startup under the DPIIT Startup India Initiative. It claims to be involved in helping professionals to up-skill themselves in software design and lay a path for better career opportunities to those professionals in the technological industry. The petitioner claims to be operating as a startup since December, 2020. It has two Directors on the Board, a team of 7 members work full time and claims to be running the show in accordance with the law. On 14-11-2022, a crime comes to be registered by the 1<sup>st</sup> respondent / Narcotics Control Bureau ('NCB' for short) against one of the Directors of the petitioner/company for offences punishable under Section 8(c) r/w Sections 20(B)(ii)(A), 23(a), 27, 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short). On registration of the aforesaid crime against one of the Directors, the account of the petitioner/company appears to have been



directed to be frozen. The petitioner wanted to operate the account and has come to understand that the account is debit frozen. After the company comes to know about debit freezing of the account, the petitioner files the subject petition seeking a direction to de-freeze the account of the petitioner.

4. The learned counsel for the petitioner would vehemently contend that the petitioner/company is not an accused. The company is holding three accounts in the 2<sup>nd</sup> respondent/Bank. The investigation also has come to an end. Above all, it is his submission that debit freezing direction from the hands of the Investigating Officer to the Bank is contrary to law and therefore, would seek quashment of the same.

5. On the other hand, the learned counsel representing the 1<sup>st</sup> respondent/NCB would vehemently refute the submission to contend that one need not be an accused for freezing the account as if the money trail of the accused leads to dropping of funds into the account of the company, it would be a circumstance enough for directing freezement of the account. She would contend that there is a direct link to the account operated by the company to the act of one of the



Directors of the Company as narcotics substance is received in the name of the Director of the Company from foreign post office. She would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The issue in the *lis* does not relate the merit of the crime that is alleged against the petitioner. It lies in a narrow compass as to whether the Investigating Officer could have directed freezment of the account of the Company without following due process of law. The undisputed facts are a complaint comes to be registered against one of the Directors of the Company by the NCB on 14-11-2022. The offences alleged are as afore-quoted. The Investigating Officer directs freezment of the account of the petitioner. Freezment of account of any person who has a link in the money trail for the aforesaid offences is relatable only to the provisions of the Act. The power to direct debit freezment of an account for offences under the Act is under Section 68F of the Act. Section 68F reads as follows:



**"68F. Seizure or freezing of illegally acquired property.—(1) Where any officer conducting an inquiry or investigation under section 68E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:**

**Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.**

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

*Explanation.—For the purposes of this section, "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—*

*(a) the creation of a trust in property;*

*(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;*

*(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and*



*(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person."*

*(emphasis supplied)*

Section 68F deals with seizure or freezing of illegally acquired property. Section 68F mandates that once seizure is directed by the NCB it has to be informed to the competent authority and an order made under sub-Section (1) of Section 68F shall have no effect unless the said order is confirmed by an order of the competent authority within a period of 30 days of it being made. Therefore, the mandate of Section 68F is twofold – first being once the seizure or freezing is made it shall be duly informed by an order made under sub-section (1) and the same shall be communicated to the competent authority within forty-eight hours and the second being freezing order shall have no effect unless the said order is confirmed by an order of the competent authority within 30 days. In the case at hand, neither of the two is followed. The communication is not even made to the competent authority by the NCB and the competent authority has not approved such seizure within 30 days. The 'competent authority' is defined under Section 68D. Section 68D of the Act reads as follows:



**"68D. Competent authority.—(1) The Central Government may, by order published in the Official Gazette, authorise [any Commissioner of Customs or Commissioner of Central Excise] or Commissioner of Income-tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.**

*(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.*

*(emphasis supplied)*

8. The learned counsel for the petitioner submits that the Commissioner of Income-Tax, Chennai has been designated to be the competent authority under Section 68D *supra*. This fact is not disputed by the learned counsel representing the 1<sup>st</sup> respondent. Therefore, it is not a case of competent authority not functioning. It is a case where there is a blatant violation of section 68F and its mandate. In the light of afore-said admitted facts of twin violation of Section 68F, the order directing debit freezment or action of freezing of the account of the petitioner/company would lose its legal legs to stand and results in its obliteration.



9. For the aforesaid reasons, the following:

**ORDER**

- i. Writ Petition is allowed.
- ii. The order/notice Ref-BM/956982, dated 08/12/2022 i.e., Annexure - A freezing the bank accounts of the Petitioner - Company in respondent No.2 Bank bearing Nos. 6145157210, 6146012129, 614935818 with a balance of Rs. 1,00,775/- (Rupees One Lakh Seven Hundred And Seventy Five Only), Rs. 50,078/- (Rupees Fifty Thousand And Seventy Eight Only) and Rs. 1,07,230/- (Rupees One Lakh Seven Thousand Two Hundred And Thirty Only) is quashed.
- iii. The quashment would not however mean that respondent No.1 - NCB is precluded from initiating proceedings in accordance with law, if necessary in law.

**Sd/-  
JUDGE**

SJK  
List No.: 1 Sl No.: 22  
CT:SNN