

Rohit Aggarwal vs Union Bank Of India & Ors on 2 December, 2020

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 1935/2020

ROHIT AGGARWAL

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Through Mr. Mohit Mathur, Sr. Adv.

Mr.Manohar Malik, Adv.

versus

UNION BANK OF INDIA & ORS.

..... Re

Through Mr. Santosh Kr Rout, Adv.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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02.12.2020

CRL.M.A. 16115/2020

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(CRL) 1935/2020 & CRL.M.A. 16114/2020 (for directions)

3. The instant petition is filed with the following prayers:

"(a) issue a writ/order/declaration to the Respondent No. 1 - Union Bank of India not to take any coercive measure including filing of criminal complaint against the petitioner pursuant to and in connection with declaration of account of M/s. Sunstar Overseas Ltd. As „fraud by resorting to „Master Directions on Frauds - Classification and Reporting by commercial banks and select FIs dated 01.07.2016 issued by the Reserve Bank of India, until the challenge to the fraud declaration filed by petitioner is pending adjudication in W.P. (C) 10526 of 2019."

4. It is submitted by the learned Senior Counsel for the petitioner the petitioner's company account of M/s.Sunstar Overseas Limited was declared as Fraud and for which W.P.(C) 10526/2019 wherein a Coordinate Bench of this Court was pleased to direct the respondent bank not to take any coercive measures against the petitioners therein. The following paragraphs of the said order are relevant:

"1. It is Mr. Sibal's contention that the petitioners are Ex-directors of respondent no. 11 company. Mr. Sibal says that respondent No. 11 company is, presently, being managed by a Resolution Professional. It is also the contention of learned senior counsel that a resolution plan has been approved by a Committee of Creditors (in short „COC“).

2. x x x 2.1 It is Mr. Sibal's contention that the resolution plan was approved by the entire body of the COC which, inter alia, comprised Corporation Bank, Punjab National Bank and Canara Bank.

2.2 x x x 2.3 x x x

3. Mr. Sibal has placed before me a copy of the order dated 12.09.2019, passed by the NCLT, Principal Bench, New Delhi. Based on this order, Mr. Sibal says that the resolution plan has been approved by the NCLT and has become effective from the date when the order was passed i.e. 12.09.2019.

4. x x x

5. x x x

6. x x x

7. Given the aforesaid circumstances, no coercive measures will be taken against the petitioners till the next date of hearing. It is made clear that if any criminal investigations are initiated against the petitioners, this order will not come in the way."

5. It is submitted by the learned Senior Counsel for the petitioner though the classification of the company's account as fraud has been stayed by the above order dated 27.09.2019, yet, Punjab National Bank - respondent no.2 on 11.06.2020 and Canara Bank/respondent No.3, in March 2020 yet again had declared the account of the petitioner's company as Fraud.

6. However, reference is made to a Forensic Audit Review of M/s.Sunstar overseas Limited, which audit has been conducted by M/s. Pipara & Co. LLP, Chartered Accountants, appointed by Omkara Assets Reconstruction Private Limited and directed to perform forensic audit review by KVB, a Consortium Bank. Such audit report dated 14.06.2020, notes as under:-

"6. Conclusion xxx Hence, it is noted that the observations mentioned in the report of DTTILLP, have not been found to qualify as valid transaction u/s 66 or Section 45 or Section 49, hence there have been no transactions reported as Fraud, within the meaning of IBC as well as in Banking Parlance as a Forensic Auditor.

Hence, in the matter of this review engagement, as enumerated in introduction of the report the scope and other parts, our opinion is standing to the same conclusion, of no fraud being found/ reported in the affairs of SSOL for the period under review."

7. It is now submitted by the learned Senior Counsel for the petitioner since the order dated 27.09.2019 has directed no coercive measures shall be taken against the petitioners till the next date of hearing, but since it had not stayed criminal investigation initiated against the petitioner, they are apprehensive of the fact that despite forensic audit report dated 14.06.2020, the respondents may initiate criminal action against the petitioner, including filing of criminal complaints with various authorities.

8. Issue notice. Learned counsel for respondent No.1 accepts notice. The remaining respondents be also served.

9. Reply, if any, be filed by respondent No.1 within four weeks from today and if any proposed criminal action is initiated, then in such event, the benefit of W.P.(C) 10526/2019 shall be extended to petitioner herein and hence no coercive measures be taken against the petitioner till next date of hearing.

10. List on 22.02.2021.

YOGESH KHANNA, J.

DECEMBER 2, 2020 acm