

# Pafm Security Solutions Private ... vs Union Of India & Ors on 15 May, 2020

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

via Videoconferencing

\$~7, 8 & 9

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 3148/2020

PAFM SECURITY SOLUTIONS PRIVATE LIMITED ..... Petitioner

Through: Mr. Amit Sibal, Sr. Adv. with Mr.  
Ashish Aggarwal, Ms. Gurkamal  
Hora Arora & Mr. Gurcharan Singh,  
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Amit Mahajan, CGSC.  
Mr. Ateev Mathur, Adv. for HDFC  
Bank.

+ W.P. (C) 3149/2020

NCUBE PLANNING AND DESIGN PRIVATE LIMITED

.... Petitioner

Through: Mr. Amit Sibal, Sr. Adv. with  
Mr. Ashish Aggarwal, Ms. Gurkamal  
Hora Arora & Mr. Gurcharan Singh,  
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Amit Mahajan, CGSC.  
Mr. Aditya Kumar, Adv. for R-7.  
Mr. Rajesh Kumar Gautam, Adv. for  
PNB.

+ W.P. (C) 3150/2020

PETRA ASSET AND FACILITY MANAGEMENT PRIVATE  
LIMITED

.... Petitioner

W.P. (C) 3148/2020, 3149/2020, 3150/2020

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Through:

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Mr. Ashish Aggarwal, Ms. Gurkamal  
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UNION OF INDIA & ORS.

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Mr. Ateev Mathur, Adv. for HDFC Bank.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 15.05.2020 CM APPL. No. 10948/2020 in W.P.(C) 3148/2020 (exemption) CM APPL. No. 10956/2020 in W.P.(C) 3149/2020 (exemption) CM APPL. No. 10958/2020 in W.P.(C) 3150/2020 (exemption) Exemption is granted, subject to just exceptions and subject to the petitioners completing all requirements of filing certified/original/legible copies of annexures and attested affidavits within 10 days of lifting of lockdown.

The applications stand disposed of.

W.P.(C) Nos. 3148/2020, 3149/2020 and 3150/2020 At the outset, it may be recorded that the petitioner in W.P.(C) No. 3148/2020 M/s. PAFM Security Solutions Private Limited is the wholly owned subsidiary of the petitioner in W.P.(C) No. 3150/2020 M/s. Petra Asset and Facility Management Private Limited; which in-turn is the wholly owned subsidiary of the petitioner in W.P.(C) No. 3149/2020 M/s. NCUBE Planning and Design Private Limited. For this reason, W.P.(C) No. 3149/2020 is being taken-up as the lead matter in this batch of petitions.

2. The petitioners impugn orders dated 30.04.2020 and 05.05.2020 made by respondents Nos. 2 and 3 freezing the petitioners' bank accounts in pursuance of proceedings under the Prevention of Money Laundering Act 2002 ('PMLA' for short).

3. Briefly, it is stated that M/s DOIT Enterprises India Private Limited, now known as DOIT Urban Ventures (India) Pvt. Ltd. ('DOIT' for short), owned by one Rana Kapoor/his family, holds 60% stake in M/s. NCUBE Planning and Design Private Limited ('NCUBE' for short) ; and that M/s Petra Asset and Facility Management Private Limited and M/s. PAFM Security Solutions Private Limited are step- down subsidiaries of NCUBE. Respondents Nos. 2 and 3 allege that by reason of proceedings initiated against Rana Kapoor, his family members and other firms/entities/concerns owned by Rana Kapoor, including Yes Bank (referred to individually and collectively as 'subject entities') under PMLA, the proceeds lying in the petitioners' bank accounts that are subject matter of the present petitions are "proceeds of crime" within the meaning of section 2(u) of PMLA and are therefore liable to be attached.

4. Mr. Amit Sibal, learned senior counsel appearing for the petitioners submits that the proceedings against the subject entities arise from alleged 'kickbacks' received by some of them against loans given by Yes Bank between April 2018 and June 2018, whereas the investment of Rs. 13.44 crores made by DOIT in NCUBE dates back to between 18.09.2013 and 23.02.2015. Mr. Sibal accordingly contends that the money so invested by the subject entities cannot possibly be "proceeds of crime" within the meaning of section 2(u) of the PMLA.

5. Issue notice on the writ petitions.

6. Mr. Amit Mahajan, learned CGSC appears for the respondents on advance copy; accepts notice; and seeks time to file counter- affidavits.

7. Let counter-affidavit be filed within four weeks ; rejoinder thereto, if any, be filed within two weeks thereafter.

CM APPL. Nos. 10947/2020, 10955/2020, 10957/2020 (for stay and de- freezing of bank accounts)

8. Issue notice on the applications.

9. Mr. Amit Mahajan, learned CGSC appears for the respondents on advance copy; accepts notice; and seeks time to file replies. Let replies be filed before the next date of hearing.

10. Mr. Mahajan points-out at the outset that in a matter arising from the same proceedings and the same attachment order, being W.P.(C) No. 3083/2020 titled M/s Art Housing Finance( India) Limited vs. Directorate of Enforcement & Ors., in which similar prayers were made by the petitioner in that case, a Co-ordinate Bench of this court has made the following order dated 13.05.2020 on the interim relief that was prayed for :

"In so far as CM. No. 10720/2020 is concerned, Mr. Luthra states, even though the prayer made in this application is for staying the operation of the order freezing the petitioner company's bank accounts/FDRs held with HDFC Bank, Pocket 2, OFC, Sector C, Vasant Kunj, New Delhi Branch as well as Development Co- operative Bank, A-Set Building, Desh Bandhu Road, Karol Bagh, New Delhi - 110005, he would be satisfied if for present the petitioner is permitted to pay the salaries to the employees for the month of April, 2020 by encashing FDRs of equivalent amounts. He states, the petitioner is ready to furnish the list of employees to whom the salaries have to be paid to the respondents within 24 hours to enable the respondents verify the authenticity of the names. According to him, if the respondents have any doubt with regard to a name, they can communicate the same to the petitioner so that the amount is not released to that person. That apart he states, salary shall be paid after deducting the TDS and permission be also granted by this court to deposit the TDS and connected statutory dues (connected with the salary) with the authorities concerned.

That apart in so far as the prayers in CM. No. 10771/2020 are concerned, it is the submission of Mr. Luthra that the petitioner has to receive monies from the lenders / customers, which be allowed to be deposited in separate bank accounts to be opened by the petitioner in the aforesaid Banks. He states, the petitioner shall not withdraw any amount so deposited till the next date of hearing."

(Emphasis supplied)

11. On instructions of Mr. Ashish Aggarwal, learned counsel for the petitioners, Mr. Sibal states that at this stage, the petitioners would be satisfied with an order along the same lines as order dated 13.05.2020 extracted above, so long as they are permitted to discharge their dues towards salaries and other reimbursements of their employees, as also their statutory obligations.

12. Mr. Sibal points-out that the dues that petitioners wish to discharge are set-out in tabulated form in the petitions, inter alia at page No. 22 of W.P.(C) No. 3149/2020.

13. After considering the submissions made, at this stage, the petitioners are permitted :

(a) to discharge their liabilities towards salaries, bonus and reimbursements payable to their employees ;

(b) to make payments towards provident fund, professional tax, TDS on salaries and TDS on non-salary payouts from the bank accounts (including fixed deposits) that are subject matter of action by respondents Nos. 2 and 3, subject to verification by the concerned respondents of the list of employees and the amounts due (towards all heads of permitted payouts), for which purpose the petitioners shall furnish to respondent No. 3 a list of employees to whom salaries/bonus/reimbursements are required to be paid, to enable the respondents to verify the same, which verification will be done by the respondents with 7 days of such list being furnished. Payouts are being permitted only towards the above heads/ purposes and not any of the other heads indicates/tabulated in the petitions.

14. If the respondents have any doubt as to the employee/s and/or the dues payable, they shall communicate the same to the petitioners ; and no disbursement shall be made by the petitioners to such employee and/or of such amount.

15. Furthermore, insofar as monies receivable by the petitioners from customers and other parties are concerned, the petitioners shall open separate bank accounts in the respondent bank/s designated only for the said purpose under written intimation to respondent No. 3; and all receivables shall be credited only to such account/s. The petitioners shall not withdraw any amount deposited in such designated accounts.

16. It is further directed that the petitioners shall maintain detailed and accurate accounts of all pay-outs and receivables as above.

17. It is clarified that the respondent banks shall permit operation of the accounts frozen by way of the impugned notices limited to the extent permitted by this order. To this end, Mr. Mahajan states, that the total amount of permissible pay-outs shall be conveyed in writing by respondent No. 3 to the concerned bank/s.

18. The rights and contentions of all parties are reserved and kept open.

Mr. Sibal states that the concurrence accorded by the petitioners in today's proceedings be also restricted to the ad-interim stage. It is recorded accordingly.

19. List on 20th May 2020 alongwith W.P.(C) No. 3083/2020, the date fixed in that matter.

ANUP JAIRAM BHAMBHANI, J.

MAY 15, 2020/uj