

Atul Punj vs Union Of India Through Ministry Of ... on 31 October, 2023

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(CRL) 2847/2023
ATUL PUNJ

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UNION OF INDIA THROUGH MINISTRY OF CORPO
AFFAIRS & ANR.

Through: Mr. Amit Tiwari,
Counsel with Mr.
Puri, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
ORDER

% 31.10.2023

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(CRL) 2847/2023 AND CRL.M.A. 26489/2023

3. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. with the following prayers:-

"i. Issue a Writ of Certiorari and/or a Writ in the nature of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 31/10/2023 at 23:15:51 Certiorari and/or any other appropriate writ, order or direction to quash the Impugned Order dated 22 May 2019 bearing Ref. Number F.No. 03/09/2019/CL-II (NR) issued under Section 212 (1) (c) of the Companies Act 2013 by the Central Government directing SFIO to investigate into the affairs of Punj Lloyd Limited and all proceedings emanating therefrom.

ii. Issue a Writ of Certiorari and/or a Writ in the nature of Certiorari and/or any other appropriate writ, order or direction to quash the Impugned Directions dated 15 July 2022 bearing Ref No. F.N. 23/25/2022-Legal conveying the approval of the competent authority to in the Central Government to the SFIO to file a petition under Section 241/242 read with Section 246/339 of the Companies Act seeking interim relief of freezing of assets against the Petitioner herein and all proceedings emanating therefrom. iii. Ad interim reliefs restraining the Serious Fraud Investigation Office from proceedings with the investigation pursuant to the Impugned Order dated 22 May 2019 issued under Section 212 (1)

(c) of the Companies Act and/ or from taking any coercive action against the Petitioner herein;

iv. Ad interim reliefs restraining the Union of India through the SFIO from proceedings with C.P. No. 146/241/PB/2023 as pending before the Principal Bench, NCLT, New Delhi. v. In the alternative, direct the Respondent No. 2 to complete its investigation pursuant to the Impugned Order dated 22 May 2019 bearing Ref. Number F.No. 03/09/2019/CL-II (NR) issued under Section 212 (1) (c) in a time bound manner.

vi. Any other ad-interim reliefs in terms prayer (i) and (ii) above. vii. Pass such other order/directions, as may be required in the interest of justice."

4. In brief the facts of the case are that on 31.05.2018, the Ministry of Corporate Affairs (MCA) received an anonymous complaint against Punj Lloyd Limited (PLL) in regard to conduct of the affairs of the company contrary to the interest of its lenders. On 12.06.2018, PLL furnished a letter in response to the same. In May 2018, SBI appointed Reshma & Co. to conduct a special audit of PLL, however, no irregularity was found against PLL in the audit. On 26.04.2019, the MCA after considering the response of PLL, closed the complaint against This is a digitally signed order.

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5. Thereafter, the Central Government on 15.07.2022 directed SFIO to initiate proceedings against the Petitioner, namely, Atul Punj and his son, namely, Shiv Punj under Sections 241/ 242/246/ 339 of the Companies Act for interim relief of freezing of personal assets of the petitioner. Subsequently, on 09.08.202, SFIO preferred a petition under Sections 241 (2)/242/246/339 of the Companies Act before the Principal Bench, NCLT and the petitioner was summoned under Section 217 of the Companies Act pursuant to the impugned order.

6. It is submitted by learned senior counsels appearing for the petitioner that the impugned order has been passed in a mechanical manner as it does not disclose any material necessitating an investigation into the affairs of PLL. It is further submitted that Section 212 (3) of the Companies Act requires that the investigation to be completed by the SFIO This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 31/10/2023 at 23:15:51 within such period as specified in the order under Section 212 (1) of the Companies Act, however, in the present case, the investigation is going on since last four years and till date no report either interim or final has been filed, furthermore, the fact that no time period whatsoever for completion of the investigation was provided in the impugned order is indicative of the fact that the SFIO investigation was ordered as a knee jerk reaction to the insolvency of PLL. It is further submitted that the impugned order is bereft of any reason upon which the decision of ordering an investigation has been issued by the MCA and even if the MCA had reason to believe that an investigation is to be conducted by SFIO into the affairs of PLL, then such reasons should have been produced and reflected in the impugned order. It is further submitted that petitioner has been cooperating in the investigation.

7. Learned senior counsels appearing for the petitioner have placed reliance upon the Minutes of Consortium Meeting convened on 22.03.2018 to discuss finalization of discussion on PLL's response on findings of forensic audit, discussion on complaint received by lenders and company's response and progress on proposed resolution plan & Discussion on Inter-se Agreement amongst all Lenders as per draft circulated; wherein it was decided that Forensic Audit may be construed as concluded for all the Lenders except Central Bank of India which shall close the report unilaterally and inform the Consortium regarding the closure, furthermore, SBI informed This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 31/10/2023 at 23:15:51 the Consortium that they had made a reference to Central Economic Intelligence Bureau (CEIB) in November 2017 as part of pre-sanction due diligence on borrower for initiating appraisal of restructuring proposal submitted by PLL on 10.08.2017 . The said CEIB reference did not report any adverse observation on PLL and lenders requested SBI to share the report for their records. It is further submitted that on 08.03.2019, PLL was admitted into the Corporate Insolvency Resolution Process by the Principal Bench, NCLT, and therefore, the petitioner seized to be the director.

8. Learned senior counsels appearing for the petitioner have placed further reliance on the following judgments:

Parmeshwar Das Agarwal and Ors. v. Additional Director (Investigation) SFIO
[2016 SCC Online Bom 9246];

Kranti Associates (P) Ltd. v. Masood Ahmed Khan [(2010) 9 SCC 496];

LIC v. Consumer Education & Research Centre [(1995) 5 SCC 482];

Calcutta Discount Co. Ltd. v. ITO [AIR 1961 SC 372].

9. It would be pertinent to look into the sub-section 1 to 3 of the Section 212 of the Companies Act, 2013 and the same are reproduced hereunder:

"(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office --

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be This is a digitally signed order.

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(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director , may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order."

10. The impugned order dated 22.05.2019 issued by MCA reads as follows:

"1. Whereas, the Central Government is empowered under Section 212 (1) (c) of the Companies Act, 2013 to order investigation into the affairs of a company.

2. AND Whereas, the Central Government has formed an opinion to order investigation into the affairs of Punj Lloyd Limited under Section 212(1) (c) of the Companies Act, 2013.

3. Now, therefore in exercise of powers conferred under section 212 (1) (c) of the Companies Act, 2013, the Central Government hereby orders investigation into the affairs of Punj Lloyd Limited under Section 212 (1) (c) of the Companies Act, 2013.

4. That the Central Government hereby authorise Director, Serious Fraud Investigation Office to nominate Inspector(s) under section 212 (1) of the Companies Act, 2013 to This is a digitally signed order.

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5. That the Inspector(s) so appointed shall exercise all the powers available to him under section 217 of the Companies Act, 2013 including powers conferred under section 219 of the Companies Act, 2013 after seeking prior approval of Central Government where ever required. The inspector(s) shall complete the investigation and submit the report to the Central Government.

6. This order is issued for and on behalf of the Central Government."

11. Issue notice. Learned senior panel counsel for respondents appears on advance notice and accepts notice. He seeks time to file reply.

12. Let the reply be filed by the respondents before the next date of hearing.

13. List on 8th December 2023.

14. Till the next date of hearing, no coercive action be taken against the petitioner. However, he shall join the investigation as and when required.

15. Dasti.

RAJNISH BHATNAGAR, J OCTOBER 31, 2023 p This is a digitally signed order.

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