

Rail Track India Pvt. Ltd vs Union Of India & Anr on 31 May, 2024

Author: Sudhir Kumar Jain

Bench: Sudhir Kumar Jain

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 8239/2024
RAIL TRACK INDIA PVT. LTD.

UNION OF INDIA & ANR.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

% 31.05.2024 CM. APPL. 33941/2024(Exemption)

1. Allowed, subject to all just exceptions

2. The application stands disposed of.

W.P.(C) 8239/2024 & CM. APPL. 33940/2024(stay)

3. The present writ petition is filed under Article 226 read with section 227 of the Constitution of India for quashing of the proceedings before the National Company Law Tribunal in CP 105/241/PB/2023 and quashing of Sanction granted by the Ministry of Corporate Affairs vide order dated 19.05.2022 to the extent of initiation of disgorgement proceedings.

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4. It is stated in the petition that the Ministry of Corporate Affairs, Government of India, under section 212(1)(c) of the Companies Act, 2013 vide order bearing no. F 5/5/2016/CL/II directed Serious Fraud Investigation Office (SFIO) to investigate into the affairs of Bhushan Power and Steel

Ltd and 14 other companies along with subsequent corrigendum dated 10.05.2016, issued by the Ministry of Corporate Affairs. The respondent no.2 thereafter on 12.05.2016 while exercising its power under Section 212 of the Companies Act, 2013 (hereinafter referred to as "the Act") appointed its officer to inspect and to carry out investigation into the affairs of the 15 companies. The respondent no.2 on 27.12.2017 sought approval under section 219 (c) of the Act to investigate into the affairs of 66 additional companies including the petitioner.

5. The respondent no.1 on 08.01.2018 under Section 219 (b) and (c) of the Act authorised the Inspector to investigate into the affairs of 66 companies. The respondent no.2 submitted an investigation report on 06.05.2022 under section 212(12) of the Act before the Central Government upon completion of the investigation. The petitioner as mentioned hereinabove was also named as an additional company in the sanction dated 08.01.2018.

6. The respondent no.1 on 19.05.2022 under section 212(14) of the Act vide order no. (Legal 35/15/2022) sanctioned authorization to the respondent no.2 to file prosecution complaint and issued other directions based on the investigation report. Thereafter, respondent no.2 filed a complaint before the Special Judge, Dwarka courts under section 439(2) read with sections 436 read with section 212 of the Act read with section 621(1) of the Act read with section 193 of the Code of Criminal Procedure on 19.05.2022 seeking This is a digitally signed order.

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7. The respondent no.2 on 08.06.2023 filed a Company petition bearing no.105/2023 before National Company Law Tribunal, Delhi, on the basis of investigation report dated 06.05.2022. The NCLT vide order dated 08.06.2023, passed an interim order in company petition bearing no.105/2023 and now the matter is stated to be listed on 06.06.2024.

8. The petitioner being an additional company of Bhushan Power and Steel Ltd, filed the present petition and challenged the sanction and the proceedings before NCLT as detailed hereinabove primarily on the ground that the proceedings before the NCLT Delhi are bad in law and are liable to be quashed. It is further submitted that the proceedings seeking disgorgement in NCLT, Delhi under Section 241/242/243 read with Section 339 of the Act cannot be initiated at any stage prior to determination of allegations of fraud by the appropriate Special Court.

9. Mr. Mohit Mathur, learned Senior Counsel for the petitioner on the basis of pleas as mentioned in the petition and as detailed hereinabove referred section 212 of the Act which deals with the investigation into the affairs of the company by serious fraud investigation office i.e., respondent no.2 in the present case and further referred sections 241/242 and 339 of the Act. The learned senior counsel argued that as per section 241(2) of the Act the Central Government if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to the public interest, it may itself applied to the Tribunal for an order. He further referred to section 241(3)(a) of

the Act, to substantiate his argument and the averments as made This is a digitally signed order.

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10. Issue notice. Ms. Shiva Laxmi, Central Government Standing Counsel for the respondents accepts the notice.

11. Ms. Shiva Laxmi, Central Government Standing Counsel opposed the stay of the proceedings pending before the National Company Law Tribunal vide CP no. 105/241/PB 2023 by referring the Section 241 of the Act and argued that the proceedings before the Special Court, Dwarka and the proceedings before the NCLT are both independent proceedings and the proceedings before the Special Court, Dwarka are criminal in nature while the proceeding of disgorgement before the NCLT are civil in nature. Ms. Shiva Laxmi, Central Government Standing Counsel also referred para no.167 of the judgment titled as Devas Multimedia PVT Ltd. vs. Antrix Corporation Limited and Another 2023 1 SCC 2016 which reads as under:

167. Yet another contention raised on behalf of the appellants is that the criminal complaint filed for the offences punishable under This is a digitally signed order.

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12. It is also initiated that section 241 of the Act gives special independent power to the NCLT to investigate the allegation of the fraud. Ms. Shiva Laxmi, Central Government Standing Counsel also referred the section 339 which gives the liability for fraudulent conduct.

13. The rival contentions/issues as stated by the learned Senior Counsel for the petitioner and the Central Government Standing Counsel for the respondents require consideration.

14. Let the counter affidavit on behalf of the respondents be filed within 04 weeks with advance copy to the briefing counsel for the petitioner. Rejoinder thereto if any be filed thereafter within 02 weeks with advance copy to the Central Government Standing Counsel.

15. The proceeding before the NCLT shall remain stayed. It is made clear that the NCLT may continue with the proceedings already listed on 06.06.2024 but the proceedings should not be in conflict with this order.

16. List on 20.08.2024.

DR. SUDHIR KUMAR JAIN, J MAY 31, 2024/K/AK/ABK This is a digitally signed order.

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