IN THE COURT OF Dr. AJAY GULATI,

SPECIAL JUDGE (PC ACT), CBI-12,

ROUSE AVENUE DISTRICT COURT, NEW DELHI

CC No. 283/2019

RC No. BDI/2011/E0002/BS&FC/CBI/New Delhi

U/s 120-B IPC r/w Sec 420, 467, 468, 471 IPC &

U/s 13 (2) r/w 13 (1) (d) of PC Act, 1988.

CBI vs. Texcomash Pvt. Ltd. And Others

Application moved by Luv Bharadwaj with a prayer for return of documents seized by the CBI during investigation, and for de-sealing of lockers of the applicant, also sealed by the CBI during investigation.

1. *Applicant* Luv Bharadwaj is a **suspect** in an ongoing investigation being conducted by the CBI into allegations of a fraud having been committed with State Bank of Mysore (SBM). The complaint regarding the alleged bank fraud was made on 14.1.2011. The initial charge-sheet arrayed the following as accused –

1. *Texcomash International Pvt. Ltd.*,
2. Vijay Julka
3. Abhishek Tiwari
4. Narendra Kumar Rajgriha
   Accused no. 2 to 4 are Directors of *Texcomash International Pvt. Ltd*.
5. Manmohan Singh, AGM, SBM
6. BS Diwakar, AGM, SBM
7. P. Shivarami Reddy, Chief Manager, SBM
8. Pawan Kumar, Deputy Manager, SBM

(accused-public servants no. 5 to 8 were posted at SBM IFB Branch, New Delhi at the relevant time)

2. The alleged fraud committed with the bank resulted in a net loss to the SBM to the tune of Rs. 59 crores. As is revealed from the charge-sheet, the alleged fraud was committed by private accused persons who submitted false documents to obtain export/foreign bill discounting remittance from State Bank Of Mysore, in connivance with the accused-public servants. The accused company *(Texcomash Intl. Pvt. Ltd.)* opened up a current account with SBM IFB Branch on 17.3.2009 for the purpose of exporting readymade garments. *Texcomash Intl. Pvt. Ltd.* thereafter submitted an application in April 2009 for availing credit facility under foreign bill discounting on the basis of letter of credit which initially was allowed for 10 crores and then enhanced to 50 crores. *At this stage*, it is important to briefly highlight the process of foreign bill discounting and significance of Letter of Credit in international trade. Once the exporter in India sends the export consignment, it will submit copies of necessary documentation to its advising bank which will in turn communicate with the overseas bank of the importer i.e. known as the confirming bank. The confirming bank will then get in touch with the importer to confirm the details of the import consignment and after receiving confirmation from the importer, send further confirmation to the advising bank in the exporter's country. The advising bank will then remit the amount of export consignment to the exporter and in turn seek rembursement from the confirming bank of the importer, for which the advising bank charges its commission.

3. As per the first charge-sheet dt.13.7.2012, out of 56 export bills submitted by *Texcomash Intl. P. Ltd.* for negotiation to SBM IFB Br., 19 bills were refused by the confirming banks but still, the accused-public servants (i.e.

officers of the SBM) cleared the bills and credited the account of *Texcomash Intl. Pvt. Ltd*. Investigation revealed that *Texcomash Pvt. Ltd* and its accused directors, in conspiracy with the public servants (i.e. bank officials) defrauded the complainant bank by submitting bills for export of gems and jewellery whereas the exporting company – *Texcomash P. Ltd.* had opened up a current account for the purpose of exporting garments. On the strength of *allegedly* false bills, money was remitted in the current account of *Texcomash P. Ltd.* for its purported exports despite the fact that the bank officials (i.e. public servants) had been informed by the overseas confirming bank regarding the documents submitted by the exporter not being in order. The amount received by *Texcomash P. Ltd* was then transferred to other accounts and was repeatedly routed through various accounts.

4. After the filing of first charge-sheet in 2012, the scope of investigation widened with the Investigating Officer (IO) looking into the money trail. Further investigation revealed that the amount which *Texcomash P. ltd.* received in its current account from State Bank of Mysore, was further transferred to 16 accounts and then rotated within these accounts to cloud the source. This money was then routed to 5 foreign gems and jewelery firms for import of diamonds. One of the accounts used for rotating the money was operating in the name of **M/s Sahara Exim Pvt. Ltd.** of which the present applicant Luv Bharadwaj was a Director **i.e.** account no. 431010200014544, Axis Bank, New Delhi. *This is how applicant came under the suspicion scanner in the present investigation.*

5. After the filing of initial charge-sheet in 2012, 2 supp. Charge-sheets dt. 14.8.2014 and 25.11.2014 have been filed but present applicant continues to be a suspect only. Specifically, the IO collected the account opening forms of all the accounts which were used for rotating the allegedly defrauded amount so as to compare the signatures appearing on these forms with the signatures of suspects. **However**, so far as the present applicant is concerned, both the supp. Charge-sheets only mention that his signatures have to be obtained for comparison with the signatures on the account opening forms and that Luv Bharadwaj denied his signatures on the account opening form. The amount allegedly rotated through the account of M/s Sahara Exim Pvt. Ltd. is to the tune of **Rs. 1.48 crores**. The investigation has been on-going for almost 9 years now, as is apparent from the date of preliminary investigation. The applicant is facing investigation for the last 6 years and despite his alleged role having been highlighted in 2 supp. Charge-sheets, the applicant has not been arrayed as an accused. However, what is relevant to highlight is that applicant has faced the investigative process in the form of seizing of documents from him and sealing of his lockers. The details of documents seizure and sealing of lockers is contained in the seizure memo which has been appended with the present application.

6. The investigation is now at the stage where the IO has sent Letters Rogatory to Hong Kong and Dubai seeking certain information in respect of the money trail. The letters were sent in 2017 but the response is still awaited by the CBI.

7. In this factual background, the present application was moved on 24 June 2020 with the request that 2 lockers of the applicant held in Federal Bank. Shalimar Bagh branch i.e. locker no. 86 and locker no. 96 be de-sealed since owing to the current pandemic, the applicant is facing serious financial difficulties. Along with the request for de-sealing of 2 lockers, applicant also requested for return of sale deed of property number 7, block A-1, Safdarjung Encl. which was seized by the CBI and which finds a mention in the seizure memo at serial no. 25. *It needs a highlight* that though in the application, applicant had sought return of all the documents seized by the CBI in view of the inordinate delay in concluding the investigation and nothing incriminating surfacing against the applicant, during the course of arguments addressed on 8.7.2020, the prayer was restricted to de-sealing of the above 2 lockers and return of sale deed dt. 3.5.2010 of the above said property.

8. Notice of the application was issued to the CBI which responded by submitting that the request of the applicant cannot be commented upon/ cannot be acceded to till the time response to the LR's sent by the CBI is received. During the course of arguments on multiple dates of hearing (through video conference), ld. PP repeatedly submitted that the CBI cannot comment upon the prayer of the applicant till the time response to the LR's is received. However, the ld. PP was **unable to explain** as to how would the response to the LR's be relevant for the purpose of the prayer for de-sealing of lockers in the face of the applicant's submissions that the 2 lockers which had been sealed by the CBI, contained gold which was purchased by the applicant's company (Riya Merchandise Pvt. Ltd.) way back in 2005-2006 from MMTC (which is a govt. body) against bills **whereas** the alleged fraud was perpetuated in the year 2009.

9. Faced with this response from the CBI, this Court directed the IO to verify the bills of all the gold articles which the applicant claimed are in the sealed lockers and which were purportedly purchased from the MMTC, and also to verify the source money of the property number 7, block A-1, Safdarjung Encl. since the same was purchased on 3.5.2010 which is during the currency of crime alleged in the present RC. It was contented by the applicant's ld. counsel that MMTC would never sell gold through cash receipts and verification of the bills would show that the financial resources used for purchase of these gold articles were legitimate. IO was also directed to investigate into the source of money used for the purchase of above said property. A detailed report was then filed by the IO wherein it was submitted that the bills submitted by the applicant in regard to the gold articles in the sealed lockers have been verified from the MMTC and have been found to be legitimate. The purchase source **however** could not be conclusively established by the IO. Initially, the applicant disclosed SBI current account no. 80528, Mayapuri Phase 2 Br. as the source. However, investigation revealed that in the financial yr. 2005-06, which is the period of purchase of gold from MMTC, not a single transaction was conducted in this account. The applicant has not been able to provide any definite source of money used for the purchase of gold from MMTC but subsequently contended that gold might have been purchased through bank guarantees. The IO was able to trace one bank guarantee of Rs. 50 lacs issued by SBI, SAMB – 1 Branch in favour of MMTC for purchase of gold. Subsequently, MMTC has provided details of bank guarantees provided by ING Vyasa Bank, Centurion Bank, SBI and Canara Bank for financing the purchase of gold by Riya Merchandise Pvt. Ltd.

10. So far as the property no. 7, block A-1, Safdarjung Encl. is concerned, the investigation directed by the Court during the course of submissions on the present application revealed that the purchase money for this property was provided by one Satbir Yadav, proprietor of M/s Nikita Exim which fact was confirmed through bank records. However, this person himself is an accused in another case registered by the CBI i.e. RCBD12011E0001, and is reportedly facing trial. Further, this property was purchased by a company named *SMC Logistics Pvt. Ltd* which has been struck off from the register of companies. As per the report filed by the IO, there are 2 shareholders in this company **i.e.** applicant and Yogesh Jain, both having 5000 shares each. It was thus contended on behalf of the CBI, that in view of the verification report, the applicant has not been able to establish any <u>sole</u> right over the property document seized by the CBI *i.e.* sale deed.

11. What is of relevance in the report submitted by the IO regarding the purchase of gold from MMTC is the fact that gold was purchased by *Riya Merchandise Pvt. Ltd* of which the applicant and Yogesh Jain were directors. Both these persons were also directors of SMC Logistics P. Ltd and this company also had the same address as that of *Riya Merchandise*. This company however has **also** been struck off from the register of companies. Despite the fact that the significant gold was purchased by the company *Riya Merchandise*, in the affidavit dt. 3.2.2012 filed by the applicant with the Registrar of Companies, the assets of the company were shown as nil. Also, in the application dt. 12.3.2012 submitted to ROC for striking off the company, the assets were shown as nil. Ld. Counsel for the applicant responded by saying that even if the assets were hidden from the Registrar of companies, the same **still does not give any right** to the IO of the present RC to hold back the gold articles, especially once the purchase bills have been verified by the IO and it is certain that the gold articles were purchased much prior to the alleged bank fraud which is the subject matter of present investigation/RC. It was further argued that if at all, the applicant may be subjected to statutory proceedings by some other govt./regulatory authorities for not disclosing the gold articles but the IO/ CBI is left with little justification to keep the lockers sealed. Ld.

Counsel for the applicant submitted that as per the first supp. Charge-sheet, the applicant is suspected of having routed Rs. 1.48 crores of the allegedly defrauded money out of India in view of which, let the CBI retain gold worth Rs. 2 crores and at least release the rest from the sealed lockers.

12. After the detailed verification report was submitted by the IO, he was further directed to make a valuation of the gold articles lying in the sealed lockers, which direction was given at the request of applicant's ld. counsel. The valuation was carried out and as per the report filed by the IO, gold worth of Rs. 10 crores 20 lacs odd was found lying in the lockers which included a number of gold articles apart from the gold purchased by the applicant from MMTC.

13. It needs a highlight that while giving various directions on the present application, the IO was specifically directed to report as to whether the monetary source of purchase of MMTC gold articles by the applicant’s company would have any bearing on the crime *alleged* to have been committed in the present RC. The reply filed by the IO **was silent** on this aspect except to contend that no comments can be offered till response to the LR’s is received from foreign authorities. It has already been highlighted that ld. PP was unable to explain the bearing of the information sought in the LR’s in regard to the prayer made in the present application.

14. It also needs a highlight that despite detailed investigation having been directed by this Court after the present application was received, in view of the facts that have surfaced, the CBI has not launched/initiated any other proceedings against the applicant nor has informed any other statutory authority of the facts which have now been revealed.

15. Faced with the above, before a finding can be returned on the present application, keeping in view the fact that a huge quantity of gold was not disclosed as the assets of *Riya Merchandise P. Ltd*, it would be appropriate that the Income Tax authorities must be made aware of such a large quantity of undisclosed gold lying in the lockers of the applicant. Therefore, I direct the IO to submit a detailed report **within a period of one week** from today regarding **all** the gold articles found in the applicant's 2 sealed lockers which were opened for the purpose of carrying out valuation vide this Court's order, to the concerned Income Tax office/officer having territorial jurisdiction over the applicant/ applicant's company. It is again highlighted that the report should mention about all the gold articles found in these 2 lockers. **The IO should furnish a compliance report within 2 days of submitting the report to the IT authorities**. This Court cannot give any direction in regard to the proceedings to be initiated by the IT authorities but **within a period of 4 weeks** from the receipt of the report submitted by the IO, the concerned IT authority will furnish a report in this Court informing as to whether they have or are in the process of initiating any proceedings against the applicant qua the gold in the sealed lockers. The application will be taken up again for final disposal after the receipt of report from the Income Tax authorities. **A copy of this order be sent along with the report to be sent by the IO to the Income Tax authorities**.

16. Further, IO is also directed to file the report of FSL in regard to the comparison of applicant's signatures with those on the account opening form of the account of M/s Sahara Exim in *Axis Bank* i.e. the account allegedly used for routing part of the defrauded money to foreign entities. It was categorically asserted by the ld. counsel of the applicant that FSL report is in favour of the applicant.

17. So far as the return of property document is concerned *i.e.* sale deed dt. 3.5.2010, the property is owned by a company which has been struck off the register of companies *i.e.* SMC Logistics. It is not understandable as to how can a company still have shareholders when the company itself has been struck off the register of companies. Further investigation is required, especially from the ROC as to what was the status of this property as SMC Logistics's asset at the time when the company was struck off the register, and if the company has been struck off, how is that the property continues to be in the name of a company which no longer exists? The funding for purchase of this property was provided by a person who himself is facing trial in another case investigated by the CBI. Further investigation would thus be required to see whether the source of purchase is in itself tainted money/part of some crime proceeds. It is thus appropriate that the applicant should wait for the final charge-sheet to be filed before seeking the return of the sale deed dt. 3.5.2010. The application to that extent is thus declined at this stage, leaving the other prayer to be decided as indicated above.

A copy of this order be supplied to the HIO/IO for immediate compliance.

Put up for further consideration on the above application on 24.11.2020.

Announced through Video Conference

Dated : 15.10.2020

(AJAY GULATI)
Spl. Judge (PC Act), CBI-12
RADC/ New Delhi

AJAY GULATI

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