

(2020) 08 DEL CK 0059

In the Delhi High Court

Case No : CONT.CAS(C) No. 369 Of 2020

Rajiv Chakraborty Resolution Professional Of ERA Infra
Engineering Limited

APPELLANT

Vs

Naveen Tyagi Branch Manager, Axis Bank Limited & Ors

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Prevention of Money Laundering Act, 2002 — Section 5, 5(1), 102
Code Of Criminal Procedure, 1973 — Section 102
Income Tax Act, 1961 — Section 226

Citation : (2020) 08 DEL CK 0059

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

**Advocate : Mohit Kishore, Wamika Trehan, Siddharth Srivastava, Shivank Diddi,
Amit Mahajan, Abhinav Srivastava**

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

CM APPLN. 12364/2020 (Directions)

1. The hearing was conducted through video conferencing.
2. Petitioner has filed the subject petition seeking initiation of contempt proceedings against the respondent-Axis Bank for failing to comply with the judgment dated 14.11.2019 in W.P. (C) No. 9566/2019.
3. By order dated 14.11.2019, this Court had directed that the freeze of the bank account, in exercise of powers under Section 102 of the Prevention of Money Laundering Act, 2002 (in short "PMLA"), could not be sustained and was quashed. However, it was held that said order would not affect the order dated 07.10.2019 passed by the authority under Section 5 of the

PMLA.

4. Petitioner filed the subject petition contending that despite order dated 14.11.2019 quashing the freezing of the bank account, respondent Bank had not permitted the operations of the bank account.

5. Respondent no. 1 to 3 have filed reply to the petition contending that on 19.04.2018, Enforcement Directorate passed an order under 102 of Cr. PC

directing 74 bank accounts of petitioner â?" Era Infra Engineering Pvt. Ltd. to be frozen including Bank Account No. 913020056551881, i.e. the

account in question. Subsequently, on 08.05.2018, the National Company Law Tribunal, Principal Bench, New Delhi in CP IB No. 190 of 2017

appointed Mr. Rajiv Chakraborty, Petitioner herein as the Interim Resolution Profession (IRP) of Era Infra Engineering Pvt Ltd. (EIEL).

6. It is contended that on 31.08.2018, Petitioner preferred a WP. No.9566 of 2019 challenging order dated 19.04.2018 of the Enforcement Directorate

freezing bank accounts before this Hon'ble Court to which the Bank was not a party. On 04.10.2018, the Adjudicating Authority under Prevention of

Money Laundering Act, 2002 passed an order exercising powers under section 102 of Cr. PC and directed that bank accounts be remain frozen.

7. On 07.10.2019, Enforcement Directorate passed a Provisional Attachment Order under Section 5(1) of the PMLA provisionally attaching 49 bank

accounts of EIEL including the account numbered 913020056551881 being maintained with Axis Bank.

8. It is contended that after the subject order dated 14.11.2019, on 17.03.2020, the Adjudicating Authority under PMLA passed an order confirming

the Provisional Attachment Order dated 07.10.2019. At the time of attachment, balance in the said account was INR 80,64,056.49 (Rupees Eighty

Lakhs Sixty Four Thousand Fifty Six and Forty Nine Paise only). It is contended that the Provisional Attachment Order dated 07.10.2019 was

challenged by the Petitioner before the National Company Law Tribunal, Principal Bench, New Delhi by an application, which is still pending.

9. It is contended that on 21.05.2020, the Income Tax Authorities credited an amount of INR 19,22,11,330 as income tax refund pertaining to

assessment year 2015-16 in the subject bank account.

10. On 27.05.2020, the Enforcement Directorate directed the Nodal Officer, Axis Bank to immediately transfer and credit the attached amount in four

different accounts including the account in question to the Directorate of Enforcement.

11. On 15.06.2020, the Respondents wrote to the Petitioner informing him about the receipt of letter dated 27.05.2020 from Enforcement Directorate

and requested him to take up the matter with the concerned authority.

12. On 16.06.2020, Petitioner wrote back to the Axis Bank, Noida Branch intimating that they have challenged the provisional attachment order dated

07.10.2019 before the National Company Law Tribunal, and the application was pending. Petitioner requested the Respondents to desist from taking

any steps for transfer of the funds lying in the accounts without their specific instructions.

13. On 22.06.2020, the Enforcement Directorate again wrote to the Bank and directed the Bank to immediately transfer and credit the attached

amount to the Directorate of Enforcement.

14. It is contended that on 26.06.2020, the respondent Bank remitted the amount of INR 80,64,056.49 to the bank account of the Enforcement

Directorate

15. It is contended that on 07.07.2020, Respondent Bank wrote an email to the Enforcement Directorate, requesting for confirmation or NOC for

de-freezing (removal of the debit freeze of the account in question). Respondent Bank also requested the Petitioner to provide NOC from

Enforcement Directorate for unfreezing of the accounts. However, Respondents did not receive any response from the Enforcement Directorate.

16. It is also contended that initially the Income Tax Department exercised a lien over the said account in question under Section 226 of the Income

Tax Act. However, vide a subsequent communication dated 15.07.2020, Income Tax Department has requested the answering Respondents to

release the Bank account in question from the said lien.

17. Respondent have explained that though there was quashing of the debit freeze order, however as there was a provisional attachment, the bank had

requested the petitioner to obtain a NOC from the authorities.

18. It is contended by learned counsel for the respondent bank that they had sought for a clarification as they are not a party to the proceedings and

they wanted to ensure that there was no other proceedings initiated by the parties and further that action taken by the bank was by way of abundant

caution and they had no intention to wilfully disobey the orders of the Court.

19. It is further pointed out that even the Income Tax Department had exercised a lien over the said account under Section 226 of the Income Tax

Act and it was only on 15.07.2020 that the Income Tax Department had permitted the respondent to release the bank account in question from the

said lien. It is, in the above circumstances, that the respondent bank did not permit operation of the subject bank account.

20. It may be further noted that the Directorate of Enforcement has passed another provisional attachment order dated 05.08.2020 attaching the

amount of Rs. 19,22,11,271/-, which is the credit balance in the subject account of the petitioner with the Axis Bank.

21. In view of the above, I find that there is no wilful default on part of the respondent bank in not permitting operation of the bank account for the

period that they were seeking clarification from the Enforcement Directorate as well as the Income Tax Department. The bank seems to have acted

only by way of an abundant caution in seeking a clarification from the Enforcement Directorate as well as from the Income Tax Department. The

cautious approach of the bank seems justified in view of the fact that the Enforcement Directorate has passed a further provisional attachment order

attaching the amount of Rs. 19,22,11,271/-, which was the credit balance in the subject account.

22. I find no merit in the petition. The petition is accordingly dismissed.

23. It is, however, clarified that this would be without prejudice to the rights of the petitioners to impugn the provisional attachment order dated

05.08.2020 in accordance with law and this order would not amount to expression of any opinion on the merits of the said order.

24. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email.