

CNR No. DLCT11-000548-2024
CBI NO. 92/2024
RC No.: RCBD1/2019/E/0006
Branch CBI/BSFB/NEW DELHI

CBI Vs. Moserbaer India Ltd. & Ors.

17.12.2024

Present : Sh. V. K. Ojha, Ld. Sr. PP for CBI along with Sh. Munna Kumar Singh, IO / Dy. SP CBI, BSFB, CBI, New Delhi.

Accused M/s. Moser Baer India Ltd. (A-1).
Sh. Anil Sethi, Ld. Counsel for official liquidator Sh. Anil Kohli.

Accused Nita Puri (A-2) **(through VC)**.
Accused Ratul Puri (A-3) in person.
Proceedings against accused Yogesh Bahadur Mathur (A-4) already abated vide order dated 16.10.2024.
Accused Naresh Jand (A-5) in person.

Accused Ajay Sehgal (A-6) **(through VC)**.
Accused Rajinder Kumar Dhingra in person.
Sh. Vijay Aggarwal along with Sh. Rajeev Goyal, Sh. Anshul Mishra, Sh. Vishal Gaurav, Ms. Barkha Rastogi, Ms. Koninica Bose and Sh. Kartikay Kumar, Ld. Counsel(s) for accused nos. 2 to 7.

Perused the case diaries and the crime file produced by the IO for the perusal of the Court.

It is submitted by Ld. Counsel for the accused persons

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that in the FIR registered on 17.08.2019 on the complaint of Central Bank of India, there is an **Annexure-1**, containing the additional information at page 14 of the said FIR, which is document no. D-1 of relied upon documents, in which it is mentioned that after the corporate debt restructuring prepared on 20.09.2012 and modified on 22.10.2012, the Central Bank of India was being nominated as the lead bank of the newly formed consortium as monitoring institution and the loan extended to M/s. MBIL by different banks of the consortium has been mentioned in detail in the Table at page 14.

He further submits that in view of the circular no. F.No. 4/5/2014-Vig., issued by Ministry of Finance, Department of Financial Services, dated 13.05.2015, more specifically para 8, it is mentioned as under :

8. In case of a consortium lending / multiple banking arrangements only one bank will be required to file an FIR and all the other banks would extend necessary support to the investigating agencies of the fraud, including by way of providing all necessary information, documents etc.

Therefore, relying upon the said circular, he submits that there is no need to lodge separate FIRs on the complaints lodged on behalf of other members of the consortium. He also submits

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that initial charge sheet was filed on 07.02.2022 in which in para 40, it is stated as under :

40. Further investigation u/S. 173(8) CrPC is kept open against other suspect persons, credit facilities sanctioned by Central Bank of India as well as other lender banks. After completion of further investigation, supplementary report will be submitted before this Hon'ble Court in due course.

Thereby implying that the investigations qua credit facilities sanctioned by the Central bank of India as well as the other lending banks was kept open for further investigations and it was submitted that supplementary report will be submitted before this Court in due course after completion of further investigations . However, he submits that as stated by him on the last date of hearing, no worth while investigations were done after the filing of the initial charge sheet on 07.02.2022 and in between the period when supplementary charge sheet was filed on 12.06.2024, in which again it was stated in para 40 as under :

40. Further investigation u/S. 173(8) CrPC is kept open other credit facilities sanctioned by the Central Bank of India as well as other lender banks. After completion of further investigation, supplementary report will be submitted before this Hon'ble Court in

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due course.

He further submits that the number of witnesses and the number of documents, as pointed out by him on the last date of hearing, which was also reflected in his arguments addressed on the last date of hearing i.e. 11.12.2024 almost remain the same in the main charge sheet as well as in the supplementary charge sheet and therefore between 07.02.2022 till 12.06.2024, no worth while investigations have been carried out by the investigating agency and it was stated by the IO vide status report filed on the last date of hearing that for early disposal of this case for further investigations, a team of three officers has been formed, headed by Sh. Munna Kumar Singh, Dy. SP and efforts will be made to dispose off the further investigations of this case by the end of 2025.

He submits that these state of affairs / report submitted by the IO is not acceptable, in view of the judgment relied upon by him on the last date of hearing cited as ***State of Bihar and Anr. Vs. P.P. Sharma AIR 1991 Supreme Court 1260***, in which the Hon'ble Supreme Court as long back as 1968 had observed that in appropriate cases, where after the registering the crime if no expeditious investigations for unexplained reasons was done the Magistrate or the High Court, on satisfying the grounds, may

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direct completion of the investigations within a reasonable time. He submits that same is also explicitly stated so in the CBI Manual, which is binding upon CBI, more specifically para(s) 9.41 & 9.42 and also Chapter 10 of the said Manual, which relates to the supervision of the investigations.

He has further relied upon the order(s) cited as *Parminder Singh @ Dimpy Vs. State of Punjab and Another 2023 PHHC 146633 dated 17.11.2023* and *Binod Bihari Sethy Vs. State of Odisha CRLMC No. 112 of 2020 dated 03.01.2022* in support of his contentions that this will lead to hanging over of sword of Damocles on the head of accused persons to their detriment and prejudice. Therefore, he submits that directions be issued to wrap up the investigations in a very short span of time.

I have perused the case diaries. From the perusal of the relevant case diaries, it appears that on 16.02.2021, the complaints of the other consortium bank i.e. Punjab National Bank, State Bank of India (on behalf of Bank of Baroda, Canara Bank, Exim Bank, UCO Bank and Union Bank of India) had been merged with case RC 06E2019. The said complaint against the accused persons was alleged of similar *modus operandi* of cheating the public sector banks. With these complaints of these banks also arraigned in the case being investigated the wrongful loss to the public sector banks has been inflated to Rs. 2800.39 Crores. Therefore,

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it appears that the investigating agency has relied upon circular no. F.No. 4/5/2014-Vig., issued by Ministry of Finance, Department of Financial Services, dated 13.05.2015 (*supra*) for merging the above complaints of the member consortium banks with the present RC.

However, the perusal of the case diaries after the said event, dated i.e. 17.02.2021 reveals that between the interregnum 17.02.2021 and 09.01.2024, no beneficial investigations pertaining to the present case was done at all including the investigations qua the complaint made by the other members of banking consortium. No convincing explanation has been given in the Court on behalf of the investigating agency as to why the investigations got stalled for almost a period of two years when nothing moved, to which the IO submits that substantial time of the above period falls during the period of Corona Pandemic and the then IO Sh. Amit Kumar, PI was busy in investigations of other important cases including the RC No. 9/E/2015 and also in discussions with the senior officers.

To this, Ld. Counsel for the accused persons relies upon the judgment titled as *S. Kasi Vs. State 2020 SCC OnLine SC 529* and submits that corona period was between 15.03.2020 till 28.02.2022, during the said period Hon'ble Supreme Court was also pleased to suspend the limitation, whereas in the present case,

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no investigation was carried out till 09.01.2024, which is much beyond the said period.

It was observed by this Court on the last date of hearing, after hearing submissions of Ld. Sr. PP and the Ld. Counsel for the accused persons that further investigations / investigations as per the CBI Manual, more specifically para 9.41 & 9.42 have to be completed within a time span of 12 months after the registration of the FIR / RC and the same has to be reviewed / supervise by the superior officers every month and the same cannot continue *adindefinitum* or till eternity, as allowing the same would be depriving the accused persons of their right to speedy investigations, which is an intrinsic part of Article 21 of The Constitution of India and allowing the prosecution to do so would be direct violation of the fundamental right of speedy investigations, which is available to the accused persons.

It has been held in the judgment *Parminder Singh @ Dimpy (supra)*, as under :

8. There is no justification for subjecting a citizen to an indefinite period of investigation. The inaction on part of the Investigating Agencies and the concerned Court in the present case cannot be accepted and it cannot be allowed to continue indefinitely. The State is under obligation to ensure

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speedy justice to its citizens. The inherent fairness embedded in Article 14, 19 and 21 makes it obligatory for the State to provide a procedure which is fair, reasonable and just.

Considering the overall facts and circumstances elaborated above, after perusal of the case diaries, since no worthwhile investigations whatsoever has been done between the period 17.02.2021 to 09.01.2024 for which no convincing explanation has been furnished by the investigating agency besides putting entire blame upon the corona pandemic and the fact that the IO was busy in some other case, details of which have been mentioned above and some other important cases, however, the accused persons cannot be made to suffer indefinitely or can be put to constant and imminent peril due to the inaction on the part of the investigating agency, as right to speedy investigation is also an intrinsic part of the Article 21 of The Constitution of India and there is no justification for subjecting the accused to an indefinite period of investigations or subject them to open ended investigations which seems to never end, like a wheel in constant spin. If the same is allowed, then right of the accused under Article 21 of The Constitution of India for fair investigations would be seriously prejudiced and jeopardized. This practice of filing one supplementary charge sheet after another supplementary

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charge sheet, thereby never completing the investigations once for all, is like playing a game of roulette, thereby allowing dreaded sword of Damocles always hanging on the head of accused persons. The same cannot be countenanced by the Court, as it cannot be continuing investigations forever.

In these facts and circumstances, in view of the judgment(s) *State of Bihar and Anr. Vs. P.P. Sharma, Parminder Singh @ Dimpy Vs. State of Punjab* and *Binod Bihari Sethy Vs. State of Odisha (supra)* the prosecuting agency i.e. CBI is directed to make a positive endeavour to complete the investigations or wrap them up expeditiously / positively within a period of two months from today, as any elongation would be travesty of justice.

Ld. Counsel for the accused persons also submits that in order to supervise the investigations, directed to be above done by the IO within the aforesaid specific period, a status report be also called from the IO from time to time in view of the judgment of *Binod Bihari Sethi (supra), S. Kasi Vs. State (supra) and Sakiri Vasu Vs. State of UP, Appeal (Crl.) 1685 of 2007*, decided by the Hon'ble Supreme Court on 07.12.2007.

In this context, he has relied upon para 10 of the judgment *Binod Bihari Sethi (supra)*, which is reproduced as under :

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10. This amounts to perpetuating the illegal inaction of the investigating agency. In all fairness, the Court below ought to have called for a report from the IO as to the status of investigation instead of giving him a free hand to do as he pleases. What is even more disturbing is that after submission of the Final Report on 31.12.2019, notice was supposedly issued to the informant calling upon him to file protest petition but alas, three more years have elapsed in the meantime with the matter being left in a state of suspended animation as it were.

In view of the afore judgments *Binod Bihari Sethi (supra)*, *S. Kasi Vs. State (supra)* and *Sakiri Vasu Vs. State of UP (supra)*, relied upon by Ld. Counsel for accused persons, the IO is directed to file a status report positively on or before 21.01.2025, regarding the investigations done by him till the said date.

Copy of this order be given dasti to the prosecution for the needful. Same be also sent to the concerned Head of Branch, CBI for compliance.

At this stage, Ld. Counsel for accused persons submits that an application had also been moved on behalf of accused no. 7 Rajinder Kumar Dhingra, seeking permission to go abroad to UAE from 01.01.2025 to 13.01.2025, for the reasons mentioned in para 3 of his application to meet his son and daughter, who are stated to be the residents of UAE. It is stated that the applicant / accused is a retired Finance Professional, having deep roots in the society and is ready to abide by any terms or conditions to be imposed by this Court.

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Reply to the said application has been filed on behalf of the CBI stating that the applicant / accused being Senior Manager of M/s. Moser Baer India Ltd. Was actively involved in day to day affairs of the company and in furtherance of criminal conspiracy, he facilitated the main accused persons to commit the fraud and causing wrongful loss to the banks to the tune of Rs. 2800 Crores approximately.

It is further stated that if the accused is allowed to travel abroad, he may never return back since he is accused of serious economic offence(s).

Considered the rival submissions.

In the present case, the charge sheet was filed without arrest and it is not the case of the IO that this accused had not cooperated in the investigations or tried to flee during the investigations or any LOC was opened qua him. In these facts and circumstances, since the accused wants to meet his son and daughter, who are stated to be the residents of UAE, **the accused Rajinder Kumar Dhingra is permitted to travel abroad from 01.01.2025 to 13.01.2025 to UAE, subject to the following conditions:**

a. That applicant shall furnish security in the form of bank guarantee in the sum of Rs.7 Lakhs or in the alternative an FDR in the like amount.

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b. That applicant shall furnish an affidavit in the court disclosing his programme/itinerary including flight numbers (to and fro) as also places of his stay at various stations abroad and telephone numbers and addresses of his stay before his departure.

c. That applicant shall intimate the court 24 hours prior to leaving and within 72 hours of his return from abroad.

d. That applicant will file complete self attested copy of his passport alongwith copy of VISA in the court on his return from abroad.

e. The applicant shall neither tamper with the evidence nor try to influence any witness in any manner and will not use the permission granted to him contrary to the rules.

f. In case of any of the above conditions are violated, the bank guarantee/FDR will be forfeited to the state.

g. In any eventuality, accused will not request for extension for staying abroad.

h. This permission shall be subject to other applicable rules and will not be deemed as directions to any other authority except the

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permission from the side of the court.

i. His surety/Ld. Counsel will undertake to accept notice(s), if any, on behalf of the accused in his absence.

j. Neither he nor his counsel will object to the carrying of the trial/inquiry during the absence of accused.

In view of the above directions, the application filed by applicant/accused Rajinder Kumar Dhingra to travel abroad stand disposed off accordingly.

Copy of this order be given to Ld. Counsel for the applicant/accused, as prayed.

Put up for compliance of the above directions / status report to be filed by the IO, as directed above on **21.01.2025**.

(SANJEEV AGGARWAL)
Special Judge (PC Act) (CBI)-10
Rouse Avenue Courts Complex
New Delhi/17.12.2024