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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7966/2023**
VENKATESHWARA HATCHERIES PRIVATE LIMITED

..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Vishal Khattar, Ms.
Aneesha, Mr. Rajat Rajoria and Ms.
Gauri Swarup Bansal, Advocates.

versus

**UNION OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF
ECONOMIC AFFAIRS & ORS.** Respondents

Through: Mr. Ravi Prakash, CGSC with Ms.
Astu Khandelwal, Ms. Usha and Mr.
Ayushman Kishore, Advocates for
UOI.

Mr. Rachit Bigghe and Mr.
Diwanshu, Advocates.

Mr. Zoheb Hossain, Mr. Vivek
Gurnani and Mr. Kartik Sabharwal,
Advocates for ED.

Mr. Abhishek Khanna, GP.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

31.10.2023

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CM APPL. 53927/2023

1. This application has been filed on behalf of the Petitioner seeking permission for making outward financial remittances for the sum of GBP 11 Million for meeting the Petitioner's financial and contractual obligations.
2. The break-up of the aforesaid amount which is required by the Petitioner towards expenses to be borne by it reads as under:



S.NO	NATUE OF EXPENSE/FINANCIAL COMMITMENT	AMOUNT (GBP)
1.	Payroll Liabilities-Salary and Wages-October-December-2023	3,834,192
2.	Payroll Liabilities (PAYE)-(Tax payable on Salaries and Wages)-September 2023	1,028,229
3.	Payroll Liabilities (PAYE)-(Tax payable on Salaries and Wages)-October-December 2023	3,085,000
4.	VAT Liability-October 2023	900,000
5.	Repayment of Loan-October-December 2023	217,251
6.	Agent Fee (Commission)	1,808,836
7.	Utilities	572,000
	Total	11,445,508

3. The facts of the case reveal that the Petitioner has three wholly owned subsidiaries companies in England, namely, Venky's London Limited, Venkateshwara London Limited and Venky's Overseas Limited. Since certain discrepancies were found regarding the outward remittances in respect of Venky's Overseas Limited, proceedings under the Foreign Exchange Management Act, 1999 (FEMA) were initiated against the Petitioner.

4. Rule 10 of the Foreign Exchange Management (Overseas Investment) Rules, 2022 which was brought into effect on 22nd August, 2022 stipulates



that any person being the resident of India who is under investigation by a financial service regulator or by any investigative agency in India, namely, the Central Bureau of Investigation (CBI) or Directorate of Enforcement (ED) or Serious Frauds Investigation Office (SFIO) shall before making any financial commitment or undertaking disinvestment under these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, has to obtain a No-Objection Certificate from the lender bank or regulatory body or investigative agency, by making an application in writing to such bank or regulatory body or investigative agency concerned.

5. The Petitioner made an application dated 17.01.2023 under Rule 10 of 2022 Rules seeking a No-Objection for remittance for financial commitments to its WOS for the year 2023-24 which has been rejected vide an Order dated 06.03.2023 passed by the Enforcement Directorate, which is the subject matter of the instant writ petition.

6. Notice has been issued in the writ petition.

7. During the pendency of the writ petition, the Petitioner has filed the present application for fulfilling its commitments, regarding the payments to be made by it for Venky's Overseas Limited which is a Special Purpose Vehicle (SPV) holding 99.99% ordinary shares of Blackburn Rovers Football Club PLC (BRFC).

8. Replies have been filed by the Respondents objecting to the remittances to be made by the Petitioner.

9. Mr. Dayan Krishnan, learned Senior Counsel for the Petitioner, draws attention of this Court to an Order dated 23.06.2023 passed by this Court in the instant writ petition i.e., W.P.(C) 7966/2023 wherein this Court permitted the Petitioner to remit a sum of GBP 3.54 Million for meeting its financial commitments on furnishing a Bank Guarantee for equivalent



amount. He, therefore, states that in view of the said Order dated 23.06.2023, there should not be any impediment for this Court to permit the Petitioner to remit a sum of GBP 11 Million. He states that the said remittances will be covered by 100% Bank Guarantee. He further states that the said remittances will be backed by the statutory auditor certificate along with an end use certificate issued by the statutory auditors.

10. *Per contra*, Mr. Zoheb Hossain, learned Counsel for ED, vehemently objects to the present application of the Petitioner by contending that the deposit of 100% Bank Guarantee does not fulfil the object of FEMA because the object of FEMA is to manage and maintain the foreign exchange of the country and release of foreign exchange cannot be substituted by depositing the Bank Guarantee. He further states that the investigation is being conducted on the activities of the Petitioner and, therefore, the remittance of amount should not be permitted.

11. In rejoinder, Mr. Dayan Krishnan, learned Senior Counsel for the Petitioner, contends that the functioning of the club has not been in the cloud of suspicion and the inquiry which is going against the Petitioner is only at the nascent stage, cannot choke the entire commercial activities of the Petitioner.

12. Undoubtedly, the functioning of the club is yet not under any cloud of suspicion. In view of the fact that the Petitioner has assured this Court that the remittances will be covered by 100% Bank Guarantee and also will be backed by the statutory auditor certificate along with an end use certificate issued by the statutory auditors, this Court is inclined to permit the Petitioner to remit the sum of GBP 11 Million which is equivalent to INR 111,10,00,000/- (Rupees one hundred eleven crores and ten lakhs only), subject to the following conditions:



- a) An unconditional Bank Guarantee to be provided by Petitioner in favour of ED for an equivalent amount GBP 11 Million which is equivalent to INR 111,10,00,000/- (Rupees One Hundred Eleven Crores and Ten Lakhs only)
 - b) After every remittance made by Petitioner to its WOS (Wholly-owned Subsidiary) an Affidavit to the effect regarding the purpose and use of the funds shall be filed by Petitioner within 1 (one) working day.
 - c) After every remittance made by Petitioner to its WOS (Wholly-owned Subsidiary) an End use Certificate issued by the statutory auditors of the Football club shall be filed within three working days.
 - d) An intimation for every remittance shall be sent by Petitioner Company to Mr. Praduman Sharma, Assistant Director, Zone-II on his email ID admbzoi51-ed@gov.in.
 - e) In addition to the above proposed conditions, the petitioner should be directed to submit bank statements of WOS and BRFC substantiating the purpose and end use of the funds.
 - f) The Bank Guarantee will be kept alive during the period of investigation.
13. In view of the above, the application is disposed of.

W.P.(C) 7966/2023

List on 24.01.2024.

SUBRAMONIUM PRASAD, J

OCTOBER 31, 2023

S. Zakir