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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 30th April, 2025*

+ **CRL.M.C. 2701/2018 & CRL.M.A. 9613/2018**

FERNAS CONSTRUCTION PVT LTD

Having its registered office at;
Space No. S-19, Second Floor,
Malhan Falcon Plaza, Plot No. 4 Pocket 7
Sector-12, Dwarka,
New Delhi- 110075

.....Petitioner

Through: Ms. Surabhi Vaya and Mr. Aakrsh
Jha, Advs.

versus

CENTRAL BUREAU INVESTIGATION

Through:
Standing Counsel
Delhi High Court,
New Delhi

.....Respondent

Through: Mr. Ripudaman Bhardwaj, SPP with
Mr. Kushagra Kumar, Mr. Abhinav
Bhardwaj and Mr. Amit Kumar Rana,
Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T(oral)

1. Petition under Section 482 of the Criminal Procedure Code, 1973 has been filed by the Petitioner to challenge the Orders dated 10.04.2018 and 03.05.2018 of the learned Special Judge (PC Act), CBI, New Delhi *vide* which the Accused No. 4 Fernas Construction Company, Turkey was



deemed to be served through the Petitioner, its subsidiary Company located in India.

2. ***Briefly stated***, a Complaint dated 06.12.2012 was submitted to the Joint Director, Economic Offence, Delhi Zone, CBI by Ms. Smitha Sehgal, Legal Department, Commercial Directorate, EIL, New Delhi against the Petitioner/Fernas Construction India Pvt. Ltd. stating that the Completion Certificate dated 16.10.2010 issued by Qatar Petroleum, which was submitted by the Petitioner for the bids of IOCL Project and OPaL Project to show the past experience to FCC Turkey, was an inauthentic and a forged document.

3. The case FIR No. RC2202013E0001 dated 17.01.2013 was by CBI registered at P.S. EOU-IV/EO-II under Section 420/468/471 IPC. The *Final Report* dated 30.09.2015 was filed before the learned Special Judge, CBI against the following accused:-

(i) *Accused No. 1: Mr. Rohit Singhal, CEO of the Petitioner Company;*

(ii) *Accused No. 2: Petitioner Company;*

(iii) *Accused No. 3: Mr. K.P. Tandon, the then Executive Director (Projects), EIL; and*

(iv) *Accused No. 4: FCC, Turkey.*

4. The Accused No. 4 FCC, Turkey could not be served. The Summons were sought to be served through MHA but no Report was received. Despite efforts to serve the Accused No. 4/FCC Turkey, the same could not be effected. Eventually, the learned Special Judge, CBI, on 10.04.2018, by observing that FCC Turkey was holding 99% shares of Petitioner i.e. FC



Pvt. Ltd., India and service on the latter was deemed to be service on FCC Turkey.

5. Aggrieved, present Writ Petition has been filed to challenge the Orders dated 10.05.2018 and 03.05.2018 of deemed service on FCC, Turkey through the Petitioner, *on the grounds* that each Corporate entity is a separate legal entity; a subsidiary Company and Parent Company are two separate and distinct legal entity and the Parent Company cannot be deemed to have been served merely because the subsidiary Company has been served, for which reference has been made to *Indowind Energy Ltd. vs. Wescare (I) Ltd.*, (2010) 5 SCC 306.

6. The impugned order of deem service is a blatant disregard to the scheme of Cr.P.C. which lays down the procedure of service to be followed for service of Corporate Bodies and also provides for the mechanism for service of the accused persons in Foreign States. It has not been appreciated that the only procedure for service of summons upon FCC, Turkey was as per the procedure laid down in Section 105 Cr.P.C. and the applicable Notification No. 25016/17/2007 dated 11.02.2009 issued by Ministry of Home Affairs, Legal Cell, Government of India. A Mutual Legal Assistance Entry for criminal matters has been entered into between Government of India and Republic of Turkey for the procedures for service of summons on a person/entity located in Turkey. The departure from said procedure would amount to ineffective, improper and illegal service.

7. Reliance has been placed on the principals laid down by Privy Council in *Nazir Ahmed vs. King Emperor* AIR 1936 PC 252, which was relied upon by the Apex Court in the case of *Dhanajaya Reddy and Ors. vs.*



State of Karnataka (2001) 4 SCC 9 to observe that when the power is given to do a certain thing in a certain way, it must be done in that way only and other methods of performance are necessarily prohibited.

8. Furthermore, it has not been considered that despite several attempts, report of the service of summons was not received by CBI. Therefore, there was no conclusive determination of whether the service has been completed or failed. Therefore, deemed service of FCC, Turkey through the Petitioner is not only bad in law, but premature and unwarranted. Moreover, several summons issued by the learned Special Judge, CBI did not provide for adequate service time as requested by the Turkish Authorities. Therefore, service could not be completed by CBI.

9. The first summons were sent on the wrong address; the second summons were issued with the service time of only one month; with regard to the third summons, the service time was extended by the learned Special Judge only on the request received by the Turkish Authority as forwarded by MHA *vide* letter dated 21.04.2016. Service time of at least three months was requested from the date the translated and certified documents were received by them. Despite this, 4th, 5th and 6th summons were issued with the summons time of a total of three to four months. Granting of three-four months time for the service of summons on FCC Turkey was absolutely inadequate due to the time taken in the transmission of the summons from MHA to Turkish Authority.

10. *Mala fide* of CBI is writ large in the fact that CBI filed the application for summoning of FCC, Turkey through its Indian subsidiary on 24.07.2017 despite the fact that on 15.06.2017, a request was made by Turkish



Authority for further time to effect service upon FCC, Turkey. The conduct of CBI demonstrates that request for deemed service upon FCC, Turkey had no connection with the attempts of service of summons to FCC, Turkey as per the prescribed procedure.

11. Furthermore, it has not been considered that mere fact that the Group Parent Company gives guidance to the Group Companies or the fact that the Parent Company exercises shareholder influence on its subsidiary, is not enough to warrant *piercing of corporate veil*, for which reliance has been placed on *Vodafone International Holdings BC vs. Union of India* (2012) 6 SCC 613.

12. In *Balwant Rai Saluja vs. Air India Ltd.* (2014) 9 SCC 407, the Apex Court held that *the principal of lifting the corporate veil* has been and should be applied in a restrictive manner wherein it is evident that the Company was a mere camouflage or sham deliberately created for the purpose of avoiding liability.

13. It is, therefore, submitted that the impugned order deeming service of FCC, Turkey through the Petitioner is illegal and be set aside.

14. The *detailed Reply* has been filed on behalf of the CBI wherein it has been explained that Sh. Farhat Nosiroglu through whom FCC, Turkey has been Charge-Sheeted, remained Director of Petitioner till 05.04.2017. He resigned from the Directorship of the Petitioner on 05.04.2017, which was accepted in the Board Meeting dated 10.04.2017 of the Petitioner. By that date, summons to FCC, Turkey had been issued through Sh. Farhat Nosiroglu on 04.01.2015, 04.02.2016, 17.03.2016, 26.05.2016, 03.10.2016 and 31.01.2017. The summonses have, therefore, been rightly deemed to



have been served on FCC, Turkey through Sh. Farhat Nosiroglu, who was the office bearer in the Petitioner Company as well as in FCC, Turkey.

15. Pertinently, the very first summons to FCC, Turkey was issued to be served through Petitioner, but it submitted the Turkey address of FCC, Turkey by concealing that the Board Chairman Sh. Farhat Nosiroglu, was one of the Directors in the Petitioner Company as well. No act prohibits service of summons to office bearer of one office in another office, where also he is the office bearer.

16. It is further submitted that FCC, Turkey is the owner of the Petitioner as it has its 99% shareholding. As per Section 63 Cr.P.C. summons on a Corporate Body may be affected through its Secretary Local Manager or other Principal Officer of the body. Therefore, service upon FCC, Turkey through Sh. Farhat Nosiroglu, its Director is not contrary to law and the Orders dated 10.04.2018 and 03.05.2018 do not suffer from any infirmity.

17. It is further submitted that summoning is a process of law by which a person is intimated that a trial is going on in the Court where his appearance is required, in the interest of justice. The prosecution never intends to shift the burden of charges/allegations of FCC, Turkey on the Petitioner, but only the summons on FCC, Turkey have been rightly deemed to have been effected through Sh. Farhat Nosiroglu, who is a Director in FCC, Turkey as well.

18. It is, therefore, submitted that there is no merit in the present petition which is liable to be rejected.

19. **Submissions Heard and Record Perused.**

20. The *moot question for determination* in the present petition is



whether FCC, Turkey has been rightly deemed to be served through its Director Sh. Farhat Nosiroglu, who was the erstwhile Director of the Petitioner Company.

21. Section 63 Cr.P.C. (now Section 65 'BNSS 2023') provides for service of summons on Corporate Body and Societies. Section 63 Cr.P.C. specifically provides that the service of the summons on a Corporation may be effective by serving it through the Secretary Local Manager or the other Principal Officer of the Corporation or by letter addressed to Chief Officer of the Corporation in India in which case, the service shall be deemed to have been effected once the letter is duly delivered in ordinary post.

22. **Section 65 BNSS** while incorporating similar provisions further specifies that the service be made through **Director**, Manager, Secretary or any other Officer of the corporation.

23. Pertinently, FCC, Turkey had been summoned through Sh. Farhat Nosiroglu, who was also a Director in the Petitioner Company. Sh. Farhat Nosiroglu was also representing the Petitioner on whose behalf summons were duly accepted.

24. Furthermore, though the summons were first issued on 04.12.2015 on FCC, Turkey and subsequently on various dates 04.02.2016. 17.03.2016. 26.05.2016. 03.10.2016 and 31.01.2017. The Petitioner herein when served with the summons, had given a request to issue the summons to FCC, Turkey at its Turkey address.

25. However, once, Sh. Farhat Nosiroglu, who is the Board Chairman of FCC Turkey and was Director in the Petitioner Company from the time of incorporation of the Petitioner Company in India until resignation on



05.04.2017, it is evident that it got duly served through the Director who was illusive and evasive in reflecting the summons.

26. There was enough Notice issued and the service had been duly effected on FCC, Turkey through Sh. Farhat Nosiroglu prior to his resignation from the Petitioner on 05.04.2017.

27. In the present case, it is not in dispute that Sh. Farhat Nosiroglu, who was representing the Petitioner Company as its Director, continues to be the Director of FCC, Turkey. In terms of Section 63 Cr.P.C. (S.65 'BNSS 2023'), the FCC, Turkey has been duly served through its Director, Sh. Farhat Nosiroglu and, therefore, the impugned Order dated 10.04.2017 is in accordance with the provisions of law and cannot be termed as illegal.

28. The next aspect to consider whether the doctrine of '*lifting of the Corporate Veil*' has been rightly invoked by the Ld. Trial Court while determining deemed service as against Accused No.4/FCC Turkey through Accused No. 2/FCI Pvt. Ltd, India.

29. It is an established principle of law that a subsidiary is a separate legal entity and is different from its holding/parent Company. However, the law recognises certain instances when the Holding Company and its subsidiary cannot take shelter under the legal position that they are two distinct entities. In the case of Vodafone International Holdings BV vs. Union of India, (2012) 6 SCC 61, the Apex Court has held that in case the "*Parent Company's management has steering influence on the subsidiary's core activities that the subsidiary can no longer be regarded to perform those activities on the authority of its own executive directors.*"

30. Further, in the case of State of U.P. vs Renusagar Power Co., (1998) 4



SCC 59, the Apex Court has held that the Court is empowered to lift the corporate veil when the “*two companies are inextricably inter-linked corporate entities*”.

31. In the instant case, the Parent Company/FCC Turkey owned 99% shares in the Indian Subsidiary, which is nothing but an indication that the two Companies are inextricably linked to one another. This is further emboldened by the fact that Sh. Farhat Nosiroglu, at the time of service of summons on Accused No. 2, was a Director of both the Companies and had only resigned from the Petitioner Company only on 05.04.2017.

32. In view of the above discussion, it is held that the impugned Order is correct and does not merit interference.

33. The Petition is accordingly, dismissed. The pending Application(s), if any, are disposed of accordingly.

NEENA BANSAL KRISHNA, J

APRIL 30, 2025/N