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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1903/2021

SHANTANU PRAKASH

.....Petitioner

Through : Mr. Dayan Krishnan Senior Advocate
Mr. Arshdeep Singh, Ms. Neeha
Nagpal, Mr. Ayush Agarwal, Mr.
Vishvendra Tomar, Advocates.

versus

**CENTRAL BUREAU OF
INVESTIGATION & ANR.**

..... Respondents

Through : Mr. Ripudaman Bhardwaj, SPP with
Mr.Kushagra Kumar, Advocate.
Mr.P.B.S, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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11.10.2021

1. The hearing has been conducted through Video Conferencing.

CRL.M.A. 15666/2021

2. Exemption allowed, subject to all just exceptions.

3. The application stands disposed of.

W.P.(CRL) 1903/2021 & CRL.M.A. 15665/2021

4. This Writ petition is filed for quashing of FIR No.RC2232021A0007 dated 29.06.2021 under Sections 406/450/120B IPC read with Section 13(2) and 13(1)(d) of Prevention of Corruption Act.

5. It is submitted by the learned senior counsel for the petitioner the present FIR was registered against M/s.Educomp Solutions Ltd. and its subsidiary. The petitioner who has come here for quashing is director of M/s.Educomp Infrastructure and School Management Ltd. This company is 86% subsidiary company of Educomp Solutions Ltd, herein after referred to as (ESL), which was incorporated under Companies Act at Registrar of



Companies, NCT of Delhi and Haryana.

6. It is submitted earlier also FIR dated 10.02.2020 was lodged against the *ESL* and its directors of which investigation has been stayed *per* orders dated 10.06.2020 passed in W.P.(CRL.) 645/2020 and on 09.07.2020 in W.P.(CRL.)1007-08/2020. It is submitted the W.P.(CRL.)1007/2020 pertain to the same petitioner present today.

7. It is the submission that M/s.ESL and ESPL availed various loan facilities from the consortium of 13 banks between November, 2011 to December, 2012 to the tune of Rs.1995.36 crores as on 30.05.2017. In July, 2013 M/s. ESL opted for loan restructuring and CDR process was initiated by State Bank of Patiala. At the time of loan restructuring *no fraudulent transaction was observed*. Between the year 2014-15 fresh loan of Rs.767 crores was given to the company out of which an amount of Rs.290 crores was given by Axis Bank. It is alleged M/s.ESL purchased receivables charged at M/s.ESPL and *no fraud or misfeasance was found* while approving CDR. It is further submitted M/s. ESPL discharged its obligations under CDR and there were no liabilities.

8. In May, 2017 M/s. ESL initiated insolvency proceedings under Section 10 of the Insolvency and Bankruptcy Code, 2016 before the NCLT. On 30.05.2017 the petition was admitted and Resolution Professional was appointed. The resolution professional on 08.10.2018 had filed affidavit before the NCLT stating inter alia there was no fraudulent transaction and such affidavit was authorised by the Consortium of Banks.

9. However on 27.03.2019 Yes Bank filed a complaint before the EoW Cell against M/s.ESL alleging inter alia fraudulent transactions. A detailed inquiry was conducted and *no fraud was found*. The complaint was thus



closed. The SBI had also made a similar complaint and on 23.05.2019 the CBI found it was not a fit case for registration of FIR.

10. Reference is also made to CVC viz. respondent no.3 who had issued circulars wherein it has directed all PSBs to refer their complaints to Advisory Board of Banking Fraud (ABBF) for their advisory before filing any complaint with the investigating agencies. In November 2019 a second complaint was filed by respondent no.2 with the CBI. Admittedly a preliminary enquiry was registered but *no merit was found* in the complaint and FIR was never registered. On 15.01.2020 CVC again issued a circular reiterating its advisory to all the PSBs.

11. On 06.02.2020 yet again respondent no.2 filed a complaint with the CBI on similar allegations but within four days i.e. on 10.02.2020 the FIR was registered despite enquiries conducted earlier.

12. The order dated 09.07.2020 (supra) notes the EOW as well as CBI on two occasions have found it is not a fit case for registration of FIR and these authorities could not find any fraud. Even the IRP has filed an affidavit before NCLT stating interalia no fraudulent transactions were found. In the previous investigation conducted by the CBI also no role of any public servant was found. Thus based upon the FIR dated 10.06.2020 in W.P.(CRL.)No.645/2020 the order dated 09.07.2020 was passed wherein further investigation for the FIR dated 10.06.2020 was stayed.

13. It is submitted by the senior counsel for the petitioner the present FIR is registered against the 86% subsidiary of M/s.ESL and in this case too prior to lodging of FIR the complaints were closed by *EOW* Cell at Delhi as well as at Gurugram and there are no public servant involved. CDR process has also been initiated in the present FIR twice i.e. in 2013 and 2016 to show



there was no fraudulent transactions found.

14. Though the present FIR is based on the forensic report of M/s.Kroll Associates, but it is submitted under the Insolvency and Bankruptcy Code, the Insolvency and Bankruptcy Board of India had stated there is a conflict of interest between the Resolution Professional and M/s.Kroll Associates and such forensic report cannot be adhered to. It is submitted the resolution professional has been suspended only because of this. It is submitted the facts are identical to the earlier FIR and the same interim order be extended in the present case.

15. The learned SPP for the CBI submits he be granted some time to file a response as he opposes submissions of the learned senior counsel for the petitioner.

16. It is submitted earlier petitions are listed for 25.10.2021 and hence this matter be also listed on the same day and till then *no coercive steps shall be taken against the petitioner herein*. However the issue of stay on investigation shall be considered on the said date.

17. The learned SPP for CBI shall file its status report/reply before the next date of hearing and the same be placed on record as well.

YOGESH KHANNA, J.

OCTOBER 11, 2021

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