

\$~25

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

% *Date of Decision: 22.05.2023*

+ **W.P.(C) 3428/2023 & CM APPL. 13239/2023, CM APPL. 25805/2023**

ZHUDAO INFOTECH PRIVATE LIMITED. Petitioner

Through: Mr. Tarun Gulati, Senior Advocate
with Mr. Jitin Singhal, Ms.
Vasundhara Shankar, Ms. Aastha
Arora, Mr. Mudit Kaushik, Mr.
Yash Chandra, Mr. Arnab
Chatterjee, Mr. Virat Anand, Mr.
Shashank and Mr. Kumar Sambhav,
Advs.

Versus

THE PRINCIPAL ADDITIONAL DIRECTOR
GENERAL & ANR

..... Respondents

Through: Mr. Harpreet Singh, Senior
Standing Counsel with Ms. Suhani
Mathur and Mr. Jatin Kumar Gaur,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner (hereafter '**ZIPL**') has filed the present petition under Article 226/227 of the Constitution of India impugning the orders dated 10.10.2022 and 06.10.2022 (hereafter '**the impugned orders**') passed by respondents nos.1 and 2, respectively. In terms of the impugned orders, ZIPL's bank accounts (Current Account

No.50200076276270 maintained with HDFC Bank Ltd.,SCO-15, Sector-14, Gurugram; Escrow / Nodal Account No.017261100000041 and Current Account No.017281300000462 maintained with Yes Bank Ltd., DLF Cyber City, Gurugram) were attached under Section 83 of the Central Goods & Services Tax Act, 2017 (hereafter '**the CGST Act**'). By a communication dated 10.10.2022 addressed to the Branch Manager of Yes Bank Ltd., respondent no.1 also directed the Branch Manager, Yes Bank to hold at least ₹643 crores in ZIPL's Escrow / Nodal Account No.01726110000004.

2. ZIPL also impugns an order dated 01.02.2023, passed by respondent no.1 in effect, rejecting the objections raised by ZIPL under Rule 159(5) of the Central Goods & Services Tax Rules, 2017 (hereafter '**the CGST Rules**').

3. ZIPL contends that the orders passed under Section 83 of the CGST Act are illegal as there is no ground for the respondents to believe that it was necessary to attach ZIPL's bank accounts in the interest of the Revenue.

4. ZIPL operates a payment aggregator platform under the name 'Onion-Pay'. It has onboarded various merchants on the said platform, which is used by merchants and their customers to pay for goods and services.

5. ZIPL claims that its role is limited to processing payments and it is not concerned with the supply of any services by any of the merchants using its online platform.

6. ZIPL also claims that it has complied with the 'Know Your Customer' (KYC) requirements in respect of the merchants using its platform but has no control over their activities in relation to the supply of goods and services, which may be chargeable to GST. ZIPL charges a transaction fee and claims that it has duly discharged the GST on the amounts charged from merchants for use of its online payment platform.

7. ZIPL states that the payments are received in the Escrow / Nodal accounts, which are maintained in terms of the guidelines issued by the Reserve Bank of India (hereafter '**RBI**'). ZIPL is entitled to only part of the payments under the Escrow / Nodal accounts and the balance amounts are required to be paid to the merchants and suppliers who have used the services of ZIPL for facilitating receipt of payments from their customers.

8. Undisputedly, the attachment of ZIPL's Escrow / Nodal account would result in effectively shutting down its business as it would no longer be able to operate the online platform.

Factual Context

9. A search was conducted on the premises of ZIPL as well as its Directors on 06.10.2022 and 07.10.2022. As noted above, the impugned orders attaching ZIPL's bank accounts were passed on 06.10.2022 and 10.10.2022.

10. Aggrieved by the same, ZIPL filed its objections under Rule

159(5) of the CGST Rules, praying that its bank accounts be defreezed. The respondents did not consider the said objections and sent a letter dated 04.01.2023, informing ZIPL that its objections were not in the correct / prescribed format.

11. Being aggrieved by the impugned orders, ZIPL approached this Court by filing a writ petition [W.P.(C) No.492/2023], *inter alia*, praying that the impugned orders be set aside. Before this Court, it was contended on behalf of the respondents that there was a serious apprehension that the merchants onboarded and transacting through ZIPL's online platform, Onion-Pay, were not genuine. This Court disposed of the said writ petition by an order dated 16.01.2023, directing the respondents to pass a speaking order in respect of the objections raised by the petitioner within a period of two weeks from the said date.

12. Thereafter, respondent no.1 scheduled a personal hearing and provided an opportunity to ZIPL to submit relevant documents. ZIPL's objections under Rule 159(5) of the CGST Rules was rejected by an order dated 01.02.2023, which is also assailed in the present petition.

Order dated 01.02.2023

13. The order dated 01.02.2023 indicates that during the course of proceedings relating to the objections preferred by the petitioner, respondent no.1 had called upon ZIPL to furnish details showing the names, bank account numbers and IFSC codes of third-party merchants and users to whom the funds were required to be paid from the Escrow

/ Nodal account. In compliance with the same, ZIPL provided details of all merchants and break-up of the outstanding amount payable to them from the funds available in the Escrow/Nodal accounts.

14. Respondent no.1 had noted in its order dated 01.02.2023 that approximately ₹314.46 crores was available in the Escrow / Nodal Account No.017261100000041 with Yes Bank Ltd. and out of the aforesaid amount, ZIPL had furnished a breakdown of the amounts due to 106 merchants aggregating to ₹244.54 crores. It had not submitted any details regarding the persons to whom the balance amount of ₹69.92 crores was required to be paid. Respondent no.1 noted that out of the amount of ₹244.54 crores belonging to 106 merchants, ₹152.25 crores pertained to merchants whose bank accounts had been provisionally attached. He accordingly allowed release of the said amount, subject to the condition that the amounts be paid to the said merchants directly in the bank accounts as mentioned in the said impugned order, that is, the accounts that had already been attached by the respondents.

15. In addition, respondent no.1 directed that before transfer of the said amount, ZIPL and Yes Bank Ltd. would submit an affidavit to the Deputy Director of DGGI to the effect that branches of the banks maintaining the accounts of the recipients are informed that the bank account of the concerned payee is attached and the same is acknowledged by the concerned banks. It was further directed that in case ZIPL and Yes Bank Ltd. are not willing to inform the recipient banks, they shall inform the same to the Deputy Director of DGGI, who would then issue a NOC after informing the banks.

16. Insofar as the balance amount of ₹92.29 crores is concerned (₹244.54 crores - ₹152.25 crores), respondent no.1 noted that it pertained to 18 other merchants, some of which were found to be non-existent, and bank accounts of some of the merchants were attached but the bank account numbers furnished by ZIPL in respect of those merchants were different from those that were attached. Respondent no.1 held that the amount of ₹28,67,90,503/- pertaining to specified merchants would be permitted to be released after their bank accounts have been attached. Further, in respect of ₹49,19,44,031/-, respondent no.1 noted that the same was required to be remitted to three merchants whose details were not shared by ZIPL at the time of search but had been provided later by a letter dated 24.11.2022. Respondent no.1 observed that *bona fides* of those merchants would require to be verified and held that the said amount could not be released before the *bona fides* of those merchants were verified. Insofar as the balance amount of ₹75,96,407/- is concerned, the same related to the eleven merchants and ZIPL was permitted to release the same.

Discussions and conclusion

17. The respondents have filed an affidavit raising several allegations against ZIPL and seeking to justify their actions of attaching the bank accounts of the ZIPL. They claim that information was received indicating that ZIPL was indulging in evasion of GST while providing an online payment gateway (Aggregator Services) under the trade name 'Onion-Pay'. The respondents allege that that ZIPL was supporting illegal gambling products such as 'Teen Patti', 'Roulette', 'Ludo',

‘Matrix 5’ and all merchants associated with the payment gateway were suspected to be fake and shell companies. Further, they allege that ZIPL had created a web of fake gaming merchant entities, which were operated and managed by ZIPL. It was claimed that a Chinese national named Jian Li was the Director of ZIPL and the mastermind in running the entire online gaming / gambling business.

18. The respondents also filed sur-rejoinder, *inter alia*, affirming that various new facts have emerged during investigation. They state that it was found that the application made by ZIPL to operate a payment gateway / payment aggregator has been returned by the RBI on 06.01.2023. The RBI had further advised ZIPL to stop the payment aggregation activity and directed it to close the Nodal account within one hundred and eighty days from 06.01.2023. ZIPL was further prohibited from submitting any further application or operating any payment system under the Payment & Settlement Systems Act, 2007 for the period of one year. It is also alleged that certain contraventions of Foreign Exchange Management Act, 1999 (FEMA) were observed and the RBI has issued a compounding order on 24.06.2022. It was also alleged that ZIPL was operating the Nodal / Escrow accounts and providing payment aggregator / payment gateway services in violation of regulatory requirements stipulated by the RBI.

19. The scope of the present proceedings is confined to determining whether the impugned orders are in accordance with Section 83 of the CGST Act. Thus, we are not required to examine the action taken by the RBI. Obviously, ZIPL will have to comply with the directions issued

by the RBI, unless the same are set aside by a competent court or authority. But the directions issued by the RBI is not the subject matter of the present petition.

20. Mr. Harpreet Singh, learned counsel appearing for the respondents, had submitted that the investigation is underway and that ZIPL's bank accounts had been attached in view of the information that some of the merchants onboarded on ZIPL's platform were non-existent. He also submitted that it was also suspected that money was being paid to fake and non-existent merchants operated by Chinese nationals, who would then transfer the funds out of India by illegal channels. He, however, readily accepted that there was no tangible material as yet to form any informed view in this regard. He further stated that insofar as ZIPL is concerned, there was no allegation that it had not discharged its liability under the CGST Act.

21. The allegations, on the basis of which the impugned order attaching the petitioner's bank account were passed, center around the theme that some of the merchants using ZIPL's platform are fake. Mr Singh submitted that registration numbers of some of the merchants had also been cancelled.

22. ZIPL had provided the details as well as the bank accounts of all merchants to whom payments are due from Nodal / Escrow account. According to ZIPL, a sum of ₹244.54 crores (out of the sum of ₹314.46 crores) is required to be paid to 106 separate merchants, and the balance amount of ₹69.92 crores belongs to it.

23. As stated above, Mr. Harpreet Singh has readily accepted that there is neither any demand nor any issue regarding ZIPL's liability under the CGST Act. ZIPL's bank accounts were attached mainly for attaching the assets of some of the merchants who were using ZIPL's platform. The relevant file produced in Court also indicated that the respondents had sought to create a lien on ZIPL's account for a sum of ₹643 crores on the basis of estimate of the tax liability owed by some of the large merchants.

24. In view of the aforesaid submission that there is no issue regarding the CGST liability of ZIPL, it is apparent that ZIPL's bank accounts could not be attached for any amount due and payable to the merchants using the ZIPL's platform. The provisions of Section 83 of the CGST Act can be invoked for attaching the assets and bank accounts of a taxable person or a person specified under Section 122(1A) of the CGST Act, if in the opinion of the Commissioner it is necessary to do so for the purpose of protecting the interest of government revenue. Thus, the bank accounts of ZIPL cannot be attached for securing the revenue of another taxable person. It is implicit that the bank accounts and assets of only those taxable person or persons specified in Section 122(1A) of the CGST Act can be attached who may be liable for payment of any government revenue and the Commissioner is of the opinion that it is necessary to attach their assets in the interest of government revenue. A debt owed by any person to the taxable person, whose assets or bank accounts are liable to be attached under Section 83 of the CGST Act, can be attached being an asset of such a person.

But the bank account of the person owing such debt cannot be subject to a provisional attachment order under Section 83 of the CGST Act.

25. We are also unable to find any basis for the various directions issued by respondent no.1 in the impugned order dated 01.02.2023 requiring ZIPL to obtain NOCs or acknowledgments from the bank accounts of the recipient merchants.

26. Mr. Tarun Gulati, learned senior counsel appearing for ZIPL, submitted that ZIPL had no issue in accepting the respondents' condition that the payments to various merchants be made only in the specified bank accounts as communicated to the respondents and as noted in the impugned order dated 01.02.2023. He also states that ZIPL has no cavil in undertaking that the amounts payable to the merchants and as recorded in the impugned order dated 01.02.2023 will be paid without holding back any amount.

27. Mr. Harpreet Singh fairly states that, at this stage, attachment of the assets of ZIPL may be lifted subject to the condition that the money due to various merchants would be remitted to the specified bank accounts as disclosed by ZIPL.

28. In view of the above, this Court considers it apposite to dispose of the present petition by setting aside the impugned orders attaching ZIPL's bank accounts *albeit* with the further direction that ZIPL shall make payments due to various merchants directly in their respective bank accounts as disclosed by ZIPL to the respondents and as recorded in the impugned order dated 01.02.2023. Insofar as the remaining

amount of ₹69.92 crores is concerned, ZIPL shall transfer the same to its current account.

29. The respondents are not precluded from taking any effective steps, in accordance with law, in respect of various merchants if they are of the opinion that it is necessary to do so in the interest of protecting the government revenues.

30. It is also clarified that the respondents are not precluded from taking any action against ZIPL in accordance with law, if it is found that any amount is due and payable by ZIPL. The concerned Commissioner is also not precluded from taking protective action, in accordance with law, in respect of any liability of ZIPL, if in his opinion the interest of protecting the government revenue requires such action.

31. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 22, 2023

‘gsr’