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

% Reserved on: 18th June, 2015
Decided on: 2nd July, 2015

\+ **W.P.(C) 6014/2015 & CM 10913/2015 (stay)**

ROSE VALLEY HOTELS AND ENTERTAINMENTS LIMITED ..... Petitioner

Through Mr. A.S. Chandhiok, Sr. Adv. with Mr. Jayant K. Mehta, Mr. Samiron, Mr. Sumeet Singh, Mr. Biswajit, Mr. Indranil Ghosh, Advs.

versus

THE SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE & ORS ..... Respondent

Through Mr. Navin Chawla, Adv. for R-1.
Mr. Shamshuddin, Adv. for ED.

\+ **W.P.(C) 6020/2015 & CM 10928/2015 (stay)**

GAUTAM KUNDU ..... Petitioner

Through Mr. A.S. Chandhiok, Sr. Adv. with Mr. Jayant K. Mehta, Mr. Samiron, Mr. Sumeet Singh, Mr. Biswajit, Mr. Indranil Ghosh, Advs.

versus

THE SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE & ORS ..... Respondent

Through Mr. Navin Chawla, Adv. for R-1.
Mr. Shamshuddin, Adv. for ED.

+ **W.P.(C) 6022/2015 & CM 10934/2015 (stay)**

SHIBAMOY DUTTA ..... Petitioner

Through Mr. A.S. Chandhiok, Sr. Adv. with Mr. Jayant K. Mehta, Mr. Samiron, Mr. Sumeet Singh, Mr. Biswajit, Mr. Indranil Ghosh, Advs.

versus

THE SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE & ORS ..... Respondent

Through Mr. Navin Chawla, Adv. for R-1. Mr. Shamshuddin, Adv. for ED.

+ **W.P.(C) 6023/2015 & CM 10938/2015 (stay)**

MODERN INVESTMENT AND TRADERS PRIVATE LIMITED & ORS ..... Petitioner

Through Mr. A.S. Chandhiok, Sr. Adv. with Mr. Jayant K. Mehta, Mr. Samiron, Mr. Sumeet Singh, Mr. Biswajit, Mr. Indranil Ghosh, Advs.

versus

THE SECRETARY DEPARTMENT OF REVENUE, MINISTRY OF FINANCE & ORS ..... Respondent

Through Mr. Navin Chawla, Adv. for R-1. Mr. Shamshuddin, Adv. for ED.

+ **W.P.(C) 6024/2015 & CM 10942/2015 (stay)**

BRAND VALUE COMMUNICATIONS LIMITED & ORS ..... Petitioner

Through Mr. A.S. Chandhiok, Sr. Adv. with Mr. Jayant K. Mehta, Mr. Samiron, Mr. Sumeet Singh, Mr. Biswajit, Mr. Indranil Ghosh, Advs.

versus

THE SECRETARY DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE & ORS ..... Respondent

Through Mr. Navin Chawla, Adv. for R-1.
Mr. Shamshuddin, Adv. for ED.

+ **W.P.(C) 6026/2015 & CM 10948/2015 (stay)**

ROSE VALLEY REAL ESTATE &
CONSTRUCTIONS LIMITED ..... Petitioner

Through Mr. A.S. Chandhiok, Sr. Adv. with
Mr. Jayant K. Mehta, Mr. Samiron,
Mr. Sumeet Singh, Mr. Biswajit, Mr.
Indranil Ghosh, Advs.

versus

THE SECRETARY DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE & ORS. ..... Respondent

Through Mr. Navin Chawla, Adv. for R-1.
Mr. Shamshuddin, Adv. for ED.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. These writ petitions challenge a common impugned order dated 29th April, 2015 passed by the adjudicating authority under the Prevention of Money Laundering Act, 2002 (in short the PML Act) whereby it was held that the appellants have committed the Scheduled offence, generated 'proceeds of crime' and laundered them, thus the Provisional Attachment Order (PAO) was confirmed and an order of confiscation was passed under sub-section (5) to sub-section (7) of Section 8 or Section 58B or sub-section (2A) of Section 60 of the PML Act.

2. A preliminary objection has been raised by the learned counsel for the respondent about the maintainability of the writ petitions in view of the alternate remedy of filing an appeal under Section 26 of the PML Act and thereafter further appeal being provided from the order of the Appellate Tribunal to be heard by the High Court. Reliance is placed on *United Bank of India Vs. Satyawati Tondon & Ors. (2010) 8 SCC 110*.

3. The contention of learned counsel for the petitioners is that since the impugned order is without jurisdiction the remedy of filing an appeal under Section 26 PML Act is not an appropriate remedy and the jurisdictional error committed by the adjudicating authority can be corrected only by this Court under Article 226 of the Constitution of India. It is stated that the impugned order notes the pleadings verbatim and thereafter in two paragraphs the discussion and conclusion have been summed up which are reproduced as under:

> "Discussions:
>
> 1. FIR and the charge sheet has been filed and the sections include schedule offences which have been prima facie committed.
>
> 2. Statements of the individual/persons recorded indicate prima facie case.
>
> 3. There is inter-linkage and inter connectivity in the transactions with various concerns of the group. There is cross holdings of the funds amongst group concerns.
>
> 4. Aggregate loss up to financial year 2012-2013 is ₹2133.708 crores and group net worth is a negative figure of ₹1891.202 as on 31.3.2013. Funds were collected by the group companies by false promise of high returns in various schemes which were apparently was not possible leading to prima facie case that this is the prima facie case of schedule offence.

5. Various schemes were floated which were not permissible under the SEBI/RBI etc law and criminal cases have been filed.

6. Commissions of ₹378.89 crores have been paid to various agent for arranging funds in the scheme. ED will consider action against such persons also as per law under PMLA.

7. Money has flown to other persons also which will be examined by ED for appropriate action.

8. Ones under Section 8(1) has not been discharged.

9. Conditions of Section 5 & 8 have been complied with.

10. There is no requirement under law to convey the reasons recorded to the defendants.

11. Complainant apparently will examine the case thoroughly and see if any other party is also required to be made defendant. If so it will take appropriate action as per law and pass fresh PAO with regard to such other parties.

12. Perusal of the PAO, OC, arguments of both the sides lead to the conclusion that prima facie case for confirmation of PAO is made out.

13. The case is not only for involvement of persons in money laundering process against whom case is filed with the Court/FIR but PMLA covers those persons also who are in possession of proceeds of crime.

14. Merely because investments are declared in the accounts does not lead to the conclusion that money laundering is not involved.

15. Offences under the provisions of IPC independently also are covered under Schedule offence if these find place in the schedule.

16. The case against the defendants is also that defendants collected money/deposit in violation of SEBI/RBI/guidelines of statutory bodies.

17. SEBI has prohibited them and now they are not doing so.

18. D-27 has not submitted reply with reference to notice u/s 8(1) on merits.

19. I have gone through the OC along with relied upon documents, PAO, statements recorded under Section 50 of the PMLA, investigation conducted, submissions of complainant & defendants and hold that prima facie case for confirmation of PAO is made out as above. PAO is accordingly confirmed considering over all facts.

20. It is held that the property which has been attached under Section 5 is involved in Money Laundering. The defendant are in possession of "Proceeds of Crime" within the meaning of provisions of Prevention of Money Laundering Act, 2002 and accordingly it is ordered that the attachment of the property shall continue during the pendency of the proceedings relating to any offence under this Act before a court or under corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and become final after an order of confiscation is passed under sub-section (5) to sub-section (7) of Section 8 or section 58B or sub-section (2A) of section 60.

21. The Provisional Attachment Order is confirmed accordingly.

22. <u>Conclusion</u>:

On a thorough perusal of the PAO, complaint, relied upon documents, the investigations conducted by the ED and the statements recorded u/s 50 of the PMLA and on careful consideration of the arguments advanced on behalf of the complainant & defendants undersigned comes to the prima facie conclusion that the defendant have committed the Scheduled offences, generated proceeds of crime and laundered them. No doubt the properties attached are proceeds of crime or value thereof and are involved in money laundering. Undersigned therefore orders confirmation of the above Provisional Attachment Order as indicated above. This order shall continue during the pendency of the proceedings relating to any offence under this Act before court or under the corresponding law of any other country, before the competent

> court of criminal jurisdiction outside India as the case may be and become final after an order of confiscation is passed under sub-section (5) to sub-section (7) of section 8 or section 58B or sub-section 2A or section 60."

4. Based on the findings of the adjudicating authority it is stated that the authority was under an obligation to adjudicate i.e. analyze, address and answer with reasons its finding. There is no finding regarding the 'proceeds of crime'. There is no finding as to which person was induced by the petitioners to invest the money. The entire and repeated reliances is on the order of SEBI which order has been stayed by the Guwahati High Court wherein it categorically held that prima facie the schemes floated by the petitioners do not fall within the meaning of expression of 'Collective Investment Scheme (CIS)', thus the SEBI does not have the jurisdiction to take action in the affairs of the business of the petitioners. The interim order passed by the Guwahati High Court in W.P.(C) 4298/2013 has attained finality as the Special Leave Petition filed by the Union of India has since been dismissed by the Supreme Court. The second ground for coming to the conclusion of involvement in the offences under PML Act and receiving the proceeds of crime is the FIR in which the complainant is a Police Officer and not an individual.

5. Heard learned counsel for the parties. Section 26 of the PML Act provides for appeals to the Appellate Tribunal by any person aggrieved by an order made by the adjudicating authority under the Act. Even aggrieved by the order of the Appellate Tribunal the Statute under Section 42 of the PML Act provides for an appeal on any question of law or fact to the High Court. Thus, even accepting the version of the petitioner that the impugned order is

a non-reasoned order and the Appellate Court would not have the benefit of reasoning before it however such order is also an appealable order and wherein the Appellate Court on appreciation of facts and law can form its opinion. There is no denial that giving reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice. However, it is not a principle of law that if an order of a competent authority is bereft of reasons, the appellate authority is denuded of its statutory jurisdiction to entertain the appeal. However, brevity of reasoning cannot be understood in legal parlance as absence of reasoning. While no reasoning in support of order whether judicial/quasi-judicial order is impermissible, the brief reasoning would suffice to meet the ends of justice at least at interlocutory stages and would render the remedy of appeal purposeful and meaningful.

6. Further because the proceedings pursuant to the complaint by SEBI are stayed by the Guwahati High Court or the complaint in the FIR is by a Police Officer cannot be a ground to hold that the impugned order is without jurisdiction so as to warrant interference by this Court under Article 226 of the Constitution of India. Moreover the view expressed by the Guwahati High Court that the case was not a case of Collective Investment Scheme in relation to the Time Share Scheme is a prima facie view and the Guwahati High Court did not express any definite opinion that it was wholly impermissible for SEBI to pass any restraint order under Regulation 65, pending an enquiry. The case of respondents is also based on the statements of the Chairman Gautam Kundu, Managing Director Shibamoy Dutta, Vice President (Finance) Amitabh Mukherjee, Pijus Kumar Das IT Head, Sudhir Shaw AGM (Accounts) and N.C. Pillai, Sr. General Manager (Admn.) of the

Rose Valley Group of Companies recorded by the competent officer. As per Section 50(2) of PML Act, the director or the officer concerned has power to examine the witnesses and the statements so recorded are admissible in evidence not being before a Police Officer.

7. Learned counsel for the petitioner relies upon the decision in *Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai & Ors. (1998) 8 SCC 1* and also the decisions in *Harbanslal Sahina & Anr. Vs. IOCL & Ors. (2003) 2 SCC 107; Popcorn Entertainment & Anr. Vs. City Industrial Development Corporation & Anr. (2007) 9 SCC 593; M.P. State Agro Industries Development Corporation & Anr. Vs. Jahan Khan (2007) 10 SCC 88 and Committee of Management & Anr. Vs. Vice Chancellor & Ors. AIR 2009 SC 1159*, which decisions follow *Whirlpool Corporation (supra)*. In *Whirlpool Corporation* the Supreme Court laid down the triple test for entertaining a writ petition despite availability of the remedy of an appeal in contractual matters i.e. firstly if the action of the respondent is illegal and without jurisdiction, secondly if the principles of natural justice have been violated and thirdly if the petitioner's fundamental rights have been violated. In *Whirlpool Corporation* the Supreme Court was dealing with the jurisdiction of the Registrar Trademarks under Section 56 of the Trade Marks Act (in short the TM Act) and it was held that Section 107 TM Act provides that an application for rectification shall in certain situations be made only to the High Court and thus it was held that the jurisdiction conferred on the Registrar under Section 56 of the TM Act was curtailed by Section 107 of the TM Act. The Supreme Court held that in view of the proceedings pending in the High Court and especially in view of the Section 107 of the TM Act the Registrar could not legally issue any suo-moto notice

to the petitioners under Section 56(4) of the TM Act for cancellation of the certificate of registration/renewal already granted.

8. The three requirements as laid down in *Whirlpool Corporation* are not satisfied in the present case. Merely because there is a stay on proceedings against the SEBI by the Guwahati High Court which interim order has attained finality, it cannot be said that the action of the respondent was wholly without jurisdiction in view of the fact that this was only a prima facie view of the Guwahati High Court and the respondents while passing the impugned order have relied upon other material also which was placed on record. There being no findings on facts with regard to the 'proceeds of crime' or the offences committed are issues to be determined on facts which the Appellate Court is competent to decide. Further there is no violation of principles of natural justice as the impugned order was passed after the parties were heard at length.

9. In *Satyawati Tondon (supra)* the Supreme Court while dealing with the maintainability of the writ petition in view of the availability of alternate remedy held that it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc. and the particular legislation contains a detailed mechanism for redressal of his grievance and only if the petitioner is able to show that its case falls within any of the exception carved out in *Whirlpool Corporation (supra)* and some other judgments then the High Court may after considering all the relevant parameters and in public interest pass an appropriate interim order.

10. Thus, without dwelling into the merits of the matter since the case of the petitioners do not fall in the exceptions as laid down in *Whirlpool Corporation* (supra), the writ petitions and applications are dismissed with liberty to the petitioner to avail the alternative efficacious remedies available under Section 26 of the PML Act, if so advised.

(MUKTA GUPTA)
JUDGE

JULY 02, 2015
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