Comp.A.Nos.617 to 621 of 2016
in C.P.No.171 of 2015

T.S.SIVAGNANAM,J.

Today (31.01.2017) this matter has been posted under the caption "for being mentioned" at the instance of the learned counsel for the applicant.

2.Heard Mr.P.S.Raman, learned senior counsel appearing for Mr.T.K.Bhaskar, learned counsel for the applicant and Mr.M.Dhandapani, learned Special Public Prosecutor for the respondent.

3.A memo has been filed by the petitioner pointing out certain typographical error and inadvertent omissions in paragraph Nos.3, 5, 7, 8, 9 and 12 of the order dated 05.01.2017.

4.The learned counsel for the respondent also submits that these are all inadvertent errors and may be rectified.

5.Accordingly, the corrected order reads as follows:

> "This order shall dispose of Application Nos.617 to 621 of 2016, and the prayer sought in each of these Applications are set out hereinbelow:-

i) C.A.No.617 of 2016

To issue a direction that 9% of non-convertible, cumulative redeemable preference shares to the extent of 10,00,000 shares of face value of Rs.100/- each and also 9% non-convertible non-cumulative preference shares to the extent of 86,67,097 shares of the face value of Rs.100/- each held by the applicant in the first transferor Company, as attached by the respondent, pursuant to the provisional attachment order, dated 25.02.2015 on the effective date of the sanction of the Scheme of Amalgamation and Arrangement shall not be extinguished as long as the same is the subject matter of any attachment order by the respondent in the pending PMLA proceedings.

ii)C.A.No.618 of 2016

To issue a direction that, consequently, the first transferor Company should not be dissolved without the order of winding up, as contemplated in the Scheme of Amalgamation and Arrangement as long as 9% of non-convertible, cumulative redeemable preference shares to the extent of 10,00,000 shares of face value of Rs.100/- each and also 9% non-convertible non-cumulative preference shares to the extent of 86,67,097 shares of the face value of Rs.100/- each that the subject matter of the provisional attachment order passed by the respondent, continues to be attached in the aforesaid PMLA proceedings.

iii)C.A.No.619 of 2016

To issue a direction that all the assets and liabilities of the first transferor Company be transferred and vested in the applicant Company as contemplated in the Scheme of Amalgamation and Arrangement and to the extent that there is any final adjudication passed in respect of investigation made by the respondent in the applicant and the movable assets of 9% of non-convertible, cumulative redeemable preference shares to the extent of 10,00,000 shares of face value of Rs.100/- each and also 9% non-convertible, non-cumulative preference shares to the extent of 86,67,097 shares of the face value of Rs.100/- found to be the properties purchased from the proceeds of crime and if there is an offence of Money Laundering committed by the applicant, the applicant undertakes to provide the respondent with monies equivalent to the redemption value of preference shares that the subject matter of the provisional attachment order.

iv)C.A.No.620 of 2016

To issue a direction upon the applicant paying the respondent, the redemption value of the preference shares, 9% of non-convertible, cumulative redeemable preference shares to the extent of 10,00,000 shares of face value of Rs.100/- each and also 9% non-convertible, non-cumulative preference shares to the extent of 86,67,097 shares of the face value of Rs.100/- shall stand extinguished and the first respondent Company shall stand dissolved without the process of winding up.

v)C.A.No.621 of 2016

To issue a direction that, upon conclusion of the proceedings under the Prevention of Money Laundering Act, 2002, by the Authority, if there is release of property, pursuant to any direction for substitution of security or upon final observation of the Court that the property that has been attached is not involved in Money Laundering, then, the said attachment order shall stand extinguished and the undertaking given by the applicant shall automatically get lapsed.

2. Heard Mr.P.S.Raman, the learned Senior Counsel for the applicant and Mr.M.Dhandapani, the learned Special Public Prosecutor for the respondent.

3. The applicant herein, is the petitioner in the Company Petition filed before this Court under Sections 391 to 394 of Companies Act, 1956 (Act) seeking for sanction of the Scheme of Amalgamation and Arrangement (hereinafter, referred to as 'the Scheme'). Prior to the filing of the Company Petition, the Scheme was approved by the Board of Directors of the applicant Company on 26.02.2014 and by the Stock Exchangers.

4. The Applicant filed applications for convening the meeting of Equity Shareholders and Secured Creditors under Section 391 of the Act, vide C.A.Nos.93 and 94 of 2015 respectively . The Court, in its order, dated 02.02.2015, directed convening of the meeting of the Equity Shareholders and Secured Creditors on 25.03.2015. In the said meeting of Equity Shareholders, the Scheme was approved by 97% in number and 99.99% in value by the shareholders, who were present and voted in the Meeting. Insofar as the meeting of Secured Creditors is concerned, the Scheme was approved by 100% of the

Secured Creditors, who were present and voted in the meeting. The Company Petition under Section 394 of the Act was then filed by the applicant Company, and pursuant to the notice ordered by this Court to the Registrar of Companies and Regional Director, both of them filed their reports, stating that they have no objection for sanction of the Scheme. At that juncture, the applicant Company received an order of provisional attachment, dated 25.02.2015, whereby, the movable and immovable properties belonging to the applicant Company have been attached, in connection with the proceedings initiated under the Prevention of Money Laundering Act, 2002 (PMLA Act). The list of assets, included inter alia, a operation of the preference shares held by the applicant Company in the first Transferor Company, which is proposed to be merged with the applicant Company, pursuant to the Scheme. The first Transferor Company also proposed to be dissolved without resorting to the process of winding up, pursuant to the order of this Court, sanctioning the Scheme. The subject matter of provisional attachment, comprises of 9% of non-convertible, cumulative redeemable preference shares, held by the applicant Company, and this attachment is on the basis that the applicant Company has invested the sale proceeds from the sale of shares held by them, in M/s.Bharathi Cement Corporation Limited. The said preference shares is the subject matter of PML proceedings initiated by the Directorate of Enforcement, in which, a charge sheet has been filed before the Principal Special Judge for CBI Cases, Hyderabad, on 10.09.2013.

5. Therefore, it is the applicant's case that, except, for aforesaid shares, which are subject matter of provisional attachment, other preference shares held by the applicant Company in the first Transferor Company, are not the subject matter of provisional attachment order. It is further submitted that the provisional attachment order, dated 25.02.2015, was confirmed by the Adjudicating Authority, constituted under Section 6 of the PML Act, 2002, and the applicant Company sought for a prayer before the Adjudicating Authority to substitute certain portions of the property attached. However, the same was rejected, as against which, the applicant filed a Writ Petition before the Hon'ble Delhi High Court, in W.P.No.9361 of 2015, which was allowed by order, dated 05.11.2015, with a direction to the applicant to make a representation in that regard before the Joint Director, Directorate of Enforcement. Challenging the order passed in W.P.No.9361 of 2015, the Joint Director has filed an Appeal before the Hon'ble Supreme Court, in LPA No.26 of 2016, which was disposed of by directing the Joint Director, Directorate of Enforcement to consider the request of the applicant for substitution of the property attached, in terms of the direction issued in W.P.No.9361 of 2015, vide order, dated 05.11.2015. The applicant has filed another Writ Petition in W.P.No.4409 of 2016 before the Delhi High Court, and the same is now pending.

6. In the given facts of the case, the applicant is before this Court praying for a suitable direction for modifying the Scheme to the aforesaid extent, while considering the prayer

sought for in the Company Petition under Section 394 of the Act, viz., the prayer for sanction of the Scheme.

7. The applicant's case is that, pending proceedings under PML Act, if the Scheme is kept in abeyance, and if ultimately, the application for substitution of the attached property is allowed, or it is discharged from proceedings, the damage caused due to non implementation of the Scheme would cause serious consequences to the applicant Company as well as their various stake holders and shareholders, who have approved the Scheme. With the above facts, the applicant is before this Court.

8. The Joint Director, Directorate of Enforcement filed an affidavit, and in para No.3 of the affidavit, they have set out elaborately as to what is the proceedings initiated under PML Act, and para No.4 pertains to the Writ Petition, which was filed before the Hon'ble Delhi High Court and Appeal thereof etc., What would be relevant for the purpose of considering the relief, that can be granted in these applications are set out in para No.4, which reads as follows:-

> " The respondent states that it has no objection to the application being allowed so long as the attached properties are not extinguished. Further, it is requested that the properties attached, i.e, 10,00,000 shares of Rs.100 each of 9% non-convertible, cumulative redeemable preference shares of M/s.Trinetra Cement Limited/first Transferor Company held by the

> applicant/M/s. India Cements Limited valued at Rs.10 Crore and 86,67,097 shares of Rs.100/- each of 9% Non-Convertible Non-Cumulative Redeemable Preference Shares of M/s.Trinetra Cement Limited held by M/s.India Cements Limited valued at Rs.86,67,09,700 shall not be extinguished by the transferee Company till the case under PML Act, 2002 attains finality, interest/dividends, accrued if any, may be deposited with the respondents and requested this Court to pass such orders. "

9. Thus, from the above averments, set out in the counter affidavit filed by the Joint Director, Directorate of Enforcement, it is seen that without prejudice to the contentions raised before the Delhi High Court, they convey their no objection to the applications being allowed, so long as the attached properties are not extinguished. Further, a prayer has been made that the attached properties, viz., 10,00,000 shares of Rs.100 each of 9% non-convertible, cumulative redeemable preference shares of M/s.Trinetra Cement Limited/first Transferor Company held by the applicant Company and 86,67,097 shares of Rs.100/- each of 9% Non-Convertible Non-Cumulative Redeemable Preference Shares of M/s.Trinetra Cement Limited by the applicant Company shall not be extinguished by the transferee Company, and till the proceedings initiated under PML Act attains finality, the interest, dividends, accrued if any, can be deposited with the respondent, and requested this Court to pass appropriate orders.

10. The learned Senior Counsel for the applicant submitted that the applicant Company is agreeable to abide by the requirements, insisted upon by the respondent/Joint Director, Directorate of Enforcement, as set out in para No.4 of the affidavit, mentioned supra, and they undertake that they will not extinguish those shares, which has been mentioned thereunder till the proceedings initiated under PML Act attains finality.

11. One more aspect, pointed out by the learned Special Public Prosecutor for the respondent is by referring to Rule 4 (4) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by the Adjudicating Authority) Rules, 2013. Under the said Rules, where the attached property confirmed by the Adjudicating Authority is in the form of shares, debentures, units of mutual funds or instruments, the Authorized Officer shall cause to get such shares, debentures, units of mutual fund or instruments to be transferred in favour of the Director of Enforcement.

12. The learned Senior Counsel for the applicant submits that the applicant has no objection in complying with Rule 4 (4) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by the Adjudicating Authority) Rules, 2013, but the same shall be without prejudice to their rights and contention raised by them in W.P.No.4409 of 2016. In fact, in para No.5 of the affidavit filed by the Joint Director, Directorate of Enforcement, it has

been stated that the proposal to provide equivalent monies, which was not acceptable to the Joint Director, Directorate of Enforcement, is the subject matter of W.P.No.4409 of 2016, before the Delhi High Court. Therefore, the applicant need not have any apprehension in this case, because, whatever decision taken, will be subject to the result of the said Writ Petition. The Applications are allowed, subject to the following conditions:-

i) The 10,00,000 shares of Rs.100 each of 9% non-convertible, cumulative redeemable preference shares of the first transferor Company, viz., M/s.Trinetra Cement Limited held by the applicant Company and ii) 86,67,097 shares of Rs.100/- each of 9% Non-Convertible Non-Cumulative Redeemable Preference Shares of M/s.Trinetra Cement Limited/First Transferor Company held by the applicant Company shall be transferred in favour of the Joint Director, Directorate of Enforcement, and the same shall not be extinguished by the transferee Company till the proceedings initiated under PML Act attains finality, and till then, the interest, dividends, accrued if any, shall be deposited with the Joint Director, Directorate of Enforcement, Government of India, Hyderabad.

Cse **31.01.2017**

Note: The Registry is directed to issue fresh certified copy of the order to the parties.

T.S.SIVAGNANAM,J.

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31.01.2017