

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

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Reserved on: 22.08.2017

Delivered on: 30.08.2017

+ W.P.(CRL) 2170/2017

RASHMI CEMENT LIMITED

..... Petitioner

versus

ENFORCEMENT DIRECTORATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Vikas Singh, Sr.Adv. with
Dr.Shamsuddin, Mr.Satyanshu Mohan,
Mr.Siddhartha Datta, Mr.Manu Nair,
Ms.Suvarna Kashyap and Mr.Nitish Massey.
For the Respondent: Mr.Sanjay Jain, Sr.Adv. with Mr.Ajay
Digpaul, CGSC, Mr.Vidur Mohan,
Ms.Mohita and Mr.Kartik Rai & Ms.Mohita.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. The petitioner, a private limited Company, has challenged (i) the registration of ECIR No.07/2012/KOL/PMLA dated 18.04.2012 whereby commission of offence under Section 3 of the Prevention of Money Laundering Act, 2002 (hereinafter called the Act) was prima facie found to have been made out for initiating detailed investigation under the Act; (ii) the original complaint No.78/2017 dated 13.06.2017 filed by the Joint Director of the Enforcement Directorate,

Department of Revenue, Ministry of Finance, which has been lodged as per the provisions of sub Section (5) of Section 5 of the Act before the Adjudicating Authority at New Delhi; (iii) the show cause notice dated 21.06.2017 issued by the Adjudicating Authority under Section 8(1) of the Act for their appearance before the Adjudicating Authority on 11.08.2017 and (iv) the provisional attachment order in the above related ECIR dated May 23, 2017 whereby the immovable assets/properties in the form of lands, valued collectively to the tune of Rs.8,45,73,643/- and movable assets/properties in the form of amounts lying in different bank accounts to the tune of Rs.62,21,020/- totaling to Rs.9,07,94,663/- which was assessed to be the value of proceeds of crime in terms of Section 2(1)(u) of the Act, have been attached.

2. However, during the course of arguments, the challenge has only been limited to the issuance of the show cause notice dated 21.06.2017 by the Adjudicating Authority under Section 8(1) of the Act as being unnecessary and a prayer has been made to stay the proceedings before the Adjudicating Authority on the ground that the very initiation of the proceedings under the Act is unwarranted and per-se illegal.

3. The show cause notice dated 21.06.2017 issued by the Adjudicating Authority under Section 8(1) of the Act inter-alia states that on the basis of the complaint filed under Section 5(5) of the Act, the Adjudicating Authority has reasons to believe that the petitioner has committed an offence under Section 3 of the Act or is in possession of proceeds of crime being the property derived or obtained as a result of criminal activities relating to a scheduled offence or the

value of any such property and as such the petitioner was called upon to indicate the source of the income, earning or assets out of which or by means of which the petitioner acquired the properties attached under Section 5(5) of the Act and the evidences on which it would rely and other relevant information and particulars and show cause as to why all or any of such properties should not be declared to be the properties involved in money laundering and be confiscated by the Central Government and the attachment order be not confirmed.

4. The ECIR No. 07/2012/KOL/PMLA indicates, that one FIR No.RC0102011A0035 dated 30.12.2011 was received by the CBI, Anti Corruption Branch. The aforesaid FIR revealed that the petitioner, in conspiracy with others caused a wrongful loss to the Railways to the tune of Rs.355 crores approximately with corresponding wrongful gain to the petitioner and, therefore, was liable for prosecution for offences under Sections 120B/420/467/471 of the IPC and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. Since these offences are scheduled offences under the provisions of the Act, therefore, the Assistant Director of the Department of Enforcement, Government of India, Kolkata considered it to be necessary to initiate proceedings under the Act against the accused persons including the petitioner to ascertain and to identify the movable assets acquired by them, out of the proceeds of crime derived by them from such illegal activities in violation of scheduled offences under the provisions of the Act.

5. The basic reason for lodging the FIR referred to above was that the Railway administration had introduced a dual freight policy by

way of a rate circular No.36/2009 issued under the Railways Act, 1989, fixing charges for iron ore transportation. As per the circular, for the traffic of iron ore meant for domestic consumption for manufacture of iron, steel and cement, lesser charges were levied. The rate circular provided for consequences of false declaration which included penalty as well as black listing in terms of Clause 6 of rate circular No.36/2009. It was alleged by the Railway Administration that the petitioner had paid a lower freight for transport of iron ore on the basis of a false declaration that the iron ore was transported for domestic consumption whereas in fact all the transported materials were not used for domestic consumption. The Railways, on the assumption that the entire material which had been transported by the petitioner to its factory was not used in the manufacturing of sponge iron and whatever quantity was not used domestically, could not have been transported at a cheaper rate as the concessional rate of freight was not admissible for goods which were not to be consumed domestically, issued a show cause notice dated 19.09.2011 to the petitioner to explain as to why such a wrong declaration was made. It has been submitted that the petitioner challenged the aforesaid show cause notice before the Kolkata High Court vide W.P.(Crl.) No.22813(W)/2012 which is pending consideration. In the meantime a FIR was registered by the CBI on December 30, 2011 under Sections 120B/467/420/468/471/477A IPC read with Sections 13(2) and 13(1) of the Prevention of Corruption Act, 1988 as officers of the Railway administration were also made accused in the case.

6. It has been submitted that after the registration of the aforesaid FIR, the impugned ECIR was registered on 19.04.2012.
7. In the meantime, it has been submitted that another company called Rashmi Metalics Limited also challenged one such show cause notice vide W.P.(CrI.) No.14656(W)/2011 which was decided on 29.09.2014. The matter went upto Division Bench in appeal. In the aforesaid proceedings before the Kolkata High Court, the validity of rate circular and the action of the Railway Administration to unilaterally levy and recover the alleged short payment of freight in terms of rate circular No.36.2009 was challenged.
8. It would be relevant here in this context to state that a suit also had been filed by the Railway administration for realization of such claim of the Railways on account of evasion of the Railway freight charges by the petitioner vide CS(OS) No.247/2015.
9. The Division Bench of the Kolkata High Court, it has been argued, was of the view that Civil Court would be the appropriate forum for determining the evaded freight amount and for realization thereof from the petitioner and others.
10. Against the judgment of the Division Bench of Kolkata High Court, both the parties i.e Rashmi Metalics Ltd and the Railway administration moved the Supreme Court of India by way of respective SLPs (SLP (C) No.15869/2015 and SLP (C) No.19925/2015) which is pending consideration of the Supreme Court. In addition to the aforesaid SLPs, a transfer petition has also been filed by the Railway administration, for seeking the transfer of 23 writ petitions filed in various High Courts of India, challenging the

show cause notices issued by the Railway administration to various entities and challenging the validity of the rate circulars. The aforesaid transfer petition being Transfer Petition (C) No.832-54/2015 has also been tagged along with the other SLPs referred to above.

11. The writ petition filed by the petitioner before the Kolkata High Court namely W.P(C) 22813(W)/2012 has also been sought to be transferred to the Supreme Court of India at the behest of the Railway administration.

12. Thus, the validity of the rate circular which provided for a dual freight policy is the subject matter of all the proceedings before the Supreme Court.

13. In the meantime, on 30.12.2014, charge sheet in the aforementioned FIR was filed by the CBI before the learned Special Judge, CBI Court, Kolkata against the petitioner and others under Sections 120B/420 and 471 of the IPC delineating that as against the petitioner and other accused persons, there were sufficient evidences to substantiate the allegation that they had entered into a criminal conspiracy with each other during the period 2008-2011, to cause wrongful loss to the Railway administration and corresponding gain to them.

14. The provisional attachment order was thereafter passed on 23.05.2017 which was based on the ECIR dated 18.04.2012 and it also referred to the charge sheet dated 30.12.2014.

15. It has been argued on behalf of the petitioner, therefore, that after 29 months of the charge sheet in the predicate offence and 68

months after the registration of the ECIR, the order of provisional attachment dated 23.05.2017 was passed.

16. Thereafter in terms of Section 5 of the Act, the original complaint No.78/2015 dated 13.06.2017 has been filed before the Adjudicating Authority with a request for confirmation of the provisional attachment.

17. On the aforesaid complaint, the impugned show cause notice dated 21.06.2017 has been issued by the Adjudicating Authority.

18. Learned counsel for the petitioner, therefore, has urged that when the validity of the rate circular, which is the genesis of the controversy, is pending adjudication before the Supreme Court of India, any decision rendered with regard to the validity of the rate circular would have a direct bearing on the monetary claim of the Railways for any freight based on that rate circular. In fact, the FIR also has been lodged on the basis of the rate circular and ultimately the charge sheet also has been submitted by taking the rate circular No. 36/2009 into account. Thus the very registration of the ECIR, the provisional attachment of the property and the original complaint before the Adjudicating Authority by the respondent, it has been argued, is premature and reflects a hasty handling of the case by the respondent.

19. It has also been urged that the freight which was paid for by the petitioner was for domestic consumption only. The entire material was processed in the factory of the petitioner and the residue which was found to be unusable, was segregated and was disposed of from the factory as being unfit for use by the petitioner company. What the

Railway administration, it has been argued, failed to appreciate was that the iron ore transported by the Railways was of different sizes and was mixed with impurities. Since the entire transported iron ore was processed in the factory of the petitioner, the declaration of the petitioner of such commodity being transported for domestic consumption was not incorrect. It matters not, in that connection, if the residue in the shape of iron 'fines' were exported and not consumed domestically.

20. The other ground of challenge is that according to the FIR and the charge sheet, the period of conspiracy begins from 2008 onwards, at which time Sections 120B/420 and 471 of the IPC were not included in the scheduled offences of the Act. These sections were added only after the amendment of the Act in 2009. In construing the provisions of a penal Statute, retrospective operation has not to be given to any amendment. There should be a prima facie link/nexus between the property to be attached and the proceeds of the crime. As such, the very registration of the ECIR on the basis of the predicate offence was incorrect and unjustified.

21. What has really been harped upon is that in the absence of any effective quantification of the losses by the Railway administration, assuming the rate circular No.36.2009 to be valid, the movable and immovable property of the petitioner could not have been provisionally attached on the assumption of the same being derived out of the ill gotten money/proceeds of crime as contemplated under Section 3 of the Act.

22. It has been argued that without the adjudication of claim by the Civil Court in the suit filed by the Railway administration, the claim of the Railways as against the petitioner would only remain a notional/unadjudicated money claim and such unadjudicated claim cannot automatically become the proceeds of crime. The respondent, therefore, has wrongly come to the conclusion that in the event of the petitioner not admitting the liability, any property bought by the petitioner during the period of Railway transportation i.e. 2008-2012 would be against the proceeds of crime and, therefore, would be subject to attachment. It has been argued that it is obviously fallacious to hold all the properties of the petitioner as being tainted. As such the entire action of the respondent is arbitrary and without the sanction of law.

23. For the provisional attachment of the property, it is of utmost importance that there should be a threat of concealment or transfer of a property in such a manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime.

24. Proceeds of Crime has been defined in Section 2(u) of the Act which means:-

2 (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 2 [or where such property is taken or held outside the country, then the property equivalent in value held within the country];

25. Property has been defined in Section 2(v) as:-

2 (v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or

immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

26. Scheduled offence means, according to Section 2(y) as:-

2 (y) “scheduled offence” means—

*(i) the offences specified under Part A of the Schedule;
or*

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or

(iii) the offences specified under Part C of the Schedule.]

27. Sections 3 & 4 of the Act read as follows:-

3. Offence of money-laundering.—*Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 1 [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*

4. Punishment for money-laundering.—*Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

28. Section 5 of the Act which deals with attachment of property involved in money laundering is as hereunder:-

5. Attachment of property involved in money-laundering. 3
[(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1 [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.”

29. A bare reading of Section 5 would make it very clear that on the satisfaction of the concerned officer of the department that any person is in possession of any proceeds of crime which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, such property could be attached for a period not exceeding 180 days from the date of the order. However, such order of attachment shall only be passed, in relation to a scheduled offence when a report regarding the same is forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure or a complaint has been filed by the person authorized to investigate the offence

mentioned in that schedule. After the attachment of the property provisionally under Section 5(5) of the Act, it is incumbent upon the attaching authority to file a complaint within a period of 30 days from the date of such attachment before the Adjudicating Authority.

30. The Adjudicating Authority, on receipt of such complaint and on being satisfied that an offence has been committed under Section 3 of the Act or the accused is in possession of proceeds of the crime, has to issue notice to the accused asking him to explain and indicate the source of income and demonstrate the documents on which it relies upon in its defence. If the Adjudicating Authority decides that the property which is being provisionally attached is involved in money laundering, such provisional attachment would be confirmed whereafter the property would be taken possession of or frozen under sub Section 1A of Section 17 of the Act. After the conclusion of the trial of the offences under the Act, the Special Court, in the event of coming to the conclusion that money was laundered, will order for the confiscation of the property to the Central Government. If the special Court does not find any that money laundering has taken place, the attached property shall be released to the person entitled to the same.

31. For ready reference, Section 8 of the Act dealing with the process of attachment by the Adjudicating Authority is extracted below:-

8. Adjudication.—(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an 1 [offence under section 3 or is in possession

of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized 2 [or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or 3 [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall—

(a) continue during the pendency of the proceedings relating to any 4 [offence under this Act before a 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]

[(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the 6 [Special Court];]

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the [possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.]

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the

offence of money-laundering after having regard to the material before it.]

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.]

32. A provision of appeal has been provided for against the order of the Adjudicating Authority. Section 26 of the Act provides the forum of the appeal to the Appellate Tribunal. Any person aggrieved by the order of the Adjudicating Authority could appeal within a period of 45 days from the date on which the copy of the order of the Adjudicating Authority is received.

33. Section 26 of the Act reads as hereunder:-

“26. Appeal to Appellate Tribunal.—(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any [reporting entity] aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as

may be prescribed: Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.”

34. Against the order passed by the Appellate Tribunal, a provision for appeal has been provided under Section 42 of the Act to High Court. Section 42 of the Act reads as hereunder:-

“42. Appeal to High Court.—Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—For the purposes of this section, "High Court" means—

(i) The High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
(ii) Where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.”

35. The aforestated provisions of the Act have been extracted for handy reference, for appreciating the contentions of the respondent with regard to the opposition to the prayer made in the writ petition.

36. The challenge by the respondent is primarily on the ground of jurisdiction of this High Court.

37. On behalf of the respondent, it has been submitted that the RC0102011A0035 (predicate offence) has been lodged in Kolkata. The charge sheet in this case has been filed before the learned Special Judge, CBI Court, Vichar Bhawan, Bank Shall, Kolkata. The property which has been provisionally attached falls in the State of West Bengal. The factory of the petitioner is also in West Bengal. The ECIR No.07/2012/KOL/PMLA has been registered in Kolkata and the complainant before the Adjudicating Authority is the Joint Director, Enforcement Directorate, Government of India, CGO Complex, Sorlake situated in Kolkata. The address of the petitioner and its functionaries are of Kolkata, West Bengal.

38. Thus, according to the respondent, the petitioner has wrongly chosen the forum of Delhi High Court and this could presumably be only on the basis of the situs/location of the Adjudicating Authority and the Appellate Tribunal and for no other reason. It has further been

argued that should an appeal be preferred against the order of the Appellate Tribunal under Section 42 of the Act, it would have to be filed in the High Court at Kolkata. Thus, for all practical purposes, but for the situs/location of the Adjudicating Authority in Delhi, there is no other reason for preferring the instant petition before the Delhi High Court.

39. The earlier round of litigation, challenging the rate circular also took place before the Kolkata High Court. That apart, on the principle of *forum convenience*, High Court of Kolkata would be the appropriate High Court for adjudicating the issues contained in the present writ petition. It would be highly inconvenient, it has been argued, for the prosecution to bring all the papers/documents before this Court and the principle of *forum convenience* which is accepted internationally, mandates that the convenience of the parties have to be looked into before assuming the jurisdiction for issuing writs.

40. The other ground of challenge is that the petition is premature in as much as only show cause notice has been issued by the Adjudicating Authority. Nothing prevents the petitioner, it has been urged, from explaining and showing cause before the Adjudicating Authority. There are several tiers of forums available to the petitioner and in that event, preferring a writ petition at such an intermediate stage would only tantamount to bypassing the statutory forum available to the petitioner, without any plausible reason.

41. Mr.Sanjay Jain, learned Additional Solicitor General has drawn the attention of this Court to the judgment of the Supreme Court in **Raj Kumar Shivhare vs. Assistant Director, Directorate of**

Enforcement & Anr, AIR 2010 SC 2239 wherein while dealing with the provision of Section 35 of the Foreign Exchange Management Act, 1999, which provision is identical in terms with Section 42 of the PMLA, the Supreme Court has held as follows:-

“34. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

35. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum.

36. Reference may be made to the Constitution Bench decision of this Court rendered in Thansingh Nathmal v. Supdt. of Taxes [AIR 1964 SC 1419] , which was also a decision in a fiscal law. Commenting on the exercise of wide jurisdiction of the High Court under Article 226, subject to self-imposed limitation, this Court went on to explain:

“The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute,

the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

(emphasis added)

42. The Supreme Court, it has been argued, in *Raj Kumar Shivhare* (Supra) held that so far as the jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 32 of the Constitution of India are concerned, the provisions of any act cannot bar and curtail the remedies. Nonetheless, while exercising powers under the aforesaid provisions of the Constitution, the Courts would certainly take note of the legislative intent manifested in the provisions of the Act. The powers under Article 226, it was observed is conceived to serve the ends of law and not to transgress them. Thus it was stated that even if a High Court had territorial jurisdiction, it should not entertain a writ petition which impugns a show cause notice by an Adjudicating Authority when there is a provision of appeal before the Appellate Tribunal and thereafter to the High Court.

43. It has been contended on behalf of the respondent that what has been challenged in the present writ petition is the show cause notice issued by the Adjudicating Authority and the same ought not to be interfered with in writ jurisdiction. A show cause notice is nothing more than an intimation to the noticee to understand the precise case set up against him which he has to meet. Thus for all practical purposes, a notice is only a step towards setting the machinery of law into motion. It has been argued that in **Gorkha Security Services vs.**

Govt. (NCT of Delhi): (2014) 9 SCC 105; The Special Director And Anr vs Mohd. Ghulam Ghouse And Anr, (2004) 3 SCC 440 and Anant R. Kulkarni vs. Y.P. Education Society, (2013) 6 SCC 515, it has been held by the Supreme Court that the practice of entertaining writ petitions questioning the legality of the show cause notices should be deprecated as it results in stalling the enquiries and retarding the investigative process and the Court should normally insist for pursuing the remedy of showing cause against a notice for the consideration of the statutory authority. A common thread runs in all the judgments referred to above, which is that a High Court should carefully examine before entertaining any writ petition under Article 226 of the Constitution of India, the facts and circumstances of each case for interfering with any show cause notice.

44. The aforesaid contentions of the respondent have been sought to be negated by the petitioner on the ground that even if a part of the transaction takes place in the territorial jurisdiction of a High Court, that High Court shall have the jurisdiction and it will depend upon the election of the party concerned to choose as to where the petition would be filed. The respondent has an all India presence and if at all it would be inconvenient to any party, it is the petitioner only and not the respondent. Part of the cause of action has taken place in Kolkata and part of it has taken place in Delhi in as much as the original complaint as envisaged under Section 5(5) of the Act has been filed in Delhi, pursuant to which the impugned notice has been issued from Delhi. In that view of the matter, it would be highly inappropriate for the

respondent to plead that Delhi High Court does not have the jurisdiction to deal with the present issue.

45. Secondly, Mr. Vikas Singh, learned senior advocate appearing for the petitioner submitted that normally High Court may not interfere at the stage of show cause notice but if it is apparent on the face of it that there are no justifiable material to proceed against the petitioner, the High Court would be failing in its duty and constitutional obligation if it turns its gaze away.

46. In **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors, (1998) 8 SCC 1**, the Supreme Court has held as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.....”

(Also refer to Rashid Ahmed vs. Municipal Board, Kairana, AIR 1950 SC 163; State of U.P vs. Mohd.Nooh, AIR 1958 SC 86; A.V.Venkateswaran, Collector of Customs vs. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506; Calcutta Discount Co.Ltd vs. ITO, Companies Distt.1; AIR 1961 SC 372 and Union of India vs. M/s.Brij Fertilizers Pvt. Ltd and Ors, (1993) 3 SCC 564)

47. Before determining any of the grounds raised by the petitioner or the opposition taken by the respondent, it would be of utmost necessity to decide as to whether this Court has jurisdiction to hear the present writ petition.

48. Article 226 of the Constitution of India reads as hereunder:-

226. Power of High Courts to issue certain writs -

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3).....

(4).....”

49. A bare reading of clause (2) of Article 226 of the Constitution of India makes it very clear that even if a small fraction of a cause of action accrues within the jurisdiction of a Court, that Court will have jurisdiction in the matter.

50. Article 226 of the Constitution of India has undergone a change with the amendments in the Constitution. When it was originally

enacted, there were only two fold limitations on the territorial jurisdiction of the High Courts. The first was that the power could be exercised by a High Court throughout the territories in relation to which it exercised jurisdiction and secondly, the person or authority to whom writ would be issued, must be within those territories i.e they must be amenable to its jurisdiction either by residence or location within those territories.

51. Later, with the amendment in the Constitution sub Clause (2) of Section 226 was added which clarified that if a cause of action, wholly or in part, arose within the jurisdiction of such High Court, the powers could be exercised in an unfettered manner. Thus, “cause of action” became a ground for conferring jurisdiction on High Court under Article 226 of the Constitution of India and it became one of the necessary considerations while entertaining a writ petition. An attempt also was made to explain and define as to what would constitute the “cause of action”. The classic definition of the expression “cause of action” was espoused by Lord Bret in *Cooke vs. Gill*, (1873) 8 CP 107.

“Cause of action” means every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the Court.”

52. Later, in **Kusum Ingots & Alloys Ltd vs. Union of India and Anr**, (2004) 6 SCC 254 it was clarified as hereunder:-

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been

judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily. 10. Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.”

53. In the aforesaid case (*Kusum Ingots & Alloys Ltd* (Supra) the appellant company was registered at Mumbai and had obtained loan from SBI, Bhopal branch. A notice was issued to the appellant company for repayment of the loan from Bhopal, in terms of the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The vires of the Act was challenged before the Delhi High Court by the appellant which was dismissed on the grounds of lack of territorial jurisdiction. It was urged by the appellant company that for testing the constitutionality of a Parliamentary Act, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition. The Supreme Court was, therefore, looking into the question as to whether the seat of Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India. The challenge was repelled by the Supreme Court by holding that a

Parliamentary legislation after receiving the assent of the President of India and its publication in the Official Gazette applies to the entire territory of India. If passing of a legislation gives rise to a cause of action, the writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It was held that the constitutionality of a Parliamentary act shall not be maintainable only in the High Court of Delhi because of the seat of the Union of India being in Delhi. It was, therefore, held as hereunder:-

“27. When an order, however, is passed by a court or tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority.”

54. With regard to *forum convenience* i.e the convenience of the parties, the Supreme Court in *Kusum Ingots & Alloys Ltd* (Supra) held as follows:-

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary

jurisdiction by invoking the doctrine of forum conveniens. [See Bhagat Singh Bugga v. Dewan Jagbir Sawhney [AIR 1941 Cal 670 : ILR (1941) 1 Cal 490] , Madanlal Jalan v. Madanlal [(1945) 49 CWN 357 : AIR 1949 Cal 495] , Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd. [1997 CWN 122] , S.S. Jain & Co. v. Union of India [(1994) 1 CHN 445] and New Horizons Ltd. v. Union of India [AIR 1994 Del 126]”

55. In **New India Assurance Company Ltd vs. Union of India and Ors, AIR 2010 Delhi 43 (FB)** a Full Bench of the Delhi High Court had an occasion to look into as to what would give territorial jurisdiction to a Court. In the aforesaid case, a learned Single Judge of Delhi High Court had dismissed the writ petition on the ground that significant part of the cause of action had not arisen within the territorial jurisdiction of Delhi and only because the order under challenge had been passed by an appellate authority located within the territorial jurisdiction of Delhi, that would not be sufficient for conferment of jurisdiction. The aforesaid decision of the learned Single Judge travelled to the Division Bench from where a reference was made to the Full Bench. In the aforesaid case, the Full Bench, after taking into account various decisions rendered by the Supreme Court and other High Courts, held that even at the place where a part of cause of action arose, it would be open to a litigant, who is the dominus litis to have his *forum convenience*. However, it was held that the remedy under Article 226 being discretionary, the Court could refuse to exercise jurisdiction when jurisdiction had been invoked malafide. Thus, what was held in *New India Assurance* (Supra) was

that that it matters not if only an insignificant or minuscule part of the cause of action has accrued within the jurisdiction of the court and cause of action accrues when appellate or revisional authority falls within the territorial jurisdiction of a particular High Court. Thus the Full Bench decided that since the appellate authority in that case was situated in New Delhi, the Delhi High Court had the jurisdiction under Article 226 of the Constitution of India and that the principle of “*forum convenience*” cannot be invoked to refuse the exercise of jurisdiction.

56. The full bench judgment in New India Insurance (Supra) came up for further consideration before a special bench of Delhi High Court in **M/s.Sterling Agro Industries Ltd vs. Union of India & Ors,** **ILR (2011) VI Delhi 729.**

57. A five Judges bench of this Court, by taking into account all the case laws on the subject of jurisdiction and *forum convenience*, formulated its conclusions as follows:-

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum convenience.

(b) *Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).*

(c) *An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.*

(d) *The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.*

(e) *The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.*

(f) *While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).*

(g) *The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.*

(h) *Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."*

(Emphasis provided by this Court)

58. Thereafter, in *Vishnu Security Services vs. Regional Provident Fund Commissioner, 2012 (129) DRJ 661 (DB)*, one of the members of the Special Bench in *M/s.Sterling Agro Industries Ltd* (Supra), namely Hon'ble Mr.Justice A.K.Sikri further explained the judgment in *M/s.Sterling Agro Industries Ltd* (Supra). In the aforesaid case, Vishnu Security Services, a proprietorship concern was having its office in Gujarat which was allotted a particular code by the employees Provident Fund Commissioner. Later, the business was shut down but the Provident Fund code had not been surrendered by the aforesaid establishment. So the proprietor of the establishment received summons from the office of the Regional Provident Fund Commissioner, Gujarat directing him to appear in person before it. On his appearance and rendition of the explanation that the business had been shut down, he was directed to pay the provident fund dues. Aggrieved by the aforesaid order, he preferred an appeal before the Appellate Tribunal located in Delhi, which too was dismissed. Against the aforesaid judgment of the Appellate Tribunal, the establishment preferred a writ petition before the Delhi High Court but the same was dismissed by a learned Single Judge on the ground of territorial jurisdiction. The learned Single Judge was of the view that merely because the situs of the appellate Tribunal was in Delhi, the Delhi High Court will not have the jurisdiction to decide the writ petition. The aforesaid order by the learned Single Judge was based on a reading of the ratio of *M/s.Sterling Agro Industries Ltd* (Supra). Thus, in the Division Bench headed by Hon'ble Mr.Justice A.K.Sikri, the issues were further explained. In the aforesaid judgment (*Vishnu*

Security Services (Supra), it was clarified that in *M/s.Sterling Agro Industries Ltd* (Supra), the Special Bench had accepted that even if a minuscule part of the cause of action arose within the jurisdiction of a Court, writ petition was maintainable before that Court. The order of the Appellate Tribunal also constitutes a part of cause of action for making a writ petition maintainable in that High Court within whose jurisdiction the Appellate Authority is constituted. What was clarified by *Sterling* was that such factor alone should not be taken into account and decision be not made on such singular factor of the location of the Appellate Authority, for deciding the jurisdiction. Discretion, it was explained, lay with the High Court which could refuse to exercise its discretion by invoking the doctrine of *forum non convenience* (Emphasis provided by this Court). It was further elaborated that if the impugned order is passed by an Appellate Authority which is located within the territorial jurisdiction of a High Court, the jurisdiction would be there with that High Court but it would be open for the High Court to take a call on the issue of jurisdiction and if the High Court does not like to exercise the discretionary jurisdiction of entertaining any petition on the application of doctrine of *forum convenience*, other reasons will have to be accorded as to why it would not be appropriate to exercise the discretion. The reasons would obviously be on the attendant facts and circumstances of each case. Thus, a scrutiny has to be made by the High Court in such matters for application of doctrine of *forum convenience* or *forum non convenience*. The Division Bench in *Vishnu Security Services* (Supra) further held as follows:-

10. When we read the judgment in *Kusum Ingots (supra)* in the manner suggested by the learned counsel and take into consideration the combined effect of paras 25 to 27 of the said judgment, what follows is that when the original authority is constituted at one place and the appellate authority is constituted at another, not only the writ petition is maintainable at both places, it is further specifically held by the Supreme Court that in such a case, it will be for the petitioner to choose his forum (see para 25). Once the Supreme Court gave choice to the petitioner, the question would be as to whether the Court can still non-suit him invoking the doctrine of *forum conveniens*. To answer this, let us again analyze in detail what *Kusum Ingots (supra)* holds. We have to bear in mind that in *Kusum Ingots (supra)*, the issue of territorial jurisdiction was raised in the context of challenge to the law, namely, judicial review of legislative action, viz., provisions of the *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*. The Court was considering the question whether the seat of Parliament or the Legislature of a State would be a relevant factor for determining the territorial jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution of India. The writ petition was filed in Delhi High Court which was dismissed on the ground of lack of territorial jurisdiction. In appeal, the contention was that since the SARFESI was a parliamentary Act and the seat of Parliament was in New Delhi, Delhi High Court had the jurisdiction. This contention was rejected and discussion qua this is contained in paras 19 to 26 of the judgment which would demonstrate laying down the following principles:

- (a) The passing of a legislation does not itself give rise to a cause of action;
- (b) No writ can be entertained and no constitutional question can be determined in a vacuum, that is to say, in the absence of a cause of action; and

(c) An order passed in a writ petition questioning the constitutionality of a Parliamentary Act will have the effect throughout the territory of India.

11. It is thereafter that the Court went further and expounded the doctrine of forum conveniens with reference to a situation where original authority is in one State and the seat of the appellate authority is located in another State. Once it is categorically held in paras 25 to 27 that in such a case, the writ would be maintainable in both the Courts and also that it is the petitioner which has right to choose his forum, we are of the view that primacy to the freedom given to the petitioner needs to be respected. Therefore, we clarify that normally in such circumstances, writ would be maintainable at both the places and only in extreme cases where the Court finds that it is totally inconvenient for a Court to entertain the writ petition and the other High Court may be better equipped to deal with such a case then the doctrine of forum conveniens has to be applied. The directions of the Sterling Agro (supra) have to be understood in that manner alone, otherwise it would be negation of the principle stated in Kusum Ingots (supra), particularly paras 25 to 27 thereof.....”

(Emphasis provided by this Court)

59. Thus, from a conspectus of these decisions, what can be simply and pithily stated is that technically speaking, with the issuance of notice to the petitioner by the Adjudicating Authority which is located in Delhi, jurisdiction is conferred on the Delhi High Court to entertain a writ petition; nonetheless it would only be in the fitness of things that before such discretion of exercising the jurisdiction is exercised, the principle of “*forum convenience*” and other factors ought also to be seen.

60. In the present case, what is not in dispute is that the petitioner is a company which is situated in Kolkata, West Bengal. The address of

the petitioner in the FIR, charge sheet and in all other documents is of Kolkata. The FIR (predicate offence) was lodged by CBI at Kolkata. The ECIR has been registered at Kolkata. Pursuant to the ECIR, properties falling under the jurisdiction of Kolkata High Court have been attached provisionally. It is only after the filing of the original complaint as contemplated under Section 5(5) of the Act before the Adjudicating Authority which is located in Delhi that the impugned notice by the Adjudicating Authority has been issued from Delhi. Though a small fraction of a cause of action has definitely arisen in Delhi but before exercising the discretion of entertaining the present writ petition, this Court would per force be required to look to other factors as well including “*forum convenience*”.

61. As has been stated earlier, but for the lodging of the original complaint, nothing has happened in Delhi. That apart, no final order has been passed by the Adjudicating Authority and only notice to show cause as to how and with what available resource, the property which has been provisionally attached was purchased by the petitioner. The impugned notice, in the present case, no doubt, has serious fiscal/penal consequences in case the explanation offered by the petitioner is not accepted by the Adjudicating Authority. But entertaining a writ petition seeking quashment of the aforesaid notice would amount to exercising discretion in the matter of arrogating jurisdiction only by virtue of the location of the Adjudicating Authority which is in Delhi. The petitioner, otherwise also has various stages and forums available to him for challenging any decision/action of the respondent or the Adjudicating Authority, viz. the Appellate

Tribunal and the High Court. Section 42 of the Act clearly indicates that in case the matter travels upto the Appellate Tribunal under Section 26 of the Act, any person aggrieved against the order of the Appellate Tribunal could approach the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain. In case the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents ordinarily resides or carries on business or personally works for gain, shall have the jurisdiction.

62. In that view of the matter, the respondent would be forced to, if it is aggrieved finally by an order of the Appellate Tribunal to challenge such order before the High Court of Kolkata only whereas if the contention of the petitioner is accepted and if this Court assumes the jurisdiction of exercising its discretion, two options would be available to the petitioner namely of Kolkata High Court and Delhi High Court. This would definitely militate against the principle of *forum convenience*.

63. This Court, therefore, is of the view that this Court ought not to entertain the present writ petition. In case the petitioner is so advised, an appropriate petition could be preferred before the High Court of Kolkata for the needful.

64. In the event of this Court not entertaining the present writ petition on grounds of jurisdiction, it would not be appropriate for this

Court to deliver any opinion on the contentions raised by the parties which could be adjudicated before the appropriate forum.

65. During the course of arguments, at one point of time, it was submitted on behalf of the petitioner that in case the proceedings before the Adjudicating Authority is stayed till the conclusion of the argument in the present case, the petitioner would not raise objection with regard to the statutory time line of 180 days for the provisional attachment to be finally confirmed.

66. In that view of the matter, the Adjudicating Authority shall not pass any final order for a period of 15 days to be counted from the date of the present order so as to enable the petitioner either to assail the present order before the superior Court or file appropriate petition before the Kolkata High Court. The petitioner in that event shall not be permitted to raise any objection with regard to the delay for the aforesaid period in completing the proceedings within the statutory period of 180 days.

67. The writ petition is thus disposed of with the following observations.

Crl.M.A. 12223/2017 (stay)

1. In view of the petition having been disposed of, the application has become infructuous.
2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 30, 2017

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