$~16

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

\+ CRL.A. 616/2018 & Crl.M.A.10721/2018

DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT .... Appellant

Represented by: Mr.Amit Mahajan, CGSC/UOI with Mr.Mohammad Faraz and Ms.Mallika Hiremath, Advocates

versus

M/S BALASORE ALLOYS LTD ..... Respondent

Represented by: Ms.Kamini Jaiswal with Mr.Gautam Mitra, Mr.Dhruv Kapur, Mr.Vijayender Kumar, Mr.Rishad Medora, Ms.Deepali Dwivedi, Mr.Maharshi Kalra and Ms.Rashmita Rey Chaudhary, Advocates

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% **21.08.2018**

1. On the complaint of N.A.N. Jayakumar, CGM (Marketing) of the State Trading Corporation of India Ltd. (in short STC) to the Director, CBI against M/s.Global Steel Holding Ltd. (in short GSHL), M/s. Global Steel Philippines Inc. (in short GSPI) and STC officials, a case was registered by the CBI on 16th March, 2017 inter alia against the senior officers of STC including its the then CMD, Chief Marketing Manager, Chief Finance

Manager, Chief General Manager etc. besides GSHL and GSPI, Pramod Kumar Mittal, the then Chairman, GSHL/GSPI and the then CEO, GSPI for commission of offences punishable under Section 120-B and 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short PC Act). On 29th March, 2017, the Enforcement Directorate recorded an ECIR being ECIR/03/DZ-I/2017 for commission of scheduled offences under the Prevention of Money Laundering Act, 2002 (in short PMLA).

2. As per the FIR registered by the CBI M/s.Global Infrastructures Holding Limited (in short GIHL) and now known as GSHL approached STC seeking assistance in terms of providing finance facility by establishing Letters of Credit for purchasing raw material required for their newly acquired steel plants in Philippines and Bosnia. As per the STC guidelines, vide circular No.173 dated 27th July, 2000 whenever considered necessary a credit rating from any specialized agency was required to be called but without calling any report with regard to financial health of the association credit facility was extended. The then Marketing Manager and the General Manager of the STC did not call for the report before putting up the proposal for financing or signing the agreement dated 4th April, 2005. Further, having availed the financial facility and defaulting in payment no action was taken by the STC officials to invoke the available securities i.e. corporate guarantee, post dated cheques and risk sale to favour the party. Due to change in market conditions, the plant operations of GSPI were shut down in the year 2008 and there was an outstanding of ₹729.09 crores as on 31st march, 2009. Ignoring the outstanding amounts and the fact that the market

was volatile, STC officials continued funding GSPI in May, 2009 exposing STC to further financial risk. Later, Pramod Kumar Mittal, Chairman, GSPI/GSHL allegedly cheated STC by diluting the securities by transferring/selling them without STC's knowledge. Though the raw material/finished material was kept under the custody of Collateral Management Agency at stock yard nominated by GSWII/GSPI no physical verification of the stock was done by the STC officials.

3. In November 2011, GSHL and GSPI proposed to settle the dues with STC through conciliation proceedings and conciliation agreement dated 15th November, 2011 was entered into which was not adhered to by GSHL and GSPI and a further settlement agreement was entered into on 17th May, 2012 which also GSHL and GSPI failed to pay to STC. As per the complaint it was revealed that GSHL had made the investment in equity shares of Balasore Alloys Ltd. (in short BAL) besides 16 other companies. Further, the share holding pattern of BAL revealed that the main promoter companies were the subsidiary companies of GSHL and Pramod Kumar Mittal was the chairman and promoter of BAL. During investigation it was revealed that Pramod Kumar Mittal was a non-Executive Chairman and promoter of BAL holding 5,710 shares and GSHL was also one of the promoters holding 34,020 shares of the company.

4. Pursuant to the registration of FIR and ECIR against Pramod Kumar Mittal and GSHL/GSPI a provisional attachment order was passed against the immovable/fixed assets of BAL to the extent of 30.35% i.e. proportionate share of Pramod Kumar Mittal and GSHL. Pursuant to the provisional attachment order a show cause notice was issued to the

respondent dated 5th February, 2018 on a satisfaction of the adjudicating authority in terms of Section 8 (1) of the PMLA vide order dated 1st February, 2018. The respondent appeared before the adjudicating authority and sought time to file reply and filed the reply as well. One of the objections taken by the respondent in the reply was lack of jurisdiction of the competent authority qua the respondent BAL as the said company was neither an accused in the predicate offence i.e. the FIR by the CBI or the ECIR recorded by the Enforcement Directorate thereby contending that the show cause notice and the attachment order were not maintainable in law besides other ground like suppression of facts and that for a share holder of a company at best the shares can be attached however, no assets of the company BAL which is an independent legal identity can be attached. The learned adjudicating authority listed the matter for final arguments on 21st May, 2018 vide its order dated 26th April, 2018.

5. Challenging the show cause notice dated 1st February, 2018 issued on 5th February, 2018 and the order of the adjudicating authority dated 26th April, 2018 listing the matter for final hearing the respondent preferred an appeal before the Appellate Tribunal. The main ground urged by the respondent in the appeal under Section 26 of the PMLA was that the show cause notice in the complaint was not maintainable and that the accused in the predicate offences and the ECIR recorded by the Enforcement Directorate were officers of STC and Pramod Kumar Mittal, the then Chairman GSHL and GSPI and BAL being not an accused, the adjudicating authority had no jurisdiction to issue a show cause notice or list the matter for final hearing without deciding the preliminary objection of jurisdiction.

Further, BAL was neither a party to the settlement proceedings nor the Award nor the Court proceedings.

6. Question of jurisdiction having been raised by BAL the learned Appellant Tribunal vide order dated 23rd May, 2018 entertained the appeal and listed it for hearing on 17th July, 2018 for final disposal directing parties to file their written synopsis. The order dated 23rd May, 2018 passed by the Appellate Tribunal listing the appeal filed by BAL before it for hearing and disposal on 17th July, 2018 is under challenge before this Court in the present appeal.

7. One of the issues raised by learned counsel for the appellant Enforcement Directorate is that a show cause notice issued and order dated 26th April, 2018 listing the matter for hearing on 21st May, 2018 could not be the subject matter of an appeal under Section 26 of the PMLA before the Tribunal. Learned counsel for the appellant relies on the decision reported as (2004) 3 SCC 440 *Special Director & Anr. Vs. Mohd. Ghulam Ghouse & Anr.* and (2014) 208 DLT 56 *Arun Kumar Mishra Vs. Union of India & Anr.*

8. After the arguments were heard in part, in the peculiar facts of the case, learned counsel for the parties agreed that the issue of jurisdiction having been raised by the respondent before the adjudicating authority, the same be decided in the first instance by the adjudicating authority before deciding the penalty on merits. Ordered accordingly.

9. Learned counsel for the respondent states that since the respondent had filed the appeal limited to the extent of jurisdiction of the adjudicating authority, the respondent will withdraw its appeal before the Tribunal and urge the jurisdictional issues before the learned adjudicating authority with

liberty to challenge the order passed by the adjudicating authority, if need arises and if so advised.

10. Learned counsel for the petitioner states that this order of consent, on instructions from the competent authority, may not be treated as a precedent and is on the peculiar facts of this case. It is clarified that since the parties consented to the adjudicating authority hearing the jurisdictional issues in the first instance this Court has not given any finding on merits or the questions raised by the parties in the present appeal or the appeal before the Tribunal.

11. Parties are further directed to appear before the adjudicating authority on 10th September, 2018 who will decide the preliminary issues and the objections qua jurisdiction raised by the respondent in the first instance. In case the parties want to file any additional pleadings or place additional evidence on record before the adjudicating authority the same be done before the next date fixed before it.

12. Appeal and the application are disposed of. Order Dasti.

MUKTA GUPTA, J.

AUGUST 21, 2018
'rk'