

\$~54

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

+ W.P.(C) 8629/2018 & CM NO. 33105/2018

N.K.PROTEINS PVT. LTD. AND ORS. Petitioners

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Suryakant Singh, Advocate

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Amit Mahajan & Ms. Mallika
Hiremath, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.08.2018**

1. The petitioner has filed the present petition, *inter alia*, impugning the show cause notices dated 04.07.2018 – five in number – issued to the petitioners respectively. Respondent No. 2, the Adjudicating Authority, has issued the impugned notices under Section 8 of the Prevention of Money Laundering Act, 2002 (hereafter ‘the Act’).
2. The petitioners claim that the impugned notices are without application of mind as there is no material to indicate that their assets, which are sought to be seized represent proceeds of any crime. The petitioners further state that they are also not accused in any of the proceedings initiated by the respondents.
3. At the outset, it would be relevant to note that the assets in question were seized under section 17 of the Act. It is also necessary to refer to

Section 8(1) of the Act, which reads as under:

“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 subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he 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 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.”

4. It is apparent from a plain reading of Section 8(1) of the Act that the necessary pre-condition for issuing the show cause notice is that the Adjudicating Authority should have reason to believe that any person has committed an offence under Section 3 of the Act or is in possession of the proceeds of the crime. Clearly if the Adjudicating Authority has not formed such an opinion, issuance of the show cause notice under Section 8 would be without jurisdiction.

5. In the aforesaid context, this Court had called upon the respondents to produce the relevant files which would indicate that the Adjudicating Authority had formed such an opinion. Mr. Mahajan, learned counsel

appearing for the respondents has produced the relevant file and has referred to the noting in the file to indicate that the Adjudicating Authority had formed such an opinion. The said noting reads as under:

“I have gone through the Original Application and other documents received with it carefully and there are reasons to believe that investigations are going on in an offence of money laundering under Section 3 of PMLA. In order to gather incriminating evidence in connection with the investigation it is necessary to examine whether permission should be granted or not. Issue notices to the Respondents asking them to file their written reply on or before 20.08.2018 at 12.20 PM.”

6. A plain reading of the aforesaid note would indicate that the Adjudicating Authority has not formed an opinion that an offence under Section 3 of the Act has been committed or that the petitioners are in possession of the proceeds of the crime. In fact, there is no opinion that any person is in possession of the proceeds of the crime.
7. In the aforesaid view, the impugned show cause notices are not sustainable and the same are set aside.
8. It is clarified that this would not preclude the respondents from proceedings in accordance with law.
9. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.
10. Order *dasti*.

VIBHU BAKHRU, J.

AUGUST 20, 2018/rd