

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 792 OF 2018

Muktar Minerals Pvt. Ltd.
Rep. by its Managing Director,
Shaikh Muktar@ Xec Mucta & Ors. ... Petitioners

Versus

Special Director of Enforcement,
Enforcement Directorate,
Mumbai & Anr. ... Respondents

Mr. Shashikiran Shetty, Senior Advocate with Ms. Princy Ponnann,
Advocate for the Petitioners.

Mr. Nikhil Vaze & Mr. L. Fernandes, Advocates for the Respondents.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 18th February, 2019

P.C.

Heard Mr. S. Shetty, learned Senior Advocate with Ms.
Princy Ponnann, learned Advocate for the Petitioners and Mr. N. Vaze,
learned counsel for the Respondents.

2. At the outset, a preliminary objection is raised to the maintainability of this petition on the ground that the Petitioners have an alternate and efficacious remedy against the impugned order dated 17th May, 2018 made by the Enforcement Directorate, to the Appellate Tribunal for Foreign Exchange, Ministry of Law, Justice and Company Affairs, Government of India.

3. Mr. Shetty, learned Senior Advocate for the Petitioners concedes that there is an alternate remedy available against the impugned order dated 17th May, 2018. However, he submits that in the present case, the impugned order is based upon certain statements made by some buyers and these statements have been acted upon without afford of any opportunity or cross examination to the Petitioners. He submits that this is clear case of violation of principles of natural justice and fair play not to mention the violation of statutory rules in force. He submits that where there is violation of principles of natural justice and fair play, an alternate remedy can never be held as a bar.

4. Mr. S. Shetty relies upon a decision of the Division Bench of this Court in *Lalit Kumar Modi Vs Special Director & Another*

(Writ Petition No.2803 of 2015 decided on 30th January, 2018). He points out that in the said case as well, opportunity of cross examination was denied to the Petitioner before the impugned order was made. He points out that the Division Bench of this Court, in such circumstances, entertained the petition and interfered with the impugned order. The directions were given to afford opportunity of cross examination.

5. In the present case, after the show cause notice dated 6th September, 2017 was served upon the Petitioners, the Petitioners chose to file reply through their Chartered Accountant. Neither in the reply nor at any stage of the proceedings before the impugned order came to be made, the Petitioners objected to taking into consideration the statements of the buyers on the ground that the same were not tested in the cross examination. There was no request made for examination of such buyers in the presence of the Petitioners or their legal representatives and thereafter for opportunity to cross examination of such buyers. The position in the case of *Lalit Kumar Modi* (supra) was quite different. In the said case, repeated requests were made in the cross examination but, the same were turned down. This is the distinguishing feature in the present case or rather this is

the distinguishing feature in the case of *Lalit Kumar Modi* (supra).

6. In any case, all the contentions including the contention with regard to the alleged breach of principles of natural justice can always be raised before the Appellate Authority. Accordingly, we uphold the preliminary objection raised and dismiss the present petition. However, we leave it open to the Petitioners to avail alternate remedy available under the statute.

7. Accordingly, we make it clear that none of the observations in this order should be used to foreclose any contentions which any of the parties may have, in case the Petitioners, choose to avail of an alternate remedy available under the statute.

8. Accordingly, this petition is dismissed with liberty as aforesaid. There shall be no order as to costs.

9. At this stage, Mr. S. Shetty, learned Senior Advocate appearing for the Petitioners prays that the Respondents be restrained from taking any coercive steps for at least four weeks within which the Petitioners will institute the appeal. Mr. Vaze, learned counsel for the

Respondents states that the objections with regard to the limitation for filing of appeal may be kept open.

10. Keeping all objections open, we direct the Respondents to refrain from taking any coercive steps to execute the impugned order for a period of four weeks from today. We make it clear that such order is not made on the basis of merits but only with a view to afford some reasonable opportunity to the Petitioners to institute an appeal and seek for interim order therein. Accordingly, if any application for interim order is made before the Appellate Authority, the same will be considered on its own merits and in accordance with law.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

*at**