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

+ LPA 386/2019 with C.M. APPL. 27120-27121/2019

M/S EXCEL POWMIN LTD

..... Appellant

Through Mr. Saket Sikri and Mr. Ahmed Said,
Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through Mr. Amit Mahajan, CGSC with Mr.
Olson Nair, Mr. Kavindra Gilland ms.
Mallika Hiremath, Advocates for R-1
& 2**CORAM:****HON'BLE MS. JUSTICE HIMA KOHLI****HON'BLE MR. JUSTICE TALWANT SINGH****ORDER**

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30.05.2019

1. The appellant/petitioner is aggrieved by an order dated 22.05.2019, passed by Ld. Single Judge whereunder the Court has declined to entertain its petition for assailing a provisional attachment order dated 29.12.2017, passed by the Enforcement Directorate based in Kolkata, as also, the show cause notice dated 09.02.2018 issued by the Adjudicating Authority based in Delhi under Section 8(1) of the Prevention of Money Laundering Act, 2002 (PMLA). The appellant/petitioner had also prayed for quashing the complaint dated 29.01.2018, filed by the Enforcement Directorate under Section 5(5) of the PMLA, again based in Kolkata.

2. The said writ petition has been dismissed by the Ld. Single Judge on

the ground that no part of the cause of action has arisen within the jurisdiction of this Court and therefore, it would not be apposite to entertain the said petition. At the same time, the appellant/ petitioner has been granted liberty to approach the concerned Court and till then, the proceedings before the Adjudicating Authority have been stayed for a period of four weeks reckoned from 22.05.2019.

3. Mr. Sikri, counsel for the appellant/petitioner states that it is an undisputed position that the Adjudicating Authority that had issued the show cause notice dated 09.02.2018, is based in Delhi and the Appellate Tribunal is also based in Delhi which clearly goes to show that a part of cause of action has arisen within the territorial jurisdiction of this Court.

4. Mr. Amit Mahajan, learned Central Government Standing Counsel supports the impugned order and submits that the appellant's petition is not maintainable in the light of the provisions of Section 42 of the PMLA which provides for legal recourse to a person aggrieved by a decision or an order before the appellate authority by filing an appeal before the High Court. In the explanation appended to the said provision, it has been clarified that for the purpose of said section, "High Court" means the High Court within the jurisdiction whereof the aggrieved party ordinarily resides or carries on business or personally works for gain.

5. It is thus submitted by learned CGSC that as per the language used in Section 42 of the PMLA, it is an undisputed position that the registered office of the appellant who is the aggrieved party in the present case is at Kolkata and it is also carrying on business in Nagpur. Once the appellant

admits that it does not have any presence in Delhi, learned Single Judge cannot be faulted in declining to entertain the petition. In support of his submission that the High Court of Delhi is not vested with the jurisdiction to entertain an appeal preferred by an aggrieved party as contemplated under Section 42 of the PMLA, learned CGSC refers to and relies on a recent judgment of a Division Bench of this Court reported as Aasma Mohammed Farooq & Anr. Vs. Union of India 2018 SCC OnLine Del. 12800. Drawing an analogy from the judgment in the case of Raj Kumar Shivhare vs. Assistant Director of Enforcement, Mumbai W.P.(C) 6527/2008 decided on 24th September, 2008, a co-ordinate Bench of this Court had dismissed the petition in the case of Aasma Mohammed Farooq & Anr. (supra).

6. In the captioned case, where the provision of Section 35 of the Foreign Exchange Management Act, which is *para materia* with Section 42 of PMLA insofar as the definition of word, "High Court" is concerned, was being examined, the High Court held that it ought not to exercise territorial jurisdiction by virtue of the said provision as the petitioner in the said case was based in Lucknow. We are informed that aggrieved by the said decision, an appeal was preferred by the petitioner therein and vide order dated 14.12.2018, the Supreme Court has upheld the said order.

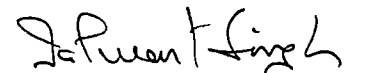
7. Even in the instant case, the registered office of the appellant/petitioner is in Kolkata and it has an office at Nagpur. Admittedly, it has no presence in Delhi. This does not mean that no part of the cause of action has arisen within the jurisdiction of this Court, as observed in the impugned order. As noticed above, the show cause notice dated 09.02.2018 was issued

to the appellant/petitioner from the office of the Adjudicating Authority at Delhi. It is also an admitted position that all the properties in question owned by the appellant/petitioner are situated in Reva, Madhya Pradesh; as per the complaint, the places of occurrence of the scheduled offence are at Kolkata, Mumbai, Jamshedpur and Bangalore. Going by that, several High Courts including the High Court of Delhi would be vested with jurisdiction to entertain the petition. But, having regard to the explanation appended to Section 42 of the PMLA and on invocation of the doctrine of *forum convenience*, the petition filed by the appellant/petitioner ought not to be entertained by this Court.

8. In view of the above discussion, the present appeal is dismissed but for the reasons mentioned above.

9. At this stage, Mr. Sikri, learned Counsel for the appellant submits that the protection of four weeks granted to the appellant/petitioner may be extended by a period of two weeks to enable his client to seek legal recourse before the competent court vested with territorial jurisdiction. The period of four weeks granted to the appellant/petitioner in terms of the impugned order, is extended by a further period of two weeks.


HIMA KOHLI, J


TALWANT SINGH, J

MAY 30, 2019/rr

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 386/2019

M/S EXCEL POWMIN LTD

..... Appellant

Through: Mr. Ashul Aggarwal, Mr. Shailesh
Pandey and Mr. Deepanshu, Advs.
for the applicant

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Amit Mahajan, CGSC with
Mr. Olson Nair and Ms. Mallika
Hiremath, Advs. for R-1

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% 02.07.2019

CM No.29140/2019 (Exemption) in LPA 386/2019

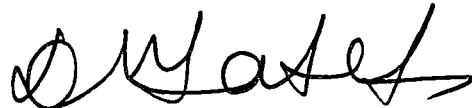
Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**CM No. 29139/2019 (Extension of protection granted by Court) in
LPA 386/2019**

Stay granted earlier shall stand continue to be operative for a further period of two weeks from today. With these observations, this application is hereby disposed of.

Copy of this order be given *dasti* to learned counsel for the applicant under signatures of the Court Master.



CHIEF JUSTICE



C.HARI SHANKAR, J

JULY 02, 2019/kr