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

Date of decision: 12.03.2020

+ CRL.A. 95/2020, CRL.M.As. 1516-17/2020 & CRL.M.A. 3338/2020

THE ASSISTANT DIRECTOR, DIRECTORATE OF
ENFORCEMENT, NEW DELHI

..... Appellant

Through Mr.Zoheb Hossain, Mr.Agni Sen and
Mr.Vivek Gurnani, Advs.

versus

OMAR ALI OBAID BALSHARAF & ORS Respondents

Through Mr.Bishwajit Bhattacharya and
Mr.Gurpreet Singh, Advs. for R-1 &
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CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A. 1518/2020 (delay)

1. Vide the present application, the applicant-Directorate of Enforcement, New Delhi, seeks condonation of delay of 80 days in filing the accompanying appeal against impugned order dated 29.08.2019 passed by Appellate Tribunal in FPA-PMLA-2617/DLI/2019, FPA-PMLA-2618/DLI/2019, FPA-PMLA-2817/DLI/2019 AND FPA-PMLA-2818/DLI/2019.

2. Brief facts of present case are that Ministry of Defence submitted a written complaint dated 12.02.2013 to the Central Bureau of Investigation (hereinafter referred to as "CBI"), New Delhi, with a request to register a case and investigate alleged illegal dealings of M/s Finmeccanica, Italy

in the matter of procurement of 12 VVIPs helicopters from M/s AgustaWestland International Ltd. Accordingly, CBI, New Delhi, registered an FIR vide RC-217/2013/A0003 dated 12.03.2013 against Mr. Carlo Gerosa, Mr. Guido Ralph Haschke, Mr. Gautam Khaitan and other persons/companies for commission of offences punishable under Section 120-B read with Section 420 IPC and Sections 7, 8, 9, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Subsequently, Directorate of Enforcement on 03.07.2014 recorded an ECIR No. DLZO/15/2014 against said accused persons/companies. As per investigation, to get contract dated 08.02.2010 for supply of 12 VVIP helicopters for Euro 556.262 million, kickbacks of Euro 70 million was paid by M/s Agusta Westland. Out of aforementioned amount, Euro 24.37 million was paid to M/s IDS Information Technology and Engineering Sari, Tunisia by M/s AgustaWestland, out of which Euro 12.4 million was transferred to M / s Interstellar Technologies Limited, Mauritius.

3. Investigations also revealed that M/s Interstellar Technologies Limited, Mauritius transferred an amount of USD 4,731,480 (between September, 2008 to June, 2009) and Euro 240,049 (February, 2009) and USD 275,000 (June, 2010) to the accounts of M/s Rawasi Al Khaleej General Trading LLC, Dubai (hereinafter referred to as the "M/s RAKGT") but the same was maintained under the ledger head Omar Ali Balsharaf-GK in the books of accounts of RAKGT.

4. It is further revealed that M/s RAKGT was incorporated in 2007 by M/s KRBL DMCC, Dubai which itself was incorporated in 2006 as a 100% subsidiary of M/s KRBL Ltd., India. In the year 2009, the entire stake (49% shareholding) of M/s KRBL DMCC held in M/s RAKGT was transferred in

the name of Anurag Poddar (nephew of the promoter of M/s KRBL Ltd.). However, said Anurag Poddar did not join investigation in present case. Accordingly, non-bailable warrants of arrest against him was obtained in another case involving similar transactions, which is being investigated by Enforcement Directorate.

5. As per investigation, proceeds of crime to the tune of Euro 1 million and USD 1 million have been found transferred from the account of M/s Interstellar Technologies Ltd. Mauritius to the account of M/s Windsor Group Holdings Ltd. in the bank account bearing No.143134 maintained with UBS Singapore out of which, USD 830,000 was further transferred to M/s RAKGT in February 2010, but the same was also maintained under the head Omar Ali Balsharaf-GK in the books of accounts of M/s RAKGT.

6. During course of investigation, search was conducted on 22.09.2014 at the premises of Mr. Gautam Khaitan and various documents were recovered from the seized hard disks, two email communications dated 06.10.2008 and 23.10.2008 between Deepak Goyal of M/s OP Khaitan & Co and M/s ML Administrators (registered agent of M/s Interstellar Technologies Limited, Mauritius) have been retrieved which proves the complicity in transferring proceeds of crime to the account of M/s RAKGT from the account of M/s Interstellar Technologies Limited, Mauritius on behalf of respondent No.1 herein.

7. Subsequently, a search was conducted by the Income Tax Department at the premises of M/s KRBL Ltd. and the scrutiny of documents of the Income Tax Department's search also revealed that books of accounts of M/s RAKGT were also forwarded along with the books of M/s KRBL DMCC to M/s KRBL Ltd. on a quarterly basis for integration of financials for

declaration of quarterly results of M/s KRBL Ltd. The said M/s KRBL DMCC and M/s RAKGT were controlled by the same person.

8. It was also revealed that in the books of account of M/s RAKGT, two ledger accounts in the name of (i) Omar Ali Balsharaf-DO and (ii) Omar Ali Balsharaf-GK were maintained. From the ledger account, maintained in the name of Omar Ali Balsharaf-GK, it transpired that M/s RAKGT had received money directly from M/s Interstellar Technologies Limited, Mauritius and other companies including M/s Carisma Investment Ltd., M/s Choice Point Trading, M/s Duet Ltd., M/s Future Key Trading, M/s High Image Trading, M/s Windsor-Group Holdings etc, but the same was incorporated in the ledger account titled as Omar Ali Balsharaf- GK. Related documents to explain nature and purpose of transactions are still awaited.

9. Thus, from the investigation it was revealed that funds to the tune of Rs. 110 crores have been received by M/s RAKGT from various companies. Also, said amount has been parked in the accounts of M/s RAKGT from various companies, maintained in the ledger accounts of M/s RAKGT under the head, M/s Omar Ali Balsharaf-GK, whereas, said funds have been received by M/s RAKGT from different companies other than Omar Ali Balsharaf. Thus, ill-gotten money is suspected to be parked in accounts of M/s RAKGT under the ledger entries of M/s Omar Ali Balsharaf-GK, who is a major shareholder in M/s KRBL Ltd.

10. While examination of Mr. Anoop Gupta and Mr. Anil Mittal in the investigation of another case, bulk trading of shares of M/s KRBL owned by Omar Ali Balsharaf and Abdullah Ali Balsharaf was carried out on 12.02.2018, through Bombay Stock Exchange (hereinafter referred to as "BSE"), i.e. respondent No.4, which seems to be an attempt to shift

suspected proceeds of crime, after initiation of investigation with regard to role of M/s KRBL, M/s KRBL DMCC and M/s RAKGT, to frustrate further proceedings under PMLA during the pendency of investigation, which was put on hold with the BSE on 13.02.2018.

11. Further, Mr. Anoop Gupta, Director of M/s KRBL in his statement recorded under Section 50 of the PMLA also stated that said money belongs to M/s Omar Ali Balsharaf, which was sent by him to M/s RAKGT as loan but no related documents have been provided to conceal exact nature of transactions between M/s RAKGT and Omar Ali Balsharaf. Further, no clarification about maintaining two ledger accounts in the name of Omar Ali Balsharaf-DO and Omar Ali Balsharaf-GK in the books of accounts of M/s RAKGT was given, which shows that all ill-gotten money has been parked in the books of accounts of M/s RAKGT under the head Omar Ali Balsharak-GK. Thereafter, vide letter dated 27.02.2018, Mr. Omar Ali Balsharaf was asked to provide details of their dealings with M/s RAKGT and communications related to the share trading and their response is still awaited. Also, Mr. Omar Ali Balsharaf and Mr. Abdullah Ali Balsharaf were summoned vide summons dated 14.03.2018 and contacted by telephone on 14.03.2018 seeking information about details of share transactions dated 12.02.2018 but their response is still awaited, despite the fact that they had expressed their interest in explaining the details and providing required information/documents. They also proposed to send their youngest brother Mohd. Balsharaf to provide required documents/information.

12. The investigation further revealed that Mr. Omar Ali Balsharaf and Mr. Abdullah Ali Balsharaf are maintaining Dematerialized accounts with M/s SMC Global Securities Ltd., 11/6B, Pusa Road, New Delhi-11060

which may be in possession of records relating to money laundering, more shares/evidence which might have links with proceeds of crime derived from Agusta Westland and certain documents including proceeds of crime and/or records relating to money laundering which can be useful or relevant for investigation and other proceedings under PMLA, 2002 are secreted in their premises.

13. During course of investigation, a search under Section 17 of PMLA was conducted on 22.03.2018 at the premises of M/s SMC Global Securities Ltd. (respondent No.3) at the address mentioned above and relevant articles/documents were seized which are crucial for investigation of offence under money laundering after the issuance of search warrants of the competent officer. During search of premises of respondent No.3, under Section 17 of PMLA, it was found that depository of broker M/s SMC Global Securities Ltd. was in possession of 42,50,000 shares of M/s KRBL in the name respondent No.1 and 35,88,330 shares of M/s KRBL in the name of respondent No.2 making a total of 78,38,330 shares of M/s KRBL owned by respondent Nos.1 & 2 in Dematerialized form. Since it was not practicable to seize above-said shares in physical form, therefore, a freezing order in terms of Section 17(1 A) of the PMLA for freezing of debit transactions in DMAT Account No. 1201910103642803 in name of respondent No.1 and DMAT Account No.1201910103642797 in the name of respondent No.2 dated 22.03.2018 was issued against respondent No.3. Thereafter, on 19.04.2018, in accordance with the Section 17(4) of PMLA, the Enforcement Directorate filed Original Application No. 194 of 2018 praying for retention of the documents/articles seized during the search at the premises of respondent No.3 dated 22.03.2018 and for continuation of the

freezing order dated 22.03.2018 against debit transactions in DMAT Account No.1201910103642803 in the name of respondent No.1 and DMAT Account No.1201910103642797 in the name of respondent No.2 was issued to M/s SMC Global Securities Ltd.

14. Since neither respondent No.1 nor respondent No.2 had joined investigation and had already attempted to shift their assets outside India, there was a possibility that they might further try to part with proceeds of crime held with respondent No.3. Therefore, another search was conducted at the premises of respondent No.3 on 14.06.2018. During the search dated 14.06.2018, 64,94,891 shares of M/s KRBL traded on 12.02.2018 by respondent Nos.1 & 2 held by respondent No.4 and credited back to account of respondent No.3 were found and frozen vide an order under Section 17(1A) of PMLA.

15. Further, during search, compliance officer of respondent No.3 declared that an amount of Rs.30,35,006.90 pertaining to the shares of M/s KRBL were also available in their BSE Settlement Account bearing Account No.000405071796 with ICICI Bank, CP New Delhi. The compliance officer also stated that neither he nor anyone in his company would withdraw or transfer said amount. Accordingly, a letter was also sent to ICICI bank directing them to freeze aforementioned amount of Rs.30,35,006.90.

16. In view of above, vide order dated 10.09.2018, learned Adjudicating Authority allowed Original Application No. 194 of 2018 finding that there were reasons to believe that respondent No.1 had apparently committed an offence of money laundering under Section 3 of PMLA and that they were in possession of proceeds of crime. Therefore, retention of the

documents/articles seized during search dated 22.03.2018 as well as freezing order restraining debit transactions in DMAT Account No.1201910103642803 and DMAT Account No. 1201910103642797 was allowed during pendency of proceedings relating to any offence under the PMLA.

17. Original Application No. 242 of 2018 was filed under Section 17(4) of PMLA before learned Adjudicating Authority praying for continuation of freezing orders dated 14.06.2018 with respect to:

- (i) 64,94,891 shares of M/s KRBL owned by respondent Nos.1 and 2.
- (ii) an amount of Rs. 30,35,006.90 available in Account No.000405071796 with ICICI Bank, CP New Delhi.

18. Accordingly, vide an order dated 05.12.2018, learned Adjudicating Authority allowed Original Application No. 242 of 2018 and ordered continuance of freezing orders dated 14.06.2018 pertaining to:

- (i) 64,94,891 shares of M/s KRBL owned by respondent Nos.1 and 2.
- (ii) an amount of Rs.30,35,006.90 available in Account No. 000405071796 with ICICI Bank, CP New Delhi., during the pendency of any proceedings relating to any offence under PMLA.

19. Being aggrieved by orders of learned Adjudicating Authority dated 10.09.2018 and 05.12.2018, respondent No.1 herein preferred an appeal to the Tribunal as provided by the PMLA. However, said Tribunal vide impugned order dated 29.8.2019 partly allowed the appeal preferred by respondent No.1 by recording as under:

"107. As of today, there is no evidence available on record against the appellants. They are not charge-sheeted. No prosecution complaint is pending, however, in the interest of justice, equity and fair play and to strike the balance in the present circumstances and the nature of case and in view of investigation is sub-judice by the police under schedule offence against other parties. Without prejudice, the appellants are directed to execute the indemnity bond by way of an undertaking to the tune of 111 crores within four weeks as a surety that if it was found by producing evidence in trial and directed by the court, at the time of passing the final judgement while coming to the conclusion that the ledger entry in the account of RAKGT is part of the bribe amount, the appellants shall deposit the said amount with the respondent as equivalent to value thereof. The liberty is also granted to the appellants to move the application before the Special Court for waiving of such condition if charges are not framed against the appellants.

108. All the four appeals are partly allowed by modifying the impugned orders, on the compliance is made as per terms mentioned in the preceding paras within the period of one month. Once the compliance is made, all shares shall stand de-frozen as the same are admittedly not acquired from proceed of crime."

20. Being aggrieved the applicant/appellant has filed the present appeal along with present application i.e. CRL.M.A.1518/2018 under Section 5 of Limitation Act, 1973 seeking condonation of delay of 80 days in filing the appeal.

21. Learned counsel for applicant submits that it is settled law that a law of limitation is enshrined in the maxim "*interest reipublicae ut sit finis litium*" i.e. it is for the general welfare that there should be an end to

litigation.

22. To strengthen his arguments, learned counsel for applicant has placed reliance on decision of Supreme Court in the case of ***N. Balakrishnan vs. M. Krishnamurthy: [1998] 7 SCC 123***, wherein the Apex Court explained the scope of limitation and condonation of delay, observing as under:-

*"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. **Rules of limitation are not meant to destroy the rights of parties.** They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. . . The law of limitation is thus founded on public policy..."* (emphasis added)

23. Learned counsel further relied upon judgment passed in the case of ***State of Nagaland vs. Lipokao : [2005] 3 SCC 752*** wherein the Supreme Court has observed in para 9 of the judgment as under:

"What counts is not the length of the delay but the sufficiency of the cause, and shortness of the delay is one of the circumstances to be taken into account in using the discretion....." (emphasis added)

24. Learned counsel also relied upon judgment passed in the case of ***Collector Land Acquisition vs. Mst. Katiji : 167 ITR 471 (SC)***, whereby the Supreme Court has inter alia held that where the defaulting party is the Government/State, the doctrine of equality before law demands that all

litigants, including the State/Government as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according harsher treatment when the State is the applicant praying for condonation of delay. On the contrary, on account of the fact that the State represents the collective cause of the community, public interest would be better served if the courts apply the legal principles as elucidated hereinabove, in the course of interpretation of the expression "sufficient cause" as provided in section 5 of the Limitation Act, 1963.

25. It is not in dispute that impugned order is dated 29.08.2019 and same was pronounced in open Court and Mr.D.P.Singh, counsel for applicant herein was present there at that time. However, certified copy of the same was received on 11.09.2019, whereas present appeal is filed on 22.01.2020 vide diary No.60434/2020.

26. Accordingly, on the other hand, Mr.Bishwajit Bhattacharya, learned Senior Counsel appearing on behalf of respondent No.2 submits that captioned appeal which is filed on 22.01.2020 is time-barred under Section 42 of PMLA, 2002 which reads as under:

“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."

27. He further submits that delay of 80 days, in this case, beyond statutory period (60 days) prescribed under Section 42 of PMLA, 2002 with a mandatory or pre-emptory negative language (like "not exceeding", "not thereafter") cannot be condoned by Courts.

28. Learned Senior Counsel further submits that present appeal was taken up on 23.01.2020 and thereafter, dubious application being CRL.M.A.No.3338/2020 was filed by the applicant in the captioned appeal. Prayer thereto is to treat another purported appeal filed purportedly on 24.12.2019 (vide diary No.162374/2019), purportedly returned (date not mentioned) after the winter break, however, not filed thereafter, which amounts to seeking permission to perpetrate dubious act. Alternative

dubious prayer is to wilfully disobey the law declared by the Supreme Court of India.

29. Reliance is placed on decision in ***Union of India vs. Popular Construction Co. : (2001) 8 SCC 470***, whereby held as under:

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.”

30. In case of ***Bengal Chemists and Druggists Association vs. Kalyan Chowdhury : (2018) 3 SCC 41***, the Supreme Court has held as under:

“12. One further thing remains-and that is that learned Counsel for the Appellant pointed out the difference between the expression used in the Arbitration Act as construed by Popular Construction (supra) and its absence in the proviso in Section 421(3). For the reasons given above, we are of the view that this would also make no difference in view of the language of the proviso to Section 421(3) which contains mandatory or peremptory negative language and speaks of a second period not exceeding 45 days, which would have the same effect as the expression "but not thereafter" used in Section 34(3) proviso of the Arbitration Act, 1996.”

31. In case of ***P. Radha Bai vs. P. Ashok Kumar : (2019) 13 SCC 445***, the Supreme Court held as under:

“35. This Court in Popular Construction case followed the same approach when it relied on the phrase “but not thereafter” to hold that Section 5 of the Limitation Act was expressly excluded ”: (SCC pp. 474-75, para 12)

“12. One further thing remains-and that is that learned Counsel for the Appellant pointed out the difference between the expression used in the Arbitration Act as construed by Popular Construction (supra) and its absence in the proviso in Section 421(3). For the reasons given above, we are of the view that this would also make no difference in view of the language of the proviso to Section 421(3) which contains mandatory or peremptory negative language and speaks of a second period not exceeding 45 days, which would have the same effect as the expression "but not thereafter" used in Section 34(3) proviso of the Arbitration Act, 1996.” (emphasis supplied)”

32. In case of ***Standard Chartered Bank vs. MSTC Limited : 2020 (3) SCALE 124***, the Supreme Court held as under:

“14. The preemptory language of Rule 5A would also make it clear that beyond 30 days there is no power to condone delay. We may also note that Rule 5A was added in 1997 with a longer period within which to file a review petition, namely, 60 days. This period was cut down, by amendment, with effect from 04.11.2016, to 30 days. From this two things are clear: one, whether in the original or unamended provision, there is no separate power to condone delay, as is contained in Section 20(3) of the Act; and second, that the period of 60 days was considered too long and cut down to 30 days thereby evincing an intention that review petitions, if they are to be filed, should be within a

shorter period of limitation – otherwise they would not be maintainable.”

33. It is an admitted case of applicant that initially appeal was filed on 24.12.2019 vide diary No.1621374/2019 and same was returned under objections which is still pending in the Registry. Whereas, in para 5 of the captioned appeal, it is specifically mentioned that no other appeal is filed or pending before this Court or any other Court.

34. Learned counsel for applicant submits that instead of re-filing the appeal filed on 24.12.2019, the applicant/appellant has filed the present appeal by mistake.

35. This fact was not brought to the notice of the Court when matter was taken up on 23.01.2020 and on the said date, learned Senior Counsel appearing for respondent No.2 strongly argued that the captioned appeal is filed after 120 days which is the maximum limit prescribed under Section 42 of PMLA Act and the same is fully covered by judgment passed in ***Union of India vs. Popular Construction Co. (supra)***.

36. As per Section 42 of PMLA, 2002, any person, aggrieved by any decision or order of the Appellate Tribunal, may file an appeal before the High Court within 60 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 60 days.

37. Fact remains that order of the Appellate Tribunal was pronounced on 29.08.2019, however, as argued by learned counsel for applicant, the same

was received on 11.09.2019 whereas the captioned appeal is filed on 22.01.2020. As per Section 42 of PMLA, 2002 as mentioned above, the maximum limit to condone delay is (60 days + 60 days) 120 days whereas, captioned appeal is filed beyond the period of limitation. Thus, as per the dictum of the Supreme Court in catena of judgments and some of them discussed above, this Court has no power to condone the delay beyond 120 days. Thus, the present application is dismissed.

38. It is pertinent to mention here that the alternative prayer of the applicant in CRL.M.A.3338/2020 is to withdraw the appeal with liberty to file the purported appeal which was filed on 24.12.2019 vide diary No.1621374/2019. However, said appeal is not before this Court. In view of above facts, the lacunae cannot be allowed to be filled-up, therefore, I hereby reject the prayer made by the applicant in CRL.M.A.3338/2020 and same is accordingly dismissed.

39. The captioned appeal is consequently rejected.

40. Pending applications stand disposed of.

(SURESH KUMAR KAIT)

JUDGE

MARCH 12, 2020/rk