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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4620/2020 & CM 16704/2020

UTKARSH PAHWA & ANR.

..... Petitioners

Through Mr.Dayan Krishnan, Sr. Adv. with
Ms.Ankita Baipai, Mr.Sumesh
Dhawan, Mr.Vatsala Kak, Advs.

versus

ASSISTANT DIRECTOR PMLA DIRECTORATE OF
ENFORCEMENT PMLA CHANDIGARH

..... Respondent

Through Mr.Amit Mahajan, CGSC.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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06.08.2020

1. This hearing has been held through video conferencing.
2. The learned senior counsel for the petitioners submitted that no notice under Section 17(1A) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'Act') was issued to the petitioners nor any "reasons to believe" have been communicated to the petitioners. He further submits that the order under Section 17 (1A) of the Act was issued to the mother of the petitioner no.1, Ms.Alka Pahwa, and has been subsequently set aside by the Appellate Tribunal by its order dated 28.03.2019. He submits that the Impugned action taken by the respondent is therefore bad in law inasmuch as it could not have been taken without following the due process of the Act.

3. He further submits that the petitioners are in fact willing to deposit an amount of Rs.40 lacs to the respondent, which according to him, is the amount of proceeds of crime alleged to be in the hands of the petitioners.

4. On the other hand, the learned counsel for the respondent submits that the petition is not bona fide and is liable to be dismissed on this ground itself. He submits that the petitioners were always aware of the order issued under Section 17(1A) of the Act, *albeit* against the mother of the petitioner no.1, as also the proceedings before the Adjudicating Authority and the Appellate Authority. The petitioners chose to remain quiet and watch these proceedings and cannot now take the benefit of such action/inaction. He submits that even otherwise, the remedy of the petitioners would be in form of an appeal before the Appellate Tribunal under Section 26 of the Act or in form of an application before the Special Court under Section 8 of the Act. He submits that the appeal before the Appellate Tribunal would, in fact, be barred and in his submission, the petitioners have not made out any ground for condoning the delay in filing such appeal.

5. After some arguments, the learned senior counsel for the petitioners prays for leave to withdraw the present petition and approach the Appellate Tribunal in form of an appeal under Section 26 of the Act. He submits that this prayer is being made without prejudice to the rights and contentions of the petitioners, as raised in the petition and as recorded hereinabove. He further submits that though in his submission, the time for filing of the appeal has not

commenced, the petitioners, out of an abundance of caution, shall be filing an application seeking condonation of delay in filing such appeal.

6. In view of the prayer made, the present petition is allowed to be withdrawn by the petitioners with liberty as prayed for, subject to the condition that the appeal along with an application seeking condonation of delay is filed by the petitioners before the learned Tribunal within two weeks from today.

7. The respondent shall not act on the impugned notice till the application seeking condonation of delay/interim orders is listed for consideration before the learned Tribunal. Further continuation /vacation/variation of the interim order passed by this Court today shall be considered by the learned Tribunal on such date of listing, in accordance with law and remaining uninfluenced by any observation made by this court in the present order. It is reiterated that this Court has not expressed any opinion on the merits of the submissions made by either party.

8. As the learned counsel for the respondent has submitted that there has already been a delay in the process caused by the petitioners, the learned Appellate Tribunal is requested to list the applications seeking condonation of delay and prayer for interim relief for consideration within a week of their filing.

9. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 06, 2020
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