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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 18th January, 2021
+ **W.P.(C) 766/2021 & CM APPLs.1926-27/2021**

HAMILTON HOUSEWARE PVT. LTD. Petitioner
Through: Mr. Vijay Aggarwal, Ms. Urfee
Haider and Mr. Talib Khan,
Advocates (M: 9971515733)

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Vikram Jetly, CGSC for R-1.
Mr. Ravi Prakash, Advocate for R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The Petitioner has filed the present writ petition challenging the final order dated 28th December, 2020, passed by the Adjudicating Authority under Section 8 of the Prevention of Money Laundering Act, 2002 (*hereinafter referred as "PML Act"*), by which the attachment of the bank account of the Petitioner has been confirmed by the Adjudicating Authority.
3. Mr. Vijay Aggarwal, Id. counsel for the Petitioner, submits that the Petitioner had moved a specific application dated 14th December 2020, in OA no. 396/2020, with the following prayers:

"1. Pass necessary order and direction hereby directing the Applicant (ED) to supply the following document at the earliest:

A. Letter of request dated 12.11.2018, received from central authority of brazil seeking legal assistance in criminal matter from the Applicant (ED) along with all the

- communication to and from the Brazilian Competent Authority. (Para 1 of original OA)*
- B. Order dated 02.10.2018, passed by the 7th Federal Criminal Court, Rio De Janerio, Brazil. (Para 2.7 of original OA)*
 - C. Forwarding letter by Central Authority of India (i.e. Ministry of Home Affairs) given to the Applicant (ED) (Para No.5 of Original OA).*
 - D. File of Central Authority of India (I.e. Ministry of Home Affairs) where the request by brazil was Processed.*
 - E. Copy of Reason to believe recoded by the Applicant (ED) for seizure U/s 17(1) of the PMLA, 2002.*
 - F. Authorisation issued by the Deputy Director as mentioned in the punchnama at Page 34 of the Original OA.*
 - G. Clarification sought from the Central Authority of Brazil (mentioned in Para 5 of the amended OA)*
 - H. Amended letter of request dated 08.09.2020 from the Central Authority of Brazil (para no.6 of the amended OA)*

So that an effective reply can be filed as per the direction of the Hon'ble AA.

2. Pass any other order/direction as the Hon'ble Adjudicating Authority deem fit. ”

4. The grievance of Mr. Aggarwal, Id. counsel, is that the said Application has neither been considered nor disposed of by the Adjudicating Authority, while passing the final order dated 28th December 2020. He further submits that the impugned order is without any application of mind, inasmuch as page 83 of the paper book i.e. internal page 34 of the order, continues to set out the bank details of the Petitioner and attachment/

freezing of the said bank account to the tune of Rs.5.81 crores. It is a matter of record that when the initial attachment of the bank account had taken place, the Petitioner had approached this Court by filing a writ petition bearing no. **W.P.(C) 5235/2020**, titled **M/S Hamilton Housewares Pvt. Ltd. v. Directorate of Enforcement**, in which, vide order dated 26th August, 2020, the amount which was frozen was restricted to a sum of USD 20,000. Despite this order continuing to be operating in favour of the Petitioner, the entire bank account of the Petitioner has been attached by the Directorate of Enforcement, subject to directions of the High Court in the writ petition.

5. Mr. Ravi Prakash, Id. counsel appearing for the Directorate of Enforcement/ Respondent No. 2, submits that the impugned order is an appealable order under Section 26 of PML Act, and the Petitioner ought to be relegated to the Appellate Tribunal to pursue his prayers and remedies thereto. He further submits that the Adjudicating Authority is conscious of the orders passed in the writ petition filed by the Petitioner, bearing no. **W.P.(C) 5235/2020**.

6. Heard Id. counsels for the parties. A perusal of the impugned order shows that the application filed by the Petitioner has not been considered by the Adjudicating Authority. According to Id. counsel for the Petitioner, the question as to whether “reasons to believe” have to be supplied or not, has been decided by two judgments i.e. the Division Bench of this court in **J. Sekar v Union of India (WP(C) 5320/2017)** and the Punjab and Haryana HC in **Seema Garg v. Deputy Director (PMLA Appl. No. 1/2019)**. Id. counsel for the Respondent No. 2, however has submitted that the judgment in **J. Sekar** has been stayed by the Supreme Court and is pending thereto.

7. Be that as it may, the Adjudicating authority ought to have decided

the application and thereafter proceeded to finally adjudicate the matter. However, the submission as to availability of an alternate remedy is not without merit. Under Section 26 of the PML Act, an appeal lies to the Appellate Tribunal against an order of the Adjudicating Authority. Merely because of the fact the application was not decided by the authority would not be sufficient ground to entertain the present writ petition. The same could be a plea that the Petitioner can raise before the PMLA Appellate tribunal as well.

8. Accordingly, this Court directs the Petitioner to approach the Appellate Tribunal under Section 26 of PML Act. The said Appellate Tribunal would firstly take a view on the Application filed by the Petitioner, and after adjudicating upon the said Application, the Appellate Tribunal shall proceed to hear the appeal on merits, against the order passed by the Adjudicating Authority. Insofar as the attachment of Petitioner's bank account is concerned, the order dated 26th August, 2020 passed in *W.P.(C) 5235/2020*, titled *M/S Hamilton Housewares Pvt. Ltd. v. Directorate of Enforcement*, would continue to apply and the attachment would only be in terms of the said order, during pendency of the appeal before the Appellate Tribunal. If there is any modification of the said order in the writ petition pending before this Court, the said modification would then be placed before the Appellate Tribunal.

9. The present petition along with all pending applications is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JANUARY 18, 2021/dk/Ak