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

Date of Decision: 5th May, 2021

\+ **W.P.(C) 5082/2021**

M/S WAVE HOSPITALITY PVT. LTD. ..... Petitioner
Through: Mr. Dhruv Gupta and Mr. Tanveer Ahmed, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocate for R-1. (M:9818030700)
Mr. Amit Mahajan, CGSC for ED
Mr. Madhav Khurana, Advocate

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The present writ petition has been filed by the Petitioner, under Article 227 of the Constitution, in view of the Appellate Tribunal under the Prevention of Money Laundering Authority, 2002, not being currently functional due to non-filling of vacancies in the Tribunal.

3. The Enforcement Directorate had issued a Provisional Attachment Order PAO 1/2019 dated 28th March 2019 vide which the hotel Holiday Inn located at Aerocity was provisionally attached to the tune of Rs. 120,20,46,003/-. The said attachment was confirmed by the Adjudicating Authority vide its order dated 19th September 2019. The Petitioner has already preferred an Appeal under Section 26 of the PMLA before the Appellate Tribunal for PMLA. Vide order dated 4th October 2019, status quo was granted by the Tribunal in the following terms:

> *" The appellant undertakes that he will serve the notice to the R-5 at the earliest. Till the next date status quo shall be maintained as on today by both the parties till the next date. However, the attachment shall continue.*
>
> *Legal and constructive possession of the ED shall remain over the property in question. Appellant shall not transfer the property in question in any manner directly or indirectly"*

4. It is the case of the Petitioner that post the outbreak of the COVID-19 pandemic, considering the adverse effect of the same on the hospitality sector, the Ministry of Finance, GOI launched the Emergency Credit Line Guarantee Scheme *(`ECLGS')*. As per the said Scheme, companies in this sector could avail an additional credit facilities which would be fully guaranteed by the National Credit Guarantee Trustee Company Limited (NCGTC). The Petitioner approached Yes Bank for availing of this credit facility which got an independent valuation of the property concerned. For the facility to be released, since the property was already attached by the ED, approval of the Appellate Tribunal was required to be taken. For the said purpose an application was moved before the appellate tribunal. However, due to lack of quorum the application could not be taken up for hearing.

5. The limited prayer of the Petitioner in the present petition is for a direction to the Respondent- Enforcement Directorate (*"ED"*) to allow the Petitioner for permission, to avail of the additional credit facility which has been sanctioned by the Respondent No. 3- Yes Bank, to the tune of the amount which the Petitioner is eligible to avail of under the Emergency Credit Line Guarantee Scheme launched by the Government of India, in

respect of the Hotel Property (Holiday INN), which is situated at Asset Area 12, Aero-city, Delhi International Airport, New Delhi- 110037.

6. On 30th April, 2021, when the matter was listed before this Court, the counsel for the ED had sought time to seek instructions in the matter. On the said date, ld. Counsel appearing for the Bank submitted that since there is already an attachment order, permission would be required from the Appellate Authority under the PMLA, in spite of the loan having been sanctioned.

7. Today, Mr. Mahajan, ld. counsel, appears for the ED and submits that so long as the interest of the ED and the priority accorded to its interest, to the extent of the attachment of Rs. 120,20,46,000/-, is not disturbed and is safeguarded, the ED would have no objection if a further loan facility of Rs. 25 crores, is extended to the Petitioner in respect of the subject property.

8. Mr. Tanveer Ahmed, ld. Counsel for the Petitioner, submits that the total attachment amount *qua* this property is only to the extent of Rs.120,20,46,000/-, and the Yes Bank has already valued the property at Rs. 342.4 crores, through its own valuation agency, and has approved the loan. However, the bank has submitted that the same is subject to the permission to be granted by the Appellate Tribunal, which is currently not functional. Hence, he submits that this Court may grant the said approval.

9. On behalf of the Yes Bank it is confirmed to this Court by Mr. Khurana, ld. counsel, that if the permission is granted, the extent of loan facility under the ECLGS scheme of National Credit Guarantee Trust Company Limited (hereinafter, "*trust*"), has already been approved by the bank and shall be extended. He further submits that the ECLGS scheme is a Scheme which is guaranteed by the Government, as per the press release of

the Ministry of Finance dated 31st March, 2021.

10. This Court has considered the submission of the parties and perused the record.

11. A perusal of the order dated 19th September, 2019 passed by the Adjudicating Authority, shows that the extent of attachment by the ED, which has been approved by the Adjudicating Authority, is to the tune of Rs.120,20,46,000/- crores. The relevant extract of the order of the Adjudicating Authority reads as under:-

> *"Accordingly, the Hotel Holiday Inn at asset area 12 Aerocity Delhi have been provisionally attached for Rs. 120,20,46,000/- u/s 5(1) of PMLA. Hence, the PAO deserves to be confirmed for attachment is hereby confirmed."*

12. Thus, the attachment of the subject property, for the said sum, has been confirmed by the Adjudicating Authority under Section 5(1).

13. The Petitioner intends to obtain a further loan facility under the scheme which is operated by the trust, and has approached the Yes Bank for the same, vide application dated 18th November, 2020. Under the ECLGS Scheme, the Yes Bank has approved the said loan. However, one of the conditions imposed by Yes Bank is as under:

> *"Approval from Appellate Tribunal for creation of 2nd charge for the facility being sanctioned under ECLGS scheme to be obtained prior to any disbursement under the facility"*

14. A perusal of the valuation report of the property, which is confirmed by the Yes Bank, shows that the total value attributed to the property is to the tune of Rs. 342.40 crores, and the realisable value of the said property is

Rs. 325.20 crores. The valuation report has been given by the CBRE, which is a valuation & advisory services agency, and the said report has also been placed on record.

15. Considering the fact that the Yes Bank's valuation of the property is to the tune of Rs.342.40 crores which is accepted by the bank and the bank has approved the loan, and the attachment by the ED is to the tune of Rs.120,20,46,000/- crores, this Court grants permission to availing of the loan under the ECLGS scheme.

16. As the Appellate Tribunal is not currently functional, the permission is being granted, considering the time sensitivity of the matter, as also the fact that the Petitioner expresses an apprehension that if this loan is not granted, there is a threat to the continued operation of the hotel itself.

17. While maintaining the ED's attachment order to the tune of Rs.120,20,46,000/- crores, and safeguarding the ED's rights in respect of the said attachment, permission is granted to the Petitioner to avail of the loan to the tune of Rs.25 crores under the ECLGS scheme, by creating a second charge in respect of the subject property- Holiday INN, which is situated at Asset Area 12, Aero-city, Delhi International Airport, New Delhi- 110037. A detailed affidavit be placed on record along with the relevant documents before the Appellate Tribunal of the PMLA, in respect of the facility sought, once the same is released along with the copies of the charge created. The PMLA shall consider the same and pass any further orders, if required, in accordance with law.

18. The petition is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

MAY 5, 2021/mw