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

Date of Decision: 19th December, 2022

+ **W.P.(C) 15863/2022 & CM APPLs. 49341/2022, 49967/2022**

MR. P. S. GAHLAUT

..... Petitioner

Through: Mr. Percival Billimoria, Sr. Adv. with
Mr. Archit Singh, Mr. Sudhir Chahal
& Ms. Rachita Sood, Advs.

versus

ADJUDICATING AUTHORITY, PMLA

THROUGH REGISTRAR

..... Respondent

Through: Mr. Zoheb Hossain & Mr. Vivek
Gurmani, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner seeking directions to the Respondent – Adjudicating Authority, PMLA, to supply the legible copies of all the Relied-Upon Documents (“RUDs”) annexed along with the Original Complaint bearing *No.1802/2022*. The Petitioner further seeks directions to the Respondent to extend the time period for filing the reply to the Show Cause Notice dated 22nd September, 2022, in accordance with the mandate of the PMLA.
3. The background of the case is that a provisional attachment order dated 4th August, 2022 was passed by the Directorate of Enforcement (“ED”) against the Petitioner, whereby movable/immovable properties, belonging to the Petitioner, his HUF and his son, valued at

Rs.14,50,74,558/-, were attached by the ED. Subsequently, on 31st August, 2022, the ED filed the Original Complaint in the matter concerning the impugned provisional attachment order, before the Respondent – Adjudicating Authority. On 22nd September, 2022, a show cause notice was issued against the Petitioner by the Adjudicating Authority. The said show cause notice was stated to have been deliberated on 30th September, 2022, and the Petitioner was directed to file its reply to the Original Complaint by or before 4th November, 2022. It is the submission of the Petitioner that the said show cause notice was neither accompanied by the Original Complaint nor any of the RUDs.

4. Thereafter, the Petitioner sought the Original Complaint and the RUDs, and the same were served upon the Petitioner by ED, on 13th October, 2022. However, while scrutinizing the RUDs, it was revealed to the Petitioner that several key documents in the said RUDs were illegible or cropped out. An application was accordingly preferred by the Petitioner seeking legible copies of the said RUDs, and further time was sought for filing of the reply to the Original Complaint.

5. Vide email dated 27th October, 2022, the petitioner was informed that the Respondent has considered the request of the Petitioner and had granted 10 additional days to file the reply. However, it is submitted that the issue concerning the supply of illegible copies of the RUDs was not considered by the Respondent. Yet again, the Petitioner requested the Respondent to supply the legible copies of the RUDs, vide email dated 27th October, 2022. In response, the Respondent extended the time for filing of the reply till 22nd November, 2022, however, failed to consider the issue relating to supply of

legible copies of the RUDs. The response dated 11th November, 2022 of the Respondent – Adjudicating Authority, reads as under:

“I am directed to inform that (D-1 to D-3) are called upon to file their written reply(s) on the email of Adjudicating Authority (registraraapmla-rev@nic.in) in MS Word as well as PDF Format or on or before 20.11.2022. You are also required to file the reply simultaneously on the email of the Complainant (dddlzoi3-ed@gov.in). It is also made clear that filling of the soft copy of reply in the MS Word as well as PDF Format is not a substitute for filling of reply in hard copy. Therefore, a reply in hard copy along with the copy of the email regarding submission of reply in soft format must be sent to the authority as well as to the Complainant so as to reach them on or before 10th day of the submission of reply on email as aforesaid. In view of the time limitation involved, non-adherence to time schedule may result in non-placement of submission on record.

Further, on receipt of reply by the Defendant on or before 20.11.2022, the Complainant is required to file the rejoinder by 30.11.2022 on the email of the Authority with copy to the Defendant and Counsel for the Defendant.”

6. Mr. Billimoria, Id. Senior Counsel appearing for the Petitioner submits that, the grievance of the Petitioner is that he is unable to file a reply to the Original Complaint without legible copies of the RUDs. He submits that a large number of the documents are complete illegible, thus, resulting in difficulty in filing the reply. Reliance is placed in the petition upon the judgment of this Court in ***JK Tyre and Industries Ltd. Vs Directorate of Enforcement [W.P.(C) 5713/2020 decided on 27th October, 2021]***.

7. Mr. Zoheb Hossain, Id. CGSC submits that, in its reply before the Adjudicating Authority, the ED gave permission to the Petitioner to inspect

original documents and, thereafter, obtain better copies, if the need so arises. In response, Mr. Billimoria, Id. Senior Counsel submits that the said reply by the ED was not filed prior to the decision of the Adjudicating Authority.

8. The court has also seen a copy of the bundle of documents. Several of the documents are illegible or unreadable. Be that as it may, since the issue in the present petition only relates to legible copies of the RUDs being supplied, this Court is of the opinion that the said issue need not be delved into further, as the same is moot, in light of the judgment of this Court in ***JK Tyre and Industries Ltd. (supra)***. The relevant paragraphs from the said judgment are extracted below:

“81. A conjoint reading of Section 8(1) of the PMLA and Regulation 13(2) of the Adjudicating Authority (Procedure) Regulations, 2013, leave no doubt that the Adjudicating Authority is duty bound to serve all the documents, that it has relied upon i.e., RUDs, while coming to its reason to believe to the party concerned, in abound paper book.

82. The said service of documents can be effected through the ED and the Adjudicating Authority has to ensure that the said service has been effected. A simple service of the show cause notice, without the RUDs would not be sufficient. The 30-day period notice would naturally have to be thus counted from the date when the complete "Relied Upon Documents" are supplied to the parties concerned/ Defendants, as no effective opportunity to reply would be possible unless all the "Relied Upon Documents" are received.

83. The language of section 8(1) of the Act, read with Regulation 13 of the Regulations of 2013 is clear, to the effect that all the evidence which the

Adjudicating Authority relies upon, including the relevant information and particulars thereof, which form the basis of its 'reason to believe' have to accompany the said showcause notice ...•

84. The Adjudicating Authority, after issuing the show cause notice, has to give a 30 days period for the parties/defendants to file their replies ...

*85. **The time for filing of reply ought to be fixed by the Adjudicating Authority keeping in mind the time that may be consumed in service of the RUDs, after the issue of the show cause notice under section 8(1).***

*86. Under section 8(2) of the PMLA, the AA is duty bound to provide a hearing to the Defendants. Such hearing ought to be a meaningful one, and a proper hearing where the complainant i.e., the ED, as also the Defendant(s), are unable to place their respective stands before the AA ought to be given. **The Complainant cannot be given any preferential treatment by the Adjudicating Authority.**"*

9. Accordingly, the following directions are issued:

- i. An inspection of all the original documents constituting the RUDs be given to the Petitioner or two representatives of the Petitioner, including a counsel, on 22nd December, 2022 at 11:00 a.m.
- ii. For the purposes of the said inspection, the Petitioner or the representatives of the Petitioner shall visit the office of the ED on the said date, and have a meeting with Mr. Amit Monga, the Investigating Officer [M:9911914869].
- iii. The Petitioner or his representatives shall inspect the original documents and obtain copies of the same, if they so require. It is made clear that the Petitioner or his representatives shall not

be made to wait indefinitely in the office of the ED for the purposes of the inspection.

10. Upon the copies of the RUDs being supplied to the Petitioner or his representatives, after inspection, the reply to the Original Complaint shall be filed by the Petitioner, by 15th January, 2023. The Adjudicating Authority shall consider the reply filed by the Petitioner and adjudicate the matter, in accordance with law.

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

PRATHIBA M. SINGH
JUDGE

DECEMBER 19, 2022
dj/ad

