

27.04.2023
Ct. No.1
Item No.11
RP/KS

**M.A.T. 636 of 2023
With
IA No.CAN 1 of 2023
Soumyendra Nath Banerjee
-Vs.-
Union of India & Ors.**

Ms. Reshmi Ghosh
Mr. Soumya Sankar Chini
.....For the Appellant

Mr. Firoze Edulji
Ms. Anamika Pandey
..For Enforcement Directorate

1. This intra-Court appeal is directed against the order dated 27th March, 2023 passed by the learned Single Bench in WPA 11161 of 2022. In the said writ petition the appellant had challenged the order passed under Section 5(1) of Prevention of Money Laundering Act, 2002 (in short “PMLA Act”) dated 29th October, 2021 by which an order of provisional attachment has been made against the appellant. The contention of the appellant was that the provisional attachment order passed under Section 5(1) of PMLA Act loses its efficacy on expiry of 180 days period. It is not in dispute that during the pendency of the writ petition order under Section 8 of PMLA Act was passed

on 25th July, 2022 making the provisional attachment absolute and as against the said order the appellant has filed an appeal before the Appellate Tribunal under Section 25 of the PMLA Act. The question would be as to whether in the facts and circumstances, a writ petition can be entertained or not. Learned advocate for the appellant would place reliance upon a decision of this Court passed by the learned Single Bench dated 27th June, 2022 in WPA 9699 of 2022 and submits that in the said order the learned writ Court had quashed the provisional attachment on the ground that it has lost its efficacy due to lapse of time i.e. 180 days. It is submitted that the Directorate of Enforcement preferred an appeal against the said order in MAT 1222 of 2022 and the Hon'ble Division Bench by a judgment and order dated 12th December, 2022 dismissed the appeal filed by the Directorate of Enforcement and affirmed the order passed by the learned Single Bench.

2. In our considered view, the grounds which have been canvassed in the writ petition and accepted by the learned writ Court could very well be canvassed by the appellant before the Appellate Tribunal. The order under Section 8

of PMLA Act has been passed on 22nd July, 2022 and the appellant has already filed an appeal challenging the said order before the Appellate Tribunal. Therefore, it is appropriate for the appellant to canvass all grounds before the Appellate Tribunal including the ground that the Adjudicating Authority could not have passed the order under Section 8 of the PMLA Act after expiry of the period of 180 days as the order of provisional attachment made under Section 5(1) loses its efficacy on expiry of 180 days. One more reason which arises in our mind for refusing to interfere at this stage of the proceeding is that the computation of the period of 180 days, it is not purely a question of law. It is a mixed question of facts and law and, therefore, the department is required to be heard in the matter. Furthermore, the Adjudicating Authority has passed the order under Section 8 of PMLA Act on 25th July, 2022 after hearing the parties and during the hearing the appellant is aggrieved by the fact that his reply submission was not considered by the Adjudicating Authority and the order under Section 8 has been passed with utmost haste. Therefore, all these grounds which are not being canvassed before this Bench are to be

canvassed before the Appellate Tribunal and the Appellate Tribunal will adjudicate the same in accordance with law. The appellant can pray before the Appellate Tribunal to decide the limitation issue first amongst all other issues.

3. With the aforesaid observations, the appeal and the connected application stand disposed of.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)