

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 01.08.2023
DELIVERED ON: 18.08.2023

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

MAT/1253/2023

**R.P. INFOSYSTEMS LIMITED AND ANOTHER
VERSUS
THE ADJUDICATION AUTHORITY AND ANOTHER**

Appearance:-

**Mr. Jayanta Kumar Mitra, Adv.
Mr. Bikash Ranjan Bhattacharya, Adv.
Mr. S. Ghosh, Adv.
Mr. Subhankar Nag, Adv.
Mr. R. Ganguly, Adv.**

.....For the Appellants.

**Mr. Arijit Chakrabarti, Adv.
Mr. Deepak Sharma, Adv.**

.....For the Respondent No. 2.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This intra court appeal filed by the writ petitioner is directed against the order dated 16.06.2023 in WPA No. 12335 of 2023. The said writ petition was filed by the appellant praying for issuance of a writ of declaration that the adjudicating authority under the provisions of the Preventing of Money Laundering Act, 2002 (the Act), the first respondent herein is statutorily incompetent to take up the case of the appellant in respect of OA No. 798 of 2023 and consequently to quash the said proceedings.
2. The facts leading to the filing of the writ petition are that the first appellant was awarded a DGS and D rate contract for supply of its products namely desktop, computers, laptops and computers peripherals to the Government sector which were produced under the brand named "CHIRAG".
3. In June 2011, IDBI Bank and the appellant entered into a loan syndication agreement they becoming the lead banker. On 01.02.2023, State Bank of Patiala (presently the State Bank of India) entered the consortium bankers who agreed to release to sanction limit of Rs. 50 crores upon receipt of a no-objection certificate from IDBI Bank. It is stated that IDBI Bank to be issued letter dated 22.02.2013 based on which the State Bank of India released Rs. 25 crores DD in favour of the appellant. By another letter dated 28.02.2013 credit information report of the appellant was furnished by IDBI to State Bank of India. Subsequently by letter dated 08.03.2013, it was stated by IDBI Bank that the aforementioned two letters were not issued by them and they sought for written clarification. Forensic

report obtained by the State Bank of India stated that the letter dated 22.02.2013 there was no concrete evidence of forgery. On 11.05.2015, IDBI Bank requested CBI to initiate criminal proceedings against the appellant No. 1 and its directors in respect of two letters dated 22.02.2013 and 28.02.2013. CBI initiated criminal proceedings and has been laid on 30.12.2016 under various provisions of the Indian Penal Code. In the meantime during 2018, the Enforcement Directorate (ED) commenced enquiry and investigation under the provisions of the PMLA Act. An order of provisional attachment under Section 5(1) of the PMLA Act was passed on 28.03.2018 and the said order was confirmed by the adjudicating authority, the first respondent on 11.09.2018. On 28.12.2022, the Enforcement Directorate conducted search and seizure operations under the provisions of the PMLA Act in the office of the first appellant and the residence of the second appellant and panchanama was drawn. The second appellant moved an application during January 2023 before the learned Special Judge for CBI cases for appointment of independent cyber expert from any government agency with a direction upon him to accompany and represent the second appellant at the time of data retrieval in the office of the investigation agency. The Special Court rejected the said application. Challenging the same, the appellant filed revision petition before this court in CRR No. 143 of 2023. In the said revision case, a direction was issued that the appellant shall be present in the office of ED on 13.01.2023 after which the Assistant Director, ED to prepare sealed cover of seized mobile phones and laptops in his presence and the articles will be sent to CFSL for data extraction and CFSL will in turn submit a report. This order was

further clarified that the proceedings under Section 17(4) of the PMLA Act can continue but the adjudicating authority should not consider the CFSL report. On 05.05.2023, the first respondent informed the appellant that OA No. 798 of 2023 is listed on 12.05.2023 for final disposal before the adjudicating authority. It is stated that the learned advocate for the appellant prayed for adjournment as reply had been served to him during the course of the hearing and expressing certain other inconvenience as the learned advocate for the appellant was placed at Delhi at the relevant time. It is stated that the said prayer was rejected and the matter was fixed for passing orders. At this juncture, the writ petition was filed.

4. In the writ petition, the appellant contended that the adjudicating authority, the first respondent cannot discharge its functions when the authority has not been formed as per the mandate under Section 6 of the PMLA Act as the first respondent is the only Member, that is Member (Finance) and there is no judicial member appointed to the adjudicating authority. It was contended that the first respondent, Member (Finance) prior to being appointed as the adjudicating authority was in the employment in the Government of India whereby there is a likelihood of bias and this according to the appellant has become more evident because of the manner in which the adjudicating authority as proceeded and according to the appellant his action was tainted with malafide, there were procedural lapses and that the authority was acting in a pre-meditated manner to harass the appellant. It was further contended that a tribunal or quasi-judicial authority cannot proceed without there being any judicial member and more particularly in the light of the mandate under Section 6 of the

PMLA Act. Further it was contended that the manner in which the hearing was conducted and concluded on 12.05.2023 is in clear violation of the principles of natural justice as the appellants were not given adequate opportunity of being heard or even to place their submissions. Further it was contended that under Section 6(2) of the PMLA Act, the adjudicating authority shall have a Chairman and two other members and in the absence of two members, the adjudicating authority is *quorum non judis* and cannot function and/or continue to decide the case against the appellant. On the aforementioned ground, the appellant sought for a declaratory relief to declare that the adjudicating authority is incompetent to take up the case of the appellant in OA No. 798 of 2023.

5. It was further contended that although Sub Section 5(b) of Section 6 states that a Bench may be constituted by the Chairperson with one or two members as the Chairperson of the adjudicating authority may deem fit, since the adjudicating authority at present is functioning with only one member that is the Chairman the option to appoint one or several members under Sub Section 5(b) of Section 6 is not available. Further it was contended that in Section 6(2), the expression “shall” has been used which makes it mandatory for the authority to consists of three members.
6. The respondent, Enforcement Directorate (ED) contended that the appellants have been repeatedly attempting to stall the proceedings initiated under Section 17(4) of the Act by filing criminal revision petitions and also the present writ petition. It was contended that the proceedings under Sub Section (4) of Section 17 is only a preliminary stage and the question of granting a detailed or elaborate hearing does not arise. It was further

contended that in terms of the Section 6(7) of the PMLA Act only if at any stage of hearing of any case or matter it appears to the Chairperson or the member that the case or the matter is of such a nature that it ought to be heard by a bench consisting of two members, the case or matter may be transferred by the Chairperson or as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit. Hence, it was contended that the normal rule is hearing by a Single Bench and not by two or more members and the circumstances arising under Sub Section (7) of Section 6 is an exception which is provided to refer the matter to a Larger Bench.

7. Further it was contended that in terms of Section 6(5)(b) of the PMLA Act, a Bench may be constituted by the Chairperson with one or two members as deemed fit by the Chairperson and therefore there is no irregularity in the Chairperson taking up the matter himself. The respondent placed reliance on the decision of the High Court of Delhi in ***M/s. Gold Croft Properties Private Limited Versus Directorate of Enforcement*** in ***WP(C) No. 2191/2023*** dated 28.02.2023.

8. The learned Single Bench held that on a comprehensive interpretation of Section 6, it is clear that not only has the Chairperson the discretion to constitute a bench with only one member but the norm also as per Section 6(7) of the Act is that the bench will consist of a single member and, only if the case is of a critical nature, a bench consisting of two members will be assigned the hearing. Thus, the court concluded that the Chairperson as a single member has proceeded to take up the hearing of the application

under Section 17 of the PMLA Act which, in the light of Section 6, cannot be held to be vitiated on the ground of *quorum non judis*.

9. The learned Single Bench next proceeded to consider the argument of the appellant with regard to the apprehension of bias. After taking note of the facts and the submissions of either side, it was held that the proceedings is only at the preliminary stage of hearing of an application under Section 17 of the Act which pertains to search and seizure. Section 17(4) was referred to wherein a time limit of 30 days has been prescribed within which the authority seizing any record or property or freezing any record or property filing an application requesting for retention of such record or property ceased under Sub Section (1) of Section 17 or for continuation of the order of freezing before the adjudicating authority has to take action.
10. The allegations with regard to the venue of the hearing was also dealt with and it was held that mere selection of the office of the Enforcement Directorate as venue could not vitiate the proceedings in the absence of any other clinching factors to indicate bias, more so, since the matter has not yet reached the final hearing of stage.
11. With regard to the contention, that the adjudicating authority is functioning with only one member that is the Chairperson and he does not even have an option of constituting a bench with one or more members was considered and it was held that such argument is rather academic in view of the Chairperson having expressed his intention to constitute himself as the bench. The argument of the Enforcement Directorate that under Sub Section (7) of Section 6 the normal rule is to constitute a bench consisting of

single member and the only in case the Chairperson or member finds that the adjudication is critical or compliance, the matter shall be referred to a multiple member bench was sustained. Thus, it was held that the Chairperson did not commit any jurisdictional error in himself being a single member to entertain and proceed with the hearing of the application pending before the authority. The court also found that sufficient opportunity has already been given to the appellants by the adjudicating authority and the next date of hearing was fixed on 16.06.2023. The Hon'ble Court also pointed out that repeated attempts of the appellant to come up in challenge in connection with the pending proceedings indicates that the appellant wants to stall the same unnecessarily and such dilatory tactics on the part of the appellant ought not to be encouraged. With regard to the allegations that the adjudicating authority was acting in undue haste, the Hon'ble Court noted the statements of objects and reasons of the PMLA Act, which stresses that it is being realized world over that money laundering poses a serious threat not only to the financial systems of the country but also to the integrity and sovereignty. After taking note of the objects for which the PMLA Act was enacted, the Hon'ble Court held merely because the adjudicating authority is trying to expedite the proceedings, it cannot be said that it is biased against the appellant. Accordingly, it was held that there is no scope of entertaining the writ petition at this stage however, further opportunity of hearing was directed to given to the appellant before closing the hearing on the pending interim applications.

12. Before us the contention advanced by the learned single bench was reiterated by the learned senior counsel and it was contended that Section

6(5)(b) of the PMLA Act envisages for a single and a double member bench but since the adjudicating authority is presently functioning with only one member, the option to appoint several members is not available and in the absence of three members to the adjudicating authority, it is *quorum non judis*. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Madras Bar Association Versus Union of India and Another**¹ and paragraph 50 of the said decision was referred to. To support the submission that the tribunals discharged a judicial role and with respect to the matters entrusted to them, the jurisdiction of the Civil Court is usually barred and therefore wherever legal expertise in the particular domain is implicated, it is necessary that a legally trained mind should be part of the tribunal. Reliance was also placed on the decision in **Pareena Swaroop Versus Union of India**² and it was contended that the independence and impartiality which are to be secured not only for the court but also for the tribunals and the members though they do not belong to the judicial service but are entrusted with judicial powers. Paragraph 11 of the judgment was referred to wherein the suggestions made were incorporated in the decision with regard to the amendment to the relevant rules.

13. The learned counsel appearing for the Enforcement Directorate submitted that Sub Section (2) of Section 6 states that an adjudicating authority shall consists of a Chairperson and two other members but the statute does not state that the bench shall consists of two members and in terms of Sub Section (5) (b) of Section 6, a bench may be constituted by the

¹ (2021) 7 SCC 369

² (2008) 14 SCC 107

Chairperson with one or two members as the Chairperson of the adjudicating authority may deem fit. Reference was also made to Sub Section (7) of Section 6. The learned counsel referred to the decision of the High Court of Delhi in ***Alaknanda Realtors Private Limited and Others Versus Deputy Director, Directorate of Enforcement, WP(C) 12243/2022*** dated 12.09.2022. The decision in the case of ***Gold Croft Properties Private Limited*** was also pressed into service. It was contended that the decision of the Hon'ble Supreme Court in ***Pareena Swaroop*** would support the case of the department more particularly, in the suggestions made for amendment of the rules qua the adjudicating authority as could be seen from the paragraph 11 of the said judgment. Further it is contended that the issue involved in the said case deals with the appellate tribunal and not with a case concerning an adjudicating authority. Similarly, the decision in ***Madras Bar Association*** also deals with setting up of a tribunal and it does not pertain to the constitution of adjudicating authority. In reply, the learned senior advocate for the appellant while reiterating the submissions, submitted that they are not urging the other points which were adjudicated by the learned single bench but their contention is that the adjudicating authority has no jurisdiction to proceed with the matter as it has become *quorum non judis*. Further it is contended that the decision in ***Gold Croft Properties*** and ***Alaknanda Realtors*** are distinguishable on facts and cannot apply to the case on hand.

14. We have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record.

15. Keeping in view the urgent need for preventing of money-laundering and related activities, confiscation of the proceeds of crimes and India's obligations under various international conventions to take action for preventing and combating money-laundering a Bill namely, the Prevention of Money-laundering Bill, 1998 was introduced in the *Lok Sabha* on 04.08.1998. Thereafter the Prevention of Money-laundering Act, 2002 (15 of 2003) was enacted in the year 2003. Even before the Act came into force, the Act was amended by the Prevention of Money-Laundering (Amendment) Act, 2005. The Prevention of Money-laundering Act, 2002 came into force on 01.07.2005. Under this Act the laundering of the proceeds of only those predicate crimes enumerated in the Schedule of the Act are actionable. The Act provides for adjudication by adjudicating authority which involves two stages namely: confirmation by the adjudicating authority of the order of attachment/retention/freezing of property or record during the pendency of the proceedings relating to the schedule (predicate) offence and secondly recording a finding whether all or any of the properties referred to in the notice issued under Sub Section (1) of Section 8 are involved in money-laundering and also prosecution of the offenders who have committed the offences of money-laundering before the Special Courts constituted for the purpose under the Act.

16. In the book "Law on Prevention of Money Laundering in India" by Dr. M.C. Mehanathan, the learned author points out that it has to be kept in view that India has a problem of black economy, which is unaccounted and many a time the holders of black money also launder the black money in order to acquire legitimate assets. It is further opined that laundering the

black money and laundering proceeds of crimes are two different issues although there is frequent overlap between the two. The learned author points out while laundering black money is to be handled through taxation laws or similar laws, the laundering of proceeds of crime is to be handled through special anti-money laundering laws. At this juncture, it will be beneficial to refer to the decision of the Hon'ble Supreme Court in ***Ram Jeth Malani Versus Union of India*** ³.

17. In ***Maqbool Hussain Versus State of Bombay*** ⁴**AIR 1953 SC 325** Constitution Bench of the Hon'ble Supreme Court laid down various tests for determining whether a tribunal can be considered to be a judicial tribunal and after referring to several decisions and the relevant provisions of the Sea Customs Act, 1878 and the nature of adjudicatory proceedings as contained in that Act, held that an adjudicatory authority functioning under the Act was merely an administrative machinery for the purpose of adjudicating confiscation, determination of duty or the increased rate of duty and for imposition of penalty as prescribed under the Act and not a judicial tribunal. In this regard, it will also be beneficial to take note of the decision of the Hon'ble Supreme Court in ***Director of Enforcement Versus MCTM Corporation Private Limited*** ⁵. In the light of the said decisions, it has to be necessarily held that the proceedings before the adjudicating authority appointed under Section 6 of the PMLA Act and the declaration/adjudication and confiscation of properties involved in money laundering by the adjudicating authority does not constitute the prosecution

³ (2011) 8 SCC 1

⁴ AIR 1953 SC 325

⁵ (1996) 2 SCC 471

nor the order of confiscation would constitute a punishment inflicted by the court or the judicial tribunal.

18. The endeavor of the learned senior advocate for the appellant is to convince us that the adjudicating authority has to mandatorily consists of a Chairperson and two members and Sub Section (3) of Section 6 also stipulates the qualification for appointment as members of an adjudicating authority and in terms of Clause (a) (i) of Section 6(3), a member has to be appointed who is qualified for appointment as District Judge. To support this argument reliance was placed on the decision in the case of **Pareena Swaroop** and **Madras Bar Association**. In **Pareena Swaroop**, a member of a Bar filed a writ petition under Article 32 of the Constitution of India to declare various sections of the PMLA Act, 2002 including Section 6 as ultravires of Article 14, 19(1)(g), 21, 50 and 323-B of the Constitution of India. According to the petitioner therein the statutory provisions of the PMLA Act and the rules more particularly relating to constitution of the adjudicating authority and the appellate authority are violative of the basic constitutional guarantee of free and independent judiciary, therefore, beyond the legislative competence of Parliament. It was pointed out that the provisions of the PMLA Act are so provided that there may not be independent judiciary to decide the cases under the Act but the members and the Chairperson are to be selected by the Selection Committee headed by the Revenue Secretary. Suggestions were made for amendment of the Act. The Hon'ble Supreme Court agreed with the apprehension of the petitioner therein that the provisions of the PMLA Act are so provided that there may not be independent judiciary to decide the cases under the Act but the

members and the Chairpersons to be selected by the Selection Committee headed by the Revenue Secretary. It was agreed that the suggestions for amendment to be incorporated after the writ petition is being disposed of.

19. In sub para 7(3) of para 11 of the judgment with regard to the adjudicating authority, it had been stated that the adjudicating authority is a body of experts from different fields to adjudicate on the issue of confirmation of provisional attachment of properties involved in money laundering. The functions of the adjudicating authority are civil in nature to the extent that it does not decide on the criminality of the offence nor does it have power to levy penalties or impose punishment.
20. In sub para 4 of para 11, it is stated that adjudication is a function which is performed by the executives under many statutes. The competent authority under NDPS/SAFEMA have been conducting adjudication proceedings routinely since 1978 from 2004 to 2008, the competent authority has taken up 1374 new cases, issued 275 show cause notices, forfeited 162 properties and disposed of 30 properties without any judicial objections. Similar adjudications are done by the customs authorities under the Customs Act or by authorities under FEMA/FERA. Further in sub para 5, it is stated that the adjudicating authority being a body of experts from different fields with a role as described above, the appointment of its Chairperson should be left to the recommendations of the Selection Committee. The Hon'ble Supreme Court considered the proposed amendments which were suggested (supra) and held that the same are in tune with the scheme of the Constitution as well as the principle laid down by the Hon'ble Supreme Court in several decisions and accordingly the

proposed amendments were approved and the Union of India was directed to implement the said provisions.

21. In the light of the above decision, it is manifestly clear that the functions of the adjudicating authority are civil in nature to the extent that it does not decide on the criminality of the offences nor does it have power to levy penalties or impose punishment. Thus, the decision in **Pareena Swaroop** would go to support the stand taken by the Enforcement Directorate before this Court. The decision in **Madras Bar Association** pertain to the constitutionality of various provisions concerning the selection, appointment, tenure, conditions of service and ancillary matters relating to various tribunals which act in aid of the judicial branch. While considering such an issue, namely appointment to tribunals which are in aid of the judicial branch namely tribunals constituted under Section 323A and 323B of the Constitution, the court made pointed observations as to the constitution of Search and Selection Committees to such tribunals, and held that the judicial dominance in the composition of the Search and Selection Committees is required to ensure independence of tribunals. Therefore, in our view the decision in **Madras Bar Association** would be inapplicable to the facts and circumstances of the case on hand.

22. Having held thus, we need to now examine the contention that in the absence of two members in the adjudicating authority whether a single member has become *quorum non judis* and cannot take up the cases for adjudication. Section 6 of the PMLA Act deals with adjudicating authorities, composition, powers etc. Sub Section (1) of Section 6 states that the Central Government shall by notification appoint and adjudicating authority to

exercise jurisdiction, powers and authority conferred by or under the Act. Sub Section (2) states that the adjudicating authority shall consists of a Chairperson and two other members. The proviso states that one member each shall be a person having experienced in the field of law, administration and finance or accountancy.

23. Sub Section (3) deals with the qualification of being appointed as members of an adjudicating authority. Clause (a) deals with the persons in the field of law and Clause (b) deals with the persons in the field of finance, accountancy or administration and he is required to possess such qualification as may be prescribed.
24. Sub Section (4) empowers the Central Government to appoint a member to be a Chairperson of the adjudicating authority. Clause (a) of Section 6(5) states that the jurisdiction of the adjudicating authority may be exercise by benches thereof. In terms of Clause (b) a bench may be constituted by the Chairperson of the adjudicating authority with one or two members as the Chairperson of the adjudicating authority may deem fit.
25. Sub Section (6) of Section 6 states that notwithstanding anything contained in Sub Section (5) the Chairperson may transfer a member from one bench to another bench. Sub Section (7) of Section 6 states that if at any stage of the hearing of any case or matter it appears to the Chairperson or a member that the case or the matter is of such a nature that it ought to be heard by a bench consisting of two members, the case or matter may be transferred by the Chairperson or as the case may be, referred to him for transfer, to such bench as the Chairperson may deem to fit.

26. It is important to note that Sub Section (1) of Section 6 empowers the Central Government to appoint an adjudicating authority by way of a notification to exercise jurisdiction, powers and authorities conferred by or under the Act and in terms of Sub Section (2) such adjudicating authority shall consists of a Chairperson and two other members. Thus, a combined reading of Sub Section (1) and (2) of Section 6 shows that in terms of the said provision, the Central Government is empowered to appoint the adjudicating authority which shall consists of a Chairperson and two other members. The Central Government in exercise of the said powers conferred under Sub Section (1) of Section 6 of the PMLA Act by notification in GSR 437(E) dated 01.07.2015 appointed an adjudicating authority to exercise jurisdiction, powers and authority conferred by or under the Act and such adjudicating authority shall consists of a Chairperson and two members and shall function within the department of Revenue, Ministry of Finance of the Central Government with headquarters at New Delhi. By notification in the GSR 438(E), the Central Government in exercise of the powers conferred by clause d of Sub Section (5) of Section 6 of the PMLA Act specified that the New Delhi bench of the adjudicating authority appointed under Sub Section (1) of Section 6 of the Act shall exercise jurisdiction, powers and authority conferred by or under the Act over the whole of India. Thus, the Central Government has exercised powers in terms of Sub Section (1) of Section 6 and notification in GSR 437(E) dated 01.07.2005 has been issued. Thus, the adjudicating authority has been validly constituted in terms of Section 6. Thus it is clear that Sub Section (1) of Section 2 and Sub Section (2) of Section 6 deals with appointment by notification of an adjudicating

authority and its composition. Admittedly, this is being done by notification dated 01.07.2005. The fact that there is a vacancy in the post of a member or more than one member will not impact the appointment of the adjudicating authority in terms of Sub Section (1) of Section 6. The manner in which the adjudicating authority has to function or in other words as regards, the constitution of the benches there is clear stipulation in Clause (b) of Sub Section (5) of Section 6 that a bench may be constituted by the Chairperson of the adjudicating authority with one or two members as the Chairperson of the adjudicating authority may deem fit. Therefore, it would be incorrect interpretation on the part of the appellant state that the adjudicating authority namely the Chairperson who has presently taken up the case for adjudication has no jurisdiction to do so. A plain reading of the provision makes it clear that the Central Government is empowered to appoint an adjudicating authority by issue of notification in the Gazette to exercise the jurisdiction, powers and authority conferred by or under the Act and in accordance with the said provision the Central Government has issued a notification on 01.07.2005 and have appointed the adjudicating authority to exercise jurisdiction, powers and authority conferred by or under the Act. Thus, for all purposes an adjudicating authority has been put in place and the manner in which the business of the adjudicating authority has to be carried out is stipulated in Sub Section (5) of Section 6 and in terms of Clause (b) of Sub Section (5) of Section 6, a single member bench of the adjudicating authority is competent to adjudicate any matter under the provisions of the Act. Any other interpretation as suggested by the appellant, if acceded to would make the provisions of the Act unworkable, apart from

such interpretation not being in line and in tenor with the provisions of Section 6. Therefore, the contention raised by the appellant has to necessarily fail.

27. The Hon'ble Division Bench of the High Court of Delhi in **J. Sekar Versus Union of India** ⁶ held that under Section 6(5)(b) of the PMLA Act, a bench may be constituted by the Chairperson of the adjudicating authority "with one or two members" as the Chairperson may deem fit. It was held that it is possible to have a single member bench. The word "bench" therefore does not connote plurality; that could, even under Section 6(5)(b) of the PMLA Act be a "single member bench". Further it was held that when Section 6(6) of the PMLA Act states that a Chairperson can transfer a member from one bench to another, it has to be noted in the above context of their also being a single member bench. Further the court took note Rule 3 of the Prevention of Money Laundering (Appointment and Conditions of Service of Chairperson and Members of the Adjudicating Authority) Rules, 2007 and held that although the said rule states that the adjudicating authority should have three members, the same has to be read along with Section 6(5)(b) that there can be a single member benches. It was further held that a contrary interpretation would frustrate the working of the adjudicatory authority.

28. Before the Division Bench in the case of **J. Sekar**, the petitioner therein relied upon the decision of the Hon'ble Supreme Court in **L. Chandra Kumar Versus Union of India** ⁷ which decision was referred to

⁶ (2018) SCC Online (Delhi)

⁷ (1997) 3 SCC 261

by the Hon'ble Supreme Court in **Pareena Swaroop** and **Madras Bar Association** and it was held that reliance placed on the decision in **L. Chandra Kumar** is misplaced as in the said case the question was whether jurisdiction of the High Court and vesting the powers of the High Court in a tribunal is constitutionally valid. It was held that such is not sought to be done under Section 8 of the PMLA Act. It was further held that adjudicating authority while proceeding with the adjudication in terms of Section 8 of the Act cannot be equated with the Administrative Tribunal under the Administrative Tribunal Act, 1985 as the tribunal was constituted under Section 323 B of the Constitution of India and that the adjudicatory authority is not that kind of a tribunal.

29. In **J. Sekar** two decisions, one of the High Court of Sikkim and the other of the High Court of Gujarat were relied on by the petitioners which were decisions of Hon'ble Single Benches of the respective high courts. The Hon'ble Division Bench in **J. Sekar** held that they are unable to agree with the decision by the learned single benches of the Sikkim and Gujarat High Courts as in the said decisions, it has not been noticed that under Section 25 of the PMLA Act, an appeal is provided for from the order of the adjudicating authority before the appellate tribunal and such appellate tribunal is not equivalent to the High Court since an appeal against the order of an appellate tribunal is provided to the High Court. Thus, it was held that the hierarchy of the judicial review under the PMLA Act presents a very different scheme from what is found in other statutes particularly the Administrative Tribunal Act, 1985. Further it was held that no two tribunals are alike, the National Company Law Tribunal (NCLT) comprises of both

judicial members and administrative members. However, the same is not in the case of PMLA Act as neither the adjudicating authority nor the appellate tribunal exercises the powers that would otherwise be available to the High Court and such power remains with the High Court in terms of Section 42 of the Act both on questions of law as well as on facts. It was further held that there can be single member benches of the adjudicating authority and the appellate tribunal under the PMLA Act and such single member benches need not mandatorily have to be a judicial member and can be an administrative member as well. It appears that as against the decision in **J. Sekar**, no appeal had been preferred at the instance of the aggrieved persons but it appears that the Enforcement Directorate has preferred an appeal, however such appeal is on a different ground and not pertaining to the decision with regard to the jurisdiction of a single member bench of the adjudicating authority which was held in favour of the Enforcement Directorate by the Division Bench in **J. Sekar**. Thus, by a reading of Section 6 of the PMLA Act without adding or substituting words into the statute, it is clear that the adjudicating authority which comprises of a single member bench is entitled to adjudicate the matter and any other interpretation would tantamount to distorting the language adopted in the statute which is impermissible.

30. In the light of the above, we hold that the appellant has not made out any case for interference with the order passed by the learned single bench. Accordingly, the appeal fails and it is dismissed. The direction issued by the learned single bench in paragraph 49 of the impugned order shall be

complied with within a period of three weeks from the date of the receipt of the server copy of this order. No costs.

(T.S. SIVAGNANAM, C.J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- SACHIN)

