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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd March, 2023

+ **W.P.(C) 5744/2022**

STATE BANK OF INDIA

..... Petitioner

Through: Mr. Chandrachur Bhattacharyya,
Advocate. (M:9810878919)

versus

THE DEPUTY DIRECTOR ,ENFORCEMENT
DIRECTORATE

..... Respondent

Through: Mr. Anurag Ahluwalia CGSC for ED.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner - State Bank of India has filed the present petition seeking setting aside of the impugned order dated 22nd December, 2021 passed by the Adjudicating Authority (PMLA).
3. The case of the Petitioner is that it's case has not even been considered by the Adjudicating Authority (PMLA) despite filing a detailed reply and explaining its position along with its documents and decisions relied upon. It is submitted that the Adjudicating Authority (PMLA) is passing template cut-paste orders and the same has been demonstrated to the Court by the Id. Counsel for the Petitioner through a compilation of similar orders passed by the Adjudicating Authority.
4. The Court has also perused the same and it appears that at least in respect of portions of the orders relating to compliance under 5(1) and 8(1) of the PMLA, 2002, the Adjudicating Authority (PMLA) is using identical

paragraphs as is seen in several orders. As an illustration, two paragraphs are extracted below:

“OC-1474/2021 M/s Ispat Damodar Private Limited & Ors.

13. COMPLIANCE OF SECTION 5(1):-

In the present case, in relation to the scheduled offences the charge sheet is not filed against the accused named. In view thereof the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of section 5 of PMLA is empowered to issue an order of attachment of property in terms of second proviso under section 5(1) of PMLA. In the present case the Deputy Director has passed the PAOs on the reasonable belief that if property involved in money laundering is not attached immediately under Chapter-III of the Act, the non-attachment of the property is likely to frustrate proceeding under the Act. The empowerment to issue PAO is conditional to the formation of requisite reasonable belief, (the reasons for such belief to be recorded in writing, on the basis of material in his possession) that if property involved in money laundering is not attached immediately under Chapter-III of the Act, the non- attachment of the property is likely to frustrate proceeding under the Act.

In the present case there is no dispute as to the authority of the Deputy Director to pass the provisional attachment Order. While examining the compliance of section 5, what is required to be seen in the present case is that the Deputy Director has entertained the reasonable belief on the basis of material in his possession and secondly whether the reason for such belief are recorded in writing or not.

OC-1637/2022

5. COMPLIANCE OF SECTION 5(1):-

In the present case, in relation to the scheduled offences the charge sheet is not filed against the accused named. In view thereof the Director or any other officer not below

the rank of Deputy Director authorized by the Director for the purposes of section 5 of PMLA is empowered to issue an order of attachment of property in terms of second proviso under section 5(1) of PMLA. In the present case the Deputy Director has passed the PAOs on the reasonable belief that if property involved in money laundering is not attached immediately under Chapter-III of the Act, the non-attachment of the property is likely to frustrate proceeding under the Act. The empowerment to issue PAO is conditional to the formation of requisite reasonable belief, (the reasons for such belief to be recorded in writing, on the basis of material in his possession) that if property involved in money laundering is not attached immediately under Chapter-III of the Act, the non- attachment of the property is likely to frustrate proceeding under the Act.

In the present case there is no dispute as to the authority of the Deputy Director to pass the provisional attachment Order. While examining the compliance of section 5, what is required to be seen in the present case is that the Deputy Director has entertained the reasonable belief on the basis of material in his possession and secondly whether the reason for such belief are recorded in writing or not.”

5. Use of identical templated paragraphs could reflect as non-application of mind by the Authority concerned and hence ought to be avoided. The Adjudicating Authority is cautioned about passing such templated orders.
6. The above position shall be brought to the notice of the Adjudicating Authority by Id. Counsel appearing for the Enforcement Directorate.
7. The Petitioner has also preferred the appeal before the Appellate Tribunal (PMLA) at the relevant point of time, however, since the Tribunal was not duly constituted, the present writ petition was filed.
8. It is the admitted position that the Appellate Tribunal (PMLA) is now constituted under the PMLA, 2002. The order under challenge is an

Attachment Order which is appealable to the Appellate Tribunal (PMLA). Accordingly, the Petitioner is relegated to the Appellate Tribunal (PMLA) to avail of its appellate remedies before the same. The appeal of the Petitioner shall now be listed and taken up by the Appellate Tribunal, for adjudication in accordance with law.

9. All contentions of the parties are left open.

10. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 22, 2023

dj/kt



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