$~12

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

Date of Decision : 10th February, 2023

\+ **W.P.(C) 8421/2021 & CM APPL.26011/2021**

M/S BLA POWER PRIVATE LIMITED AND ORS..... Petitioners

Through: Mr. Abhimanyu Bhandari, Ms Vidula Mehrotra, Ms. Kartika Sharm, Mr. Chirag Madan, Mr. Somesh Tiwari & Ms. Utsav Saxena Advs. (M: 9833796568)

versus

PALASH BHOYAR, DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT AND ANR. ..... Respondents

Through: Mr. Anurag Ahluwalia, Advocate for R-1 & 2.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Background

2. In this petition, the Petitioners challenge the impugned provisional attachment order (PAO) dated 7th June, 2021 in ECIR/03/INSZO/2014 passed by Respondent No. 1- Deputy Director, Directorate of Enforcement, Indore passed under Section 5 of the Prevention of Money Laundering Act, 2002 (*hereinafter 'PMLA Act'*). The petitioner also challenges the show cause notice dated 13th July, 2021 issued by the Adjudicating Authority (*hereinafter 'AA'*)

3. The present petition was first listed on 13th August, 2021 on which date the following order was passed:

*"**<u>CM APPL. 26012/2021 (Exemption)</u>***

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 8421/2021 & CM APPL. 26011/2021 (stay)</u>

3. Vide the present petition, the petitioners seek to assail the Provisional Attachment Order (PAO) No. 3/2021 dated 07.06.2021, provisionally attaching the petitioners' power plant situated at Gadarwara, Narsinghpur, Madhya Pradesh.

4. Learned counsel for the petitioners submits that the impugned PAO is wholly illegal and without jurisdiction, as the respondents had earlier passed an identical PAO on 04.01.2018 in respect of the same FIR, which provisional attachment was not approved by the Adjudicating Authority, PMLA – which, after hearing the parties at length, had come to a categorical conclusion, vide its order dated 20.06.2018, that no case was made out against the petitioner for either generating proceeds of crime or laundering them. He further submits that though the respondent no.1 has assailed the aforesaid order by way of an appeal before the Appellate Tribunal, PMLA, the same has not been stayed. He, therefore, contends that the impugned PAO dated 07.06.2021 is clearly barred by res-judicata and therefore, prays that the same be stayed.

5. Issue notice. Mr. Mahajan accepts notice on behalf of the respondents. He prays for, and is granted, six weeks' time to file a reply. Rejoinder thereto, if any, be filed within four weeks thereafter.

6. Mr. Mahajan is not in a position to dispute the fact that the impugned PAO is based on the same FIR as referred to in the previous PAO dated 04.01.2018.

7. <u>In the light of this undisputed position that the impugned PAO is based on the same facts which were subject matter of the previous PAO dated 04.10.2018, which was not approved by the Adjudicating Authority,</u>

> *it is directed that till the next date, the operation of the impugned PAO dated 07.06.2021 shall remain stayed, as also all consequential proceedings emanating therefrom.*
> *8. List on 07.01.2022."*

4. A perusal of the above order would show that the case of the Petitioner is that the allegations raised against the Petitioner in the impugned PAO dated 7th June, 2021 were identically raised in a previous proceeding wherein PAO No. 01/2018 was issued by the Director, Directorate of Enforcement, New Delhi on 4th January, 2018.

5. It is observed that the FIR bearing Number RC 221/2014/E0001 dated 7th January, 2014 registered by the CBI was also the same in both the PAOs and even the underlying transactions which were considered are also the same. The Adjudicating Authority, in the first round of proceedings, had on 20th June, 2018 held that no case was made out against the Petitioner in respect of generation of proceeds of crime or laundering. The conclusion recorded by the AA in the said order dated 20th June 2018, are extracted below:

> *"10. Conclusion:*
> *On a thorough perusal of the PA, Complaint, relied upon documents, the investigations conducted the statements recorded u/s 50 of the PMLA and on careful consideration of the arguments advanced on behalf of the Complainant and Defendants undersigned comes to the prima facie conclusion that the Defendants have neither committed the Scheduled Offence, nor generated proceeds of crime or laundered them.* ***No doubt the properties attached are not proceeds of crime or value thereof and are not involved in money laundering. Undersigned therefore orders not***

> ***<u>confirmation of the above Provisional Attachment Order.</u>***
> *11. Appeal against the order lies to Hon'ble Appellate Tribunal, PMLA New Delhi under section 26 to the PML Act. The appeal may be filed within a period of 45 days from the date of receipt of the order.*
> *Pronounced on this day of 20th June, 2018 in the open court of this Authority."*

6. It has been stated that the ED has preferred an appeal against this order dated 20th June, 2018 which is stated to be pending in appeal before the Appellate Tribunal constituted under Section 25 of the PMLA Act.

7. Despite the said proceedings, the AA has, pursuant to the impugned PAO, issued a show cause notice dated 13th July, 2021. This second show cause notice has also been challenged by the Petitioner before the Appellate Tribunal. Copy of the said appeal has been filed before this Court.

8. On behalf of the Petitioner, it is submitted by ld. Counsel that insofar as the allegation that the award of the coal block was illegally allotted in favour of the Petitioner is concerned, the Petitioner has succeeded before the Supreme Court. Vide its judgment dated 17th August, 2022 in ***B.L.A Industries Pvt. Ltd. vs Union Of India (UoI) and Ors., AIR 2022 SC 3805*** the Supreme Court has held that the mining lease in favour of the Petitioner was not based on an allocation letter but was done in accordance with the provisions of the Mining and Minerals (Development and Regulation) Act, 2019 along with Mineral Concession Rules, 1960. He submits that this judgment completely absolves the Petitioner of any alleged illegality insofar as the allotment of the coal mine is concerned.

9. Mr. Ahluwalia, ld. CGSC appearing for the ED, submits that the present petition has been filed primarily on the ground that the Appellate

Tribunal under the PMLA Act was not constituted and, thus, the Petitioner ought to be relegated to the Appellate Tribunal. His submission is that since the appeal has also been filed challenging the showcause notice issued pursuant to the PAO dated 7th June, 2021, the Appellate Tribunal would now be considering the matter.

10. Heard. A perusal of paragraph 19 of the writ petition would show that the reason why the Petitioner had approached this Court is due to the non-availability of the Appellate Tribunal under the PMLA. The said paragraph of the writ petition reads as:

> *"19. That the Petitioners have not filed any same or similar Petition/ in relation with the present case before this Hon'ble Court or any other Constitutional Court. The Petitioner has filed appeal against inter alia the 2021-SCN before the Appellate Tribunal. However, as the Appellate Tribunal constituted under PMLA is not functional thus the Petitioners have no other efficacious / alternate remedy other than approaching this Hon'ble Court under Writ jurisdiction."*

11. The factual scenario that, emerges from the above events that have transpired is that, firstly, there is one appeal in the earlier round of proceedings, filed by the ED challenging the adjudicating authority's order dated 20th June, 2018. Secondly, the show cause notice issued pursuant to the PAO under challenge has also been challenged by the Petitioner before the Appellate Tribunal. Thirdly, the judgment of the Supreme Court has also been rendered on 17th August, 2022 which the Petitioner can rely upon.

12. The relevant extract of the Supreme Court judgement in ***B.L.A. Industries Pvt. Ltd (supra)*** reads as:

*"20. Given the aforesaid facts and circumstances of the instant case, **<u>we find force in the submission made by the learned Counsel for the Petitioner that the mining lease granted in favour of the Petitioner was not tainted by mala fides, as was the case of the other allottees.</u>** It was the Respondent No. 2 - State Government that had undertaken a diligent exercise to examine the Petitioner's application before recommending its case to the Respondent No. 1 - UOI for grant of the mining lease. Founded on the said recommendations, the Respondent No. 1 - UOI had issued the letter allocating the coal block to the Petitioner and not the other way round. Given the aforesaid position, the Respondent No. 1 - UOI ought not to have included the name of the Petitioner and the coal blocks allotted to it in Annexure - 1 filed before this Court that forms a part of the Second Judgment. Taking the contents of the said Annexures - 1 and 2 filed by the Respondent No. 1 - UOI as true and correct, this Court passed the consequential order directing payment of compensation as an additional levy. The fact that the Petitioner did not get an opportunity to inform the Court about the error on the part of the Respondent No. 1 - UOI of including its name in Annexure - 1 can be discerned from the observations made in para 24 of the Second Judgment to the effect that the Court had not dealt with any individual case but only with the process of allotment of coal blocks which was found to be fatally flawed.*

*21. **<u>It is therefore held that allocation of the coal block made in form of the Petitioner did not run foul of the procedure prescribed in the MMDR Act and the MC Rules.</u>** The Petitioner was not allocated the coal block either through the Screening Committee Route or the Central Government Dispensation Route, which fact was not pointed out by the Respondent No. 1 - UOI at the appropriate stage, that led to painting the Petitioner with the same brush as the other allottee*

> *listed in Annexures - 1 and 2. Having held that the Petitioner was not a beneficiary of the flawed process, the consequences spelt out in the Second Judgment would not apply to it and therefore, it cannot be called upon to pay penalty as compensatory payment, as demanded by the Respondent No. 1 - UOI."*

13. In the present petition, since the Appellate Tribunal under the PMLA Act has now been constituted, in the opinion of this Court, the entire issue would have to be comprehensively considered by the Appellate Tribunal in the two appeals which are pending before the said tribunal. Therefore, the entertaining of this writ, at this stage, when the Tribunal stands constituted could result in multiplicity of proceedings and also there is a possibility of conflicting rulings, which ought to be avoided.

<u>Directions</u>

14. Accordingly, under these circumstances, it is directed that the appeals challenging the show cause notice dated 13th July, 2021 and the appeal of the ED challenging the order dated 20th June, 2018 passed by the adjudicating authority shall now be considered together by the Appellate Tribunal. In the said proceedings before the Appellate Tribunal, the Petitioner shall place on record the judgment of the Supreme Court in ***B.L.A. Industries Pvt. Ltd. (supra)*** dated 17th August, 2022. The challenges and the grounds raised against the impugned PAO dated 7th June, 2021 as part of this writ petition shall also be considered by the Appellate Tribunal under the PMLA Act. The Petitioner is thus permitted to approach the PMLA to raise its challenge to the impugned PAO dated 7th June 2021. The Appellate Tribunal would then adjudicate the appeals and pass a decision in accordance with law.

15. Needless to add, none of the interim orders which have been passed by this Court or any observations made would have a bearing on the ultimate merits of the case that would be decided by the Appellate Tribunal under the PMLA Act.

16. Since there is an interim order since 13th August, 2021 staying the PAO and the proceedings before the Adjudicating Authority, the said order shall continue till the interim applications, if any, filed before the Appellate Tribunal are disposed of by the Appellate Tribunal. The said interim order dated 13th August, 2021 is extracted below for the sake of ready reference:

> *"7. In the light of this undisputed position that the impugned PAO is based on the same facts which were subject matter of the previous PAO dated 04.10.2018, which was not approved by the Adjudicating Authority, it is directed that till the next date, the operation of the impugned PAO dated 07.06.2021 shall remain stayed, as also all consequential proceedings emanating therefrom."*

17. The above interim order shall be subject to further orders which may be passed by the Appellate Tribunal under the PMLA Act.

18. With these observations, the present petition, along with all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 10, 2023/*dj/am*