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

Date of decision: 10th February, 2023

\+ **W.P.(C) 10166/2021 & CM APPL.31354/2021**

PRIME ISPAT LIMITED & 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

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Asheesh Jain, CGSC with Gaurav Kumar, Adv. for R-1. (M: 9999822288)

Mr. Anupam Sharma, SC with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra & Mr. Ripudaman Sharma, Advocates.

(14) AND

\+ **W.P.(C) 10613/2022 & CM APPL.30735/2022**

MS. SHREE RAM VIHAR ..... Petitioner

Through: Mr. Abhimanyu Bhandari, Ms Vidula Mehrotra, Ms. Kartika Sharm, Mr. Chirag Madan, Mr. Somesh Tiwari & Ms. Utsav Saxena Advocates.

versus

DIRECTORATE OF ENFORCEMENT PMLA & ORS. ..... Respondents

Through: Mr. Anupam Sharma, SC with Mr. Prakarsh Airan, Ms. Harpreet Kalsi, Mr. Abhishek Batra & Mr. Ripudaman Sharma, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

Background

2. The Petitioners challenge the provisional attachment order (PAO) dated 27th November, 2020, bearing PAO No.03 of 2020, passed by the Deputy Director, Directorate of Enforcement, Raipur under Section 5 of the Prevention of Money Laundering Act, 2002 (PMLA Act). The impugned PAO has been issued by the Directorate of Enforcement (ED) in Enforcement Case Information Report (ECIR) bearing No. ECIR/01/NGR/2011 dated 10th January, 2011. The petitioners also challenge the show cause notice dated 7th January, 2021 issued by the Adjudicating Authority (*hereinafter 'AA'*) in the Original Complaint bearing O.C No. No. 1380 of 2020. The Petitioners in these cases are:

(i) M/s. Prime Ispat Limited

(ii) Sh. Pawan Kumar Agrawal

(iii) Sh. Ashok Kumar Agrawal

(iv) M/s. Shree Ram Vihar

3. One of the present writ petitions, i.e., **W.P.(C) 10166/2021** titled '***Prime Ispat Limited & Ors. v. Union of India and Ors.***' was considered on 14th September, 2021, on which date, the following order was passed:

> *"**CM APPL. 31355/2021 & CM APPL. 31356/2021***
> *1. Exemption allowed, subject to all just exceptions.*
> *2. The notarized affidavit be filed within one week.*
> *3. The applications stand disposed of.*
> ***W.P.(C) 10166/2021 & CM APPL. 31354/2021 (stay)***
> *4. Vide the present petition, the petitioners seek to assail the provisional attachment order (PAO) dated 27.11.2020 passed by the respondent no.2 under Section 5(1) of the PMLA. The petitioners also assail the consequential proceedings arising from the said PAO.*

5. Learned counsel for the petitioners submits that a PAO issued by the respondent no.2 on 04.04.2017 in respect of the same allegation was not approved by the adjudicating authority vide its orders passed on 14.05.2018 and 27.06.2018 by categorically recording that no case of money laundering was made out against the petitioners. He submits that although the respondents have assailed the said orders passed by the adjudicating authority by way of an appeal, which is pending before the Appellate Tribunal-PMLA and the parties have been directed to maintain status quo vide an order passed on 13.11.2019, the respondents could not have issued the impugned PAO or initiated any further proceedings against the petitioner at this stage.

6. Issue notice. Learned counsel for the respondents accepts notice. While urging that the present petition is not maintainable, he prays for, and is granted, four weeks' time to file counter affidavit. Rejoinder thereto, if any, be filed within four weeks thereafter.

7. List along with W.P(C)8421/2021 on 07.01.2022.

8. Till the next date, the adjudicating authority will not proceed with the matter and will therefore fix a date after the next date of hearing before this Court."

4. It is the submission of Mr. Anupam Sharma, ld. Counsel appearing for the Respondents that the Appellate Tribunal under the PMLA Act has now been constituted and the Petitioner ought to be relegated to the Appellate Tribunal.

5. On the other hand, Mr. Abhimanyu Bandari, Ld. Counsel for the Petitioners submits that in view of this writ pending before this Court, the Petitioners had not filed an appeal before the Appellate Tribunal.

6. Paragraph 2(kk) in the impugned PAO i.e., PAO No. 03 of 2020, dated 27th November, 2020 reads as:

"That, against an amount of Rs 36,09,17,400 out of the total money laundered, which was integrated in M/s. PIL by way of share capital and share premium through 13 shell companies created by Shri Sunil Agrawal, CA and used for the creation of assets in the said company, total fixed assets amounting to Rs.35,49,56,341 of M/s. PIL and immovable property total amounting to Rs.59,61,059 belonging to Sh. Babulal Agrawal & Sh. Babulal Agrawal, HUF had been attached by ED through Deputy Director, Enforcement Directorate, Raipur Sub-Zonal Office, Raipur, under the provisions of sec 5 (1) of the PMLA, 2002, vide Provisional Attachment Order 01/2017 dated 04.04.2017 (for brevity PAO-01/2017 dated 04.04.2017). As per provisions u/s 8 of the PMLA 2002, Original Complaint No 771/2017 dated 03.05.2017 (for brevity OC 771/2017 dated 03.05.2017) filed before the Ld Adjudicating Authority for the confirmation of PAO-01/2017. <u>However, the Ld Adjudicating Authority. New Delhi vide two separate orders dated 14.05.2018 & 27.06.2018 did not confirm the PAO-01/2017 dated 04.04.2017. That, against the order dated 14.05.2018 i.r.o Babulal Agrawal and Babulal Agrawal (HUF), the Respondent Department filed an Appeal u/s 26 of the PMLA 2002 along with a stay application filed before the PMLA, Tribunal on 22.08.2018.</u> That, similarly against the order dated 27.08.2018 in respect of properties of M/s Prime Ispat Ltd, Raipur, the Respondent Department filed an Appeal u/s 26 of the PMLA 2002 along with a stay application filed before the PMLA, Tribunal on 19.08.2018. Presently the matter is pending in the Hon'ble Appellate Tribunal (PMLA), New Delhi. Further, the Hon'ble Appellate Tribunal (PMLA), New Delhi vide its Order dated 13.11.2019 has directed the Petitioner in this case not to deal with the properties in any manner directly or indirectly till the next date of hearing and in the Order dated 10.01.2020 has

ordered for interim order as above to continue. So, the property derived against the rest of the illicit money i.e. 27,86,55,246 (Rs.63,95,72,646 Rs 36,09,17,400) will be the additional - Proceed of Crime remaining to be attached under section 5(1) of PMLA, 2002 and this additional POC consists of-

(i) Rs 26,16,59,600 (Total illicit money integrated as share application money along with premium in M/s. PIL of Rs.62,25,77,000 minus Rs 36,09,17,400/- attached vide earlier PAO-01/2017 dated 04.04.2017) at the end of M/s. PIL,

(ii) Rs 20.43.150/- balance amount in the 291 accounts out of the total 445 bank accounts of unsuspecting villagers & shell companies,

(iii) Rs. 39,52,496/- in the hand of the three sister concerns i.e. M/s. Xpress Mining Pvt. Ltd., M/s. Bapu Agriculture Pvt. Ltd. Mahamaya Agrotech Pvt. Ltd,

(iv) 2Kg Gold (valued at Rs.60,00,000) and Rs. 40,00,000/- against this amount transferred by Shri Babulal Agrawal out of which Rs. 39,81,000/- seized by CBI, ACU-V, New Delhi,

(v) Rs.15,00,000/- seized by Income Tax Department, Raipur from the bank locker owned by Shri Babulal Agrawal."

7. A perusal of the impugned provisional attachment order would show that the case of the Petitioner is that in an earlier round, on the same very transactions, the Adjudicating Authority had issued a PAO dated 4th April, 2017 and vide orders passed on 14th May, 2018 and 27th June, 2018, the Adjudicating Authority (AA) had come to the conclusion that no case of money laundering is made out.

8. Subsequent to the orders of the ld. AA, the ED preferred appeals challenging the orders of the ld. Adjudicating Authority. The said appeals bearing Appeal No. FPA-PMLA-2377 and 2472/RP/2018 were filed by the

ED in July 2018. The Appellate Tribunal has heard the matter on three dates and passed orders dated 31st July, 2018, 30th August, 2018 and 13th November, 2019. It is the claim of the Petitioners that no stay of operation on the orders of the AA, has been granted. The order dated 13th November, 2019 of the Appellate Tribunal reads as:

> *"Mr. N.K. Matta, ld. counsel for the appellant is present. Mr. Somesh Tiwari, Adv. is present on behalf of the respondent. The Id. counsel for the respondent is seeking two weeks time to file the written synopsis on the ground that the main arguing counsel is not available today.*
>
> *The ld. counsel for the appellant is pressing for direction to the respondent not to part with the property till the next date of hearing.*
>
> *Heard both the parties. The ld. counsel for the respondent has strongly objects to the prayer of the appellant and drawn the attention of the order dated 30th August, 2018 wherein the appellant had pressed for status quo order and it was submitted by the ld. counsel for the respondent that the question of disposing of attached properties does not arise as said immovable properties are already mortgaged with the Bank and it was also recorded by this tribunal on the said order dated 30th August, 2018 that the respondent agrees that they will not dispose of the vehicle (movable property) till the disposal of the appeal.*
>
> *On hearing the rival of contentions and that the properties in question are already mortgaged with the bank and if the restrain order against the respondent not to deal with the property is passed, I am of the view that no prejudice will be caused to the respondent.*
>
> *The respondent is directed not to deal with the properties in any manner directly or indirectly till the next date of hearing.*
>
> *List on 10th January, 2020."*

The said appeals are still stated to be pending before the Appellate Tribunal.

9. However, despite the said proceedings, the AA has, issued the impugned PAO, pursuant to which, it has also issued a show cause notice dated 7th January, 2021.

10. In light of the decision of the AA vide orders dated 14th May, 2018 and 27th June, 2018, the Petitioners have raised the plea of *res judicata* under Section 11 of the Code of Civil Procedure, 1908 (CPC).

11. This position and the plea of *res judicata* is refuted by ld. Counsel for the ED.

12. In the present petitions before the Court, 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. There are already two pending appeals filed by the ED in respect of the earlier order of the AA. The present PAO is now challenged before this Court. Therefore, the entertaining of this petition, 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.

13. Considering that the impugned provisional attachment order by the ED was of 27th November, 2020 and the present writ petition was filed way back in September, 2021. The Supreme Court in ***M.A. No. 21 of 2022*** of ***Suo Moto Writ Petition (C) No. 3/2020*** titled '***In Re: Cognizance for Extension of Limitation***' had held that the period between 15th March, 2020 to 28th February, 2022 would not be counted for the purpose of limitation.

14. It is accordingly directed that the present writ petition shall be treated as an appeal challenging the PAO dated 27th November, 2020. This appeal to the PAO shall be considered by the Appellate Tribunal under the PMLA Act in accordance with law along with the two pending appeals filed by the ED. The stay application filed before this Court shall be considered as a stay application before the Appellate Tribunal under the PMLA Act.

15. It is made clear that until the stay application is decided by the Appellate Tribunal, the interim order dated 14th September, 2021 in ***W.P. (C) 10166/2021*** and the interim order dated 1st September, 2022 in ***W.P. (C) 10613/2021*** shall continue.

16. The interim order dated 14th September, 2021 in ***W.P. (C) 10166/2021*** is extracted as under:

> "*8. Till the next date, the adjudicating authority will not proceed with the matter and will therefore fix a date after the next date of hearing before this Court.*"

17. The interim order dated 1st September, 2022 in ***W.P. (C) 10613/2021*** is extracted as under:

> *In W.P.(C) 10613/2022, the Court notes that it had taken notice of the contention of learned counsel to the extent that the proceeds of crime in the hands of Mrs. Mamta Aggarwal, was quantified at Rs.15,00,000. Out of the same, Rs.4,75,000/- was found lying in the account of M/s Capstone and the balance amount of Rs.10,25,000/- was identified in the hands of the petitioner here as a consequence of which the land in question came to be attached.*
>
> *The Court takes note of the submission of Mr. Bhandari, learned counsel appearing for the petitioner, that it was ready to deposit the aforesaid sum without prejudice to its rights and contentions subject to the*

> *Provisional Attachmen Order of the land in question being lifted.*
>
> *Before this Court it is not disputed that the total proceeds of crime stand quantified at Rs.15,00,000/- out of which only Rs.10,25,000/- has been found to have been secreted in the hands of the petitioner.*
>
> *In that view of the aforesaid matter, subject to the petitioner depositing a sum of Rs.10,25,000/- before the competent Adjudicating Authority, the provisional attachment of the plot of land shall stand lifted subject to further orders being passed in the writ petition.*

18. The said two interim orders shall be subject to further orders which may be passed by the Appellate Tribunal under the PMLA Act.

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

20. 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.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 10, 2023
dj/am