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

Date of decision: 13th April, 2023

\+ **W.P.(C) 10771/2022 & CM APPL. 31276/2022, 5680/2023, 6087/2023**

DASH EXPORTS PRIVATE LIMITED & ANR. ..... Petitioners

Through: Mr. Sandeep Sethi & Mr. Raj Shekhar Rao, Sr. Advs. with Mr. Abhijit Mittal (M: 9971005414) & Mr. Anukalp Jain (M: 9999911484) Advs. for Petitioner No.1 & 2.

versus

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

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Tarveen Singh Nanda, Government Pleader for R-1. (M: 9555551536)

Mr. Zoheb Hossain, counsel for Directorate of Enforcement with Mr. Vivek Gurnani, and Mr. Kavish Garach, Advs for ED. (M: 9769842146)

Mr. Ramji Srinivasan, Senior Advocate along with Mr. Rajiv Kapur, & Mr. Akshit kapur, Advs. for R-3. (M: 9716076533)

Mr. Deepak Motla, Adv. for R-4. (M: 9625444388)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. This is a petition under Article 226 impugning the order dated 26th

May, 2022 passed by the ld. Adjudicating Authority under the Prevention of Money Laundering Act, 2002.

3. The Petitioner no.1 Dash Exports Pvt Limited went into insolvency proceedings before the NCLT. The resolution plan submitted by M/s. Asteroid Shelter Homes Pvt Ltd - Petitioner No.2 was approved by the Committee of Creditors (CoC) on 27th November, 2020.

4. However, the Adjudicating Authority under the PMLA passed the provisional attachment order on 25th August, 2021, of the property of Petitioner No.1 situated at 228-P, Village Habibpur, Pargana District, Tehsil Gautam Buddh Nagar, UP.

5. The case of the Petitioners is that despite the provisional attachment order having been passed, on 29th September 2021, the Resolution Plan was approved by NCLT. Thus, the Petitioner No.2 was never informed of the said provisional attachment order and more than Rs. 28 crores has been deposited by Petitioner No.2 on 28th March 2022, in terms of the Resolution Plan, for securing the Company including rights over the property. It was only when the possession of the property was sought for from the Bank on 13th April 2022 that the Bank informed the Chairperson of the monitoring committee that the property is attached.

6. The allegation of the Petitioners is that Respondent No.3- State Bank of India (SBI) was fully aware of the provisional attachment order but still did not inform the Petitioner or other bidders.

7. This Court heard the matter on 29th November, 2022 and considering that a substantial amount of money had been paid by the Petitioners, since the Bank was not placing its clear stand on record, a responsible official of the Bank was directed to be present in court to clarify the position. The

affidavits on behalf of the Bank have been placed on record.

8. An application for the release of the title deeds was also filed by the Petitioners. On 24th March, 2023, submissions were heard on behalf of the Bank as also the Petitioners and the Enforcement Directorate. After hearing the parties, the following order was passed on 24th March 2023.

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> *3. Mr. Srinivasan, ld. Sr. Counsel appearing on behalf of the Bank submits that the State Bank of India acquired knowledge of the provisional attachment order dated 25th August, 2021 only on 14th October, 2021. It is the contention of the SBI that prior to this, the CIRP had been initiated and on 26th February, 2020 when the moratorium order was passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 and the Company was sold to the Petitioner herein. Thereafter, the resolution plan has been approved by the creditors on 27th November, 2020.*
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> xxx
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> *6. The Court has heard ld. Counsels for all the parties. In view of the submissions made today, it is directed that the title deeds shall continue to remain with the State Bank of India.*
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> *7. The prayer of the Petitioner is for setting aside of the provisional attachment order being PAO No. 05/2021 dated 25th August, 2021 on the grounds that the CIRP had commenced before the passing of the impugned PAO. Clearly, it is the Petitioner's case that, having already taken control of the Company including the immovable property, the same cannot be set at naught by the Enforcement Directorate.*
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> *8. The Appellate Tribunal under Section 25 of the PMLA Act has now been constituted. The Bank has admittedly filed an appeal challenging the confirmation of the provisional attachment order*

> *by the Adjudicating Authority on 26th May, 2022. The said appeal is pending and is stated to be listed on 20th April, 2023.*
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> *9. Since the appeal has to be now substantially heard by the Appellate Tribunal, the Petitioner submits that since the monetary value of the property was only Rs.3.01 crore, the Petitioner is willing to deposit the said sum with the Enforcement Directorate subject to which the title deeds could be released. This arrangement could be subject to the outcome of the PMLA Appellate Tribunal and without prejudice to the rights and contentions of the Petitioner.*
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> *10. Mr. Hossain, ld. Sr. Standing Counsel seeks time to take instructions in the matter. Considering the submissions made today, the Bank officials are discharged for the time being and no longer need to be present on the subsequent days of the hearing, unless directed otherwise.*"

9. As can be seen from the above order, the stand of the Bank was that it acquired knowledge of the Provisional Attachment Order (*'PAO'*) dated 25th August, 2021 only on 14th October, 2021. Further, the CIRP had been initiated on 26th February, 2020, when the moratorium order was passed and finally, the resolution plan was approved by the creditors on 27th November, 2020. The resolution plan was also approved by the NCLT on 29th September, 2021.

10. The Court is informed that no appeals have been filed challenging the final approval of the resolution plan dated 29th September, 2021. In effect, the Petitioner No.2 has stepped into the management of the Petitioner No.1 company. The Petitioners had deposited a sum of Rs.28 crores, which was kept at the disposal of the 'Committee of Creditors' and has also been

distributed amongst the various creditors and lenders.

11. The issue, that has obviously arisen today, is that despite the payment of Rs.28 crores, the title deeds of the land continued to remain with the Bank in view of the fact that the attachment by the ED took place subsequent to the commencement of CIRP. Ideally, the Bank ought to have informed the Petitioner no.2 of the PAO, when it acquired knowledge in October 2021, as the amounts were deposited by the Petitioner no.2 only in March 2022, which for inexplicable reasons, it did not.

12. In order to resolve this stalemate, a suggestion was put forth as recorded in paragraph 9 of the order dated 24th March 2023 extracted above. Today, Mr. Zoheb Hossain, ld. Counsel for the ED submits that the ED is agreeable, in the unique facts and circumstances of this case, for the deposit of Rs.3.01 crores, which is the value which has been ascribed to the property by the ED. He has placed an email received from the concerned official of the ED, before the Court. In order to avoid any further complications and conflict of interest between the various stakeholders, it is deemed appropriate to pass directions securing the interest of the Petitioners, the bank as also the ED.

13. Considering the ED's instructions that have been communicated to the Court, and the Petitioners' willingness to deposit a sum of Rs. 3.01 crores, in the peculiar facts and circumstances of the present case, the following directions are issued:

(1) The Petitioners shall be permitted to challenge the PAO order dated 25th August 2021 and the confirmation order dated 26th May 2022 before the PMLA Appellate Tribunal, within four weeks.

(2) The Petitioner No.2 shall within four weeks, deposit a sum of Rs.3.01 crores by means of an FDR in favour of the ED, which shall be on an auto renewal mode and subject to orders, which would now be passed by the PMLA Appellate Tribunal.

(3) Subject to the above deposit being made and the confirmation of the said deposit being given to the SBI Bank, all the title deeds, which are lying deposited with the Bank, shall be released to the Petitioners within one week.

(4) The appeal, if filed within 4 weeks before the PMLA Tribunal, shall not be dismissed on the ground of limitation considering the fact that the present writ petition has been pending before this Court.

14. The legal issues raised in this petition have not been adjudicated upon by this Court. Mr. Zoheb Hossain, ld. Counsel shall inform the Petitioners of the name of the official with whom the Petitioners shall coordinate for the submission of the FDR of Rs.3.01 crores.

15. The present petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH, J.

APRIL 13, 2023/_dk/rp_