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

Date of decision: 22nd March, 2023

+ **W.P.(C) 10048/2019**

RBL BANK LTD.

..... Petitioner

Through: Mr. Kunal Tandon & Ms. Richa Sandilya, Advs. (M: 72898 15907)

versus

THE DIRECTORATE OF ENFORCEMENT
AND ORS.

..... Respondents

Through: Mr. Zoheb Hossain, Adv. for Directorate of Enforcement with Mr. Vivek Gurnani, and Mr. Kavish Garach, Advs. (M: 9769842146)
Mr. Tarun Sharma & Ms. Yashodhara Gupta, Advs. for R-3 to 5, 8 & 9. (M: 9818822257)
Mr. Pulkit Deora and Ms. Vaishnavi Varshney, Advs. for Zenica Cars Pvt. Ltd. (M: 9927950030)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner – RBL Bank Ltd. challenging the Provisional Attachment Order (PAO) dated 2nd September, 2019 to the extent that the Petitioner ought to be permitted to sell the immovable property bearing no. D-PH-01, 12th Floor, Central Park-I, Sector-42, Main Sector Road, Near DLF Golf Course, Gurgaon, Haryana (*hereinafter, 'subject property'*).
3. The case of the Petitioner is that the subject property is owned by Shri

Rash Pal Singh Todd and Shri Mandhir Singh Todd and was mortgaged with the Petitioner on 31st July, 2015.

4. It is submitted that the subject property could not have been included as proceeds of crime by the Adjudicating Authority (PMLA). The Petitioner had, thus, approached this Court after passing of the PAO to enable it to sell the said property. The said application was considered by this Court on 4th June, 2021 and the Petitioner was permitted to sell the subject property. The operative portion of the said order is set out below:

“8. I have considered the submissions of the learned counsel for the parties. The present petition was preferred seeking a stay of the provisional order of attachment passed by the respondent no.1 against the subject property. The petitioner claimed that since the subject property was mortgaged with it, it was a ‘secured creditor’ under the SARFAESI Act, whose rights assumed priority. On the other hand, the respondent no.1 has contended that under Section 8(8) of the PMLA, the subject property could not be released to the petitioner for finalization of the sale without an order in this regard being passed by the learned Special Judge, PMLA. In this regard, it may be apposite to refer to Section 8(8) of the PMLA which reads as under:

8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered

the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

9. *The effect of the aforesaid statutory position espoused by the respondent has to be considered in the light of the petitioner's primary ground for challenging the provisional attachment order – the purchase of the subject property and deposit of title deeds thereof, whereafter rights in the subject property were created in favour of the petitioner, predates the passing of the impugned provisional attachment order on 02.09.2019 or, for that matter, the registration of the FIR on 29.08.2018 which formed the basis of the actions of respondent no.1. Also, the question as to whether the respondent no.1 possessed the requisite jurisdiction to deal with the subject property, especially when it is a matter of record that the same was purchased and its title deeds were deposited under the SARFAESI Act much prior to the FIR registration, can be considered at a later stage.*

10. *For the time being, it is a given that the COVID-19 pandemic has had a drastic impact on the economy and has left businesses devastated, which has driven Banks, such as the petitioner, scrambling for recovery of monies from loan defaulters. The loan given to the Borrower by the petitioner Bank was substantial and was public money. In such circumstances, I am inclined to agree with the petitioner's contention that there is an urgent need to ensure that atleast some of the amounts, if not all, of the loan that was extended to the defaulter Borrower, are recovered by permitting finalization of the sale of the subject property, especially since such an action would be in public interest.*

11. *Inasmuch as the question of valuation is concerned, since the petitioner Bank had already conducted three valuations of the subject property - one each in September, October and November 2020, it cannot be said that the petitioner had not carried*

out the requisite valuation. In fact, despite the value of the subject property seeing a rapid fall on a monthly basis during September, October and November 2020, the proposed purchaser is willing to buy the subject property at Rs. 5.50 crores in March 2021, four months after it was estimated to be of that value. Thus, it cannot be said that the petitioner has contrived to sell the subject property at a price lower than the market valuation of the property.

12. For the aforesaid reasons, the application is allowed. The petitioner may proceed to finalize the sale with the proposed purchaser in respect of the subject property, through the private treaty, and register all necessary documents in relation thereto.

13. Needless to say, the utilization of the sale proceeds received by the petitioner Bank from this sale would be subject to orders of this Court. It is made clear that in case the petitioner is unsuccessful in the captioned petition, the Court may consider passing appropriate orders for restitution.

14. This order has been passed without prejudice to the rights and contentions of the parties.”

5. Mr. Kunal Tandon, Id. Counsel appearing for the Petitioner submits that sale of the subject property has been effected and total sale proceeds of Rs.5.50 crores have been recovered. The said amount is lying with the Petitioner. Mr. Tandon, Id. Counsel further submits that the subject property could not have been considered as proceeds of crime as it was purchased way back in 2007, which was prior to the allegations of money laundering levelled against the purchasers of the subject property.

6. It is observed that the challenge is to a PAO dated 2nd September, 2019 and the purpose of ensuring that the subject property is duly sold and the amounts are realized, has been achieved. Further, the Petitioner has a remedy under Section 8(2) first proviso of the PMLA Act, 2002 to approach

the Adjudicating Authority (PMLA) and to establish that the subject property is not involved in money laundering. In view thereof, the following directions are passed:

- (i) The matter shall now proceed before the Adjudicating Authority under the provisions of PMLA Act, 2002.
 - (ii) The Petitioner would be free to file an application before the Adjudicating Authority under Section 8 of the PMLA Act, 2002 and raise contentions that the subject property is not subject matter of any money laundering activities and was purchased much before the allegations were raised.
 - (iii) The said application, if filed, shall be considered and adjudicated in accordance with law.
 - (iv) The Respondent No.1- The Directorate Of Enforcement shall take the necessary steps post the passing of the PAO *qua* the Petitioner.
 - (v) The time spent in the writ petition i.e. from 17th September, 2019 till today shall stand excluded for the purposes of calculating the limitation of 180 days under Sections 5 & 8 of the PMLA Act, 2002.
7. The present petition, along with all pending applications is disposed of in these terms.
8. All the remedies and contentions of the parties are left open.

PRATHIBA M. SINGH
JUDGE

MARCH 22, 2023
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