S/L 17
15.07.2024
Court. No. 551
Suvayan

WPA 28631 of 2023

LGW Industries Limited
Vs.
Deputy Director, Kolkata Zone-II, Enforcement Directorate & Anr.

Mr. Vinay Kr. Shraff
Miss. Priya Sarah Paul
Mr. Dev Kr. Agarwal

...for the petitioner.

Ms. Debjani Ray
Mr. Sunil Gupta
Ms. Swapna Jha
Ms. Supriti Sarkhel

...for the E.D.

1. In this writ petition as filed under Article 226 of the Constitution of India the writ petitioner has prayed for issuance of appropriate writ for quashing the provisional attachment order No. 07/2023 in respect of ECIR No. KLZO-II/20/2022 dated 14.09.2022 as issued by the Enforcement Directorate.

2. This Court has heard the learned Advocate for the writ petitioner and the learned Advocate for the respondents, i.e., the Enforcement Directorate authority.

3. On perusal of the entire materials as placed before this Court it appears that Cyber Crime Police Station, Bidhannagar Police Commissionerate had lodged FIR No. 77 of 2022 dated 11.05.2022 for the offences under Sections 120B/419/420/471 IPC which are the scheduled offences under Paragraph 1 of Part A of Prevention of Money Laundering Act, 2002 (hereinafter referred to as the said 'Act of 2002').

4. In course of hearing, learned Advocate for the writ petitioner submits before this Court that in the said

criminal case the present accused petitioner was not an accused and on the contrary the said FIR was lodged against one Mr. Kunal Gupta who is the owner of M/s. Met Technologies Private Limited.

5. It is submitted on behalf of the writ petitioner further that a deed of lease in respect of the attached property of which the present petitioner is the owner was executed in favour of the aforesaid company of which the accused Kunal Gupta was the owner and the present petitioner has got no involvement in the alleged crime as allegedly committed by the said Kunal Gupta and, therefore, the property which has been attached by the PMLA under the provisions of the said Act of 2002 is required to be released for which the writ petitioner has approached before this Court for issuance of the appropriate writ.

6. In course of hearing, learned Advocate for the writ petitioner further draws attention of this Court to the object of the said Act of 2002. Attention of this Court is also drawn to Sections 4 and 5 of the said Act of 2002. Learned Advocate for the writ petitioner further draws attention of this Court to Section 44 of the said Act of 2002. Placing his reliance upon the aforesaid sections of the said Act of 2002 it is submitted on behalf of the writ petitioner that since the said Act of 2002 is special statute and the said statute itself provides its own procedure there cannot be any impediment on the part of this Court to grant relief to the writ petitioner as prayed for. It is further submitted that since the property of the writ

petitioner was attached by invoking the provision of Section 5 of the said Act of 2002 and not under Section 4 of the said Act of 2002 the present petitioner has got no alternative forum but to approach this Court for obtaining the reliefs as sought for.

7. On behalf of the respondent authorities such prayer has been opposed.

8. For effective adjudication of the instant *lis*, this Court considers that some sections of the said Act of 2002 are required to be looked into:

> *"Section 4. Whoever commits the offence of money-laundering shall be punishable with regorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*
>
> *Provided that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."*
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> *"Section 5. [(1) Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-*
>
> *(a) any person is in possession of any proceeds of crime; and*
>
> *(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any*

manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorized to investigate the offence mentioned in that Schedule before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is like to frustrate any proceeding under this Act:]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further

period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, also with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under [sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation-For the purposes of this sub-section, "Person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."

"Section 44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

[(a) an offence punishable under section 4 and any schedule offence connected to the offence

under the section shall be triable by the Special Court constituted for the area in which the offence has been committed :

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]

(b) a Special Court may, upon a complaint made by an authority authorized in this behalf under this Act take [cognizance of offence under section, without the accused being committed to it for trial]:

[Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]

[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorized to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed; or

(d) a Special Court while trying the scheduled offence of the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.]

[Explanation-For the removal of doubts, it is clarified that,-

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under

this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigating that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether names in the original complaint or not.]

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that Section includes also a reference to a "Special Court" designated under section 43."

"Section 46. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not

> *less than seven years, under the Union or a State, requiring special knowledge of law.*
> *(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.*
> *Appeal and revision."*

9. On conjoint perusal of the aforesaid provisions of the said Act of 2002 it thus appears to this Court that Section 4 of the said Act of 2002 deals with the punishment of the money laundering while Section 5 of the said Act of 2002 deals with the attachment of the property involved in the money laundering. Section 44 of the said Act, however, prescribes that considering the peculiar nature of the offence, the offences are to be triable by a special court and save and otherwise provided in the said Act of 2002, the provisions of the Code of Criminal Procedure, 1973 shall apply to a proceeding before a special court dealing with the cases under the said Act of 2002.

10. Coming to the factual aspects of this case, it reveals to this Court that it is the version of the writ petitioner that in respect of the attached property vide; provisional attachment order No. 07/2023 dated 14.09.2022, a lease agreement was executed by and between the present writ petitioner and the company of the principal accused of the aforementioned criminal case and the present petitioner has got no knowledge with regard to the commission of

the alleged crime at such rented accommodation at the instance of the principal accused as well as the co-accused persons.

11. It appears to this Court that the said Act clearly prescribes the mode of making attachment in respect of the property involved in the alleged money laundering and the said Act also provides the authority of the competent person to make such attachment. First proviso of Section 5 of the said Act of 2002 also made it clear that an attachment under Section 5 of the said Act of 2002 shall not be made in relation to a schedule offence unless a report has been forwarded to a Magistrate under Section 173 of the Cr.P.C. or a complaint has been filed by a person authorized to investigate the offence mentioned in that schedule either before a Magistrate or before a Court for taking cognizance of the schedule offence as the case may be.

12. It thus appears to this Court that it is not the case of the petitioner that the respondent authorities has proceeded in violation of Section 5 while issuing the alleged provisional attachment order No. 07/2023 dated 14.09.2022.

13. Materials have been placed before this Court that in respect of the offence in question the special court is in seisin over the matter after taking cognizance of the offence and the said Act of 2002 clearly envisages the applicability of the Code of Criminal Procedure, 1973 except to the extent it has been made non-applicable pursuant to the provision of the said Act of 2002.

14. In the event the present writ petitioner has any grievance with regard to the alleged provisional attachment order No. 07/2023 dated 14.09.2022 as made by the respondent authorities, the writ petitioner has ample opportunity to approach before the special court who is in seisin over the said PMLA case and the said special court has ample jurisdiction to pass an appropriate order on an application made by the writ petitioner under the Code of Criminal Procedure. The reported decision of *Excel Powmin Ltd. Vs. Union of India and Others* reported in *MANU/WB/0302/2020* as passed by a co-ordinate Bench of this Court and as relied upon by the writ petitioner is distinguishable from the facts and circumstances of the instant case.

15. In view of the discussion made hereinabove and in view of the availability of the alternative remedy of the writ petitioner under the Code of Criminal Procedure (though according to the writ petitioner is not an accused in connection with the aforesaid case) this Court thinks it prudent not to exercise its plenary power under Article 226 of the Constitution of India in the case in hand. This Court has every reason to believe that in the event this Court passes any order as prayed for in this writ petition that may have encroach or overlap the jurisdiction of the special court who is in seisin over the aforesaid criminal case.

16. In view of the discussion made hereinabove this Court thus finds no merit in the instant writ petition.

17. Accordingly, the instant writ petition being WPA 28631 of 2023 is dismissed.

18. There shall be no order as to costs.

19. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)