

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present:

The Hon'ble Justice Jay Sengupta

WPO 1772 OF 2023
M/S KEDIA FINTRADE PVT LIMITED & ORS.
-VS-
UNION OF INDIA & ORS.

For the petitioner : Mr. Kishore Dutt, Sr. Adv.
Mr. Ankit Agarwal, Adv.
Mr. Nilay Sengupta, Adv.
Mr. Altamash Alim, Adv.
.....Advocates

For the ED : Mr. Arijit Chakrabarti, Adv.
Mr. Deepak Sharma, Adv.
.....Advocates

For the respondent no.1: Mr. Vipul Kundalia,
Mr. Sujit Mitra, Adv.
.....Advocates

Heard lastly on : 13.02.2024

Judgment on : 10.05.2024

Jay Sengupta, J:

1. This is an application under Article 226 of the Constitution of India praying for quashing of seizures, freezing, orders and of the consequential actions of the Enforcement Directorate (ED, for short) in respect of the petitioners.

2. Learned senior counsel appearing on behalf of the petitioners submitted as follows. The petitioner no. 3 was a full time share trader for the past 30 years. The petitioner no. 3 and his family members had been gold and platinum tax payers. The petitioner no. 1 was company incorporated on 17.10.2019, initially engaged in the business of investment and trading of shares out of their own capital. The petitioner no. 1 company was appointed as a sub broker of Motilal Oswal Financial Services Limited only on 19.10.2022. In ordinary course of business, one Vikash Chhaparia was tagged with the petitioner no. 1 as a client by Motilal Oswal Financial Services Limited. Apart from such person, the petitioner no. 1 company had approximately 140 other clients. It was not required of a sub-broker or the broker of any Stock Exchange to know the source of investments of their clients. Any sub broker was required to operate within the contours of contractual relationship which was in accordance with the SEBI regulations. These included buying/selling of shares on express instructions of the client. The petitioners were admittedly not named in the FIR's lodged in connection with the predicate offence. Nor had allegation been levelled against the petitioners so far as the offence of money laundering was concerned. The officers of the Enforcement Directorate conducted a search

operation at the premises of the petitioners as one Vikas Chapparia, an accused in the case of money laundering, was a client of the petitioner no. 1 company in its capacity of a sub-broker of Motilal Oswal Financial Services Limited. The petitioners thoroughly cooperated with the investigation. But surprisingly, the Enforcement Directorate issued *carte blanche* freezing orders on the securities held by the petitioners. The same had no bearing with the ongoing investigation of the Directorate. Some of the relevant dates, pertaining to the facts of the case could be noted. In 2022, two FIRs under (i) Mohan Nagar PS, FIR No. 112/2022 had been lodged. (ii) Supela PS case No. 1030/2022 were filed against one Mahadev App and its owner & Operator. On 06.02.2022, Enforcement Directorate (ED) started investigation under ECIR/RPZO/10/2022. On 08.09.2023 and 09.09.2023, search and seizure was conducted at the office of the petitioner. Seizure Memo was prepared. On 10.09.2023, the Assistant Director of ED issued a freezing order u/s 17(1A) of the Prevention of Money Laundering Act, 2002 and summons were issued and the Petitioner all along attended the interrogations. On 11.09.2023, 12.09.2023, 25.09.2023, 27.09.2023, and 28.09.2023, the Petitioner No.3 was interrogated by the ED, pertaining to affairs of one “Mahadev App” pursuant to the summon issued from time to time. On 09.10.2023, by Email, the Respondent No. 4 informed the Petitioners that the Respondent No. 2 had decided to continue the freezing order. On 13.10.2023, the Respondent Authority issued show cause u/s 8 of the Act being OA No. 1012/2023 & OA No. 1014/2023. On 19.10.2023, the Petitioner No. 3 submitted written explanation against the queries of the ED

Authority. Learned Counsel of the Enforcement Directorate had taken a preliminary point of territorial jurisdiction of this Hon'ble Court, as because, FIRs in relation to the predicate offence were lodged in Chhattisgarh and ECIRs were lodged at Raipur and hence, it was submitted that only Chhattisgarh High Court should have the exclusive jurisdiction to entertain the present writ application. Article 226 (2) of the Constitution of India, conferred power to the High Courts to entertain a Writ Petition, wherein full or a part of cause of action arose, within its jurisdiction. Further Explanation of the Section 42 of the said Act, also conferred the jurisdiction of the High Court (although for filing of the Appeal), where the aggrieved party ordinarily resided or carried on business or personally worked for gain. In the present case, search and seizure took place within the jurisdiction of this Court, through Kolkata Regional Office, particularly when the petitioners were not the named accused, in any of the FIRs. Freezing of the bank accounts and its continuation had been communicated from the Kolkata Regional Office of the Respondent Authority. The petitioners suffered all legal and financial injury within the jurisdiction of this Hon'ble Court. The PMLA, 2002 had well defined contours so far it related to jurisdiction of courts. So far as jurisdiction of criminal courts in relation to commission of an offence of money laundering was concerned, the same should invariably stem from the special court taking cognizance of the offence of money laundering. In the facts of the present case, for the purposes of trial, bail, etc. the same should be the courts at Chhattisgarh. But the same was completely different so far as it related to process of

attachment and/or freezing of properties. It was submitted that for the purposes of attachment and/or freezing of properties the “Authority” under the PMLA, 2002 was situated at New-Delhi for the entire country. Hence, the legislature in its wisdom had reserved the rights for the aggrieved person approached his/her local High Court in the event where a challenge was presented against the action of the Directorate. The question of conflict of judicial decisions in the event when the aggrieved person approached his local High Court did not arise as Section 17[4] PMLA, 2002 postulated ‘one proceeding in every seizure’. As such, the facts involved in the present proceedings should not, in any manner, overlap other proceedings in respect of other seizures. That apart, the territorial jurisdiction as envisaged under Article 226 [2] clearly empowered this Hon’ble Court to entertain this writ petition wherein cause of action had arisen within the territorial limits of this Hon’ble Court. Reliance was placed on following judgements: (i) Aasma Mohammed Farooq and Anr. Vs. Union of India and Ors. [2018 SCC Online Del 12800], (ii) Nawal Kishore Sharma Vs. Union of India & Ors. [(2014) 9 SCC 329]. The search, seizure and freezing order in the present case were done/issued by one Shri Biswajit Mridha, Assistant Director, Enforcement Directorate, Kolkata Zonal Office – I, 6th Floor, CGO Complex, DF Block, Slat Lake, Kolkata – 700064 on purported authorisation issued by Shri Hemant, Deputy Director, Enforcement Directorate, Raipur Zonal Office. Such authorisation was purported issued on 08.09.2023. Sections 17 and 17 (1A) of PMLA, 2002 read with Rule 2 (c) of the Prevention of Money Laundering (Forms, Search and Seizure or Freezing And The Manner of Forwarding the

Reasons And Material To The Adjudicating Authority, Impounding And Custody Of Records And The Period of Retention) Rules, 2005, made it clear that the 'authority' for the purposes of the same was 'an officer' subordinate to the 'Director' and authorised by the 'Director' under Section 17(1) of PMLA, 2002. Rule 2(f) further clarified that Director meant the Director appointed under Section 49(1) of PMLA, 2002. Hence, in the present case, the person who had acted was not authorised by the Director making the search, seizure, freezing and all consequential actions a nullity. Also, FORM II in respect of Rule 4(2) of the aforementioned rules, a statutory form had been tweaked. The form as prescribed in the statute book made it clear that the authority had to be given by the Director to a Subordinate Officer. Delegation was a statutory function. There could not be a delegation of power without a statutory provision. PMLA, 2002 did not provide for double delegation. Statutory Power should be exercised, strictly, in the manner it was directed in the Statute. The PMLA, 2002 was a self-contained special statute. It had very severe penal consequences. The authority exercising its powers derived from such act, had to do so in complete deference and compliance of the act. Any deviation from the procedure would render the action a nullity. The PMLA, 2002 provided for safeguards which were inbuilt in the Act. One of them was the satisfaction and recording of reasons by the senior most official before undertaking penal measures against any individual. In cases where such internal safeguards, which were provided for, were breached, all consequences therefrom had to invariably be nullified. Extension of Freezing Order by the said Mukesh Kumar, an

Assistant Director was also bad. On 09.10.2023, Mr. Mukesh Kumar, Asst. Director extended the freezing order which was also bad, due to lack of proper authority, as stated above. Section 20 of PMLA, 2002 empowered extension of orders of retention of property. It was provided in Section 20 that the same had to be done by an officer authorised by the 'Director'. Further, the maximum period for which such property could be retained was 180 days from the date of Seizure/Freezing. The communication not only lacked any authorisation from the 'Director', but the same had been issued till perpetuity. Hence, the same was beyond the scope of PMLA, 2002. Reliance was placed on following judgements. (iii) ROY V.D. Vs. State of Kerala [(2000) 8 SCC 590], (iv) Vijay Madanlal Choudhary and Others Vs. Unions of India & Ors. [2022 SCC online SC 929], (v) OPTO Circuit India Ltd. Vs. Axis Bank & Ors. [(2021) 6 SCC 707], (vi) Dr. Nalini Mahajan & Ors. Vs. Director of Income Tax & Ors. [2022 SCC Online Del 533]. The Adjudicating Authority pursuant to the seizures made from the premises of the petitioners and on application u/s 17[4] of the ED had initiated two proceedings. One had been numbered as OA 1012 of 2023 and other as OA 1014 of 2023. Section 8 of PMLA, 2002 mandated independent application of mind by the adjudicating authority on the application of the ED and the materials relied upon by the ED and forwarded to the authority and thereafter 'recording of reasons' by the adjudicating authority in relation of commission of crime u/s 3 of the PMLA, 2002 or possession of 'proceeds of crime'. The reasons to believe supplied in connection with both OA 1012/2023 and OA 1014/2023 were same and identical. So far as the

present petitioners were concerned, only the recordings of paragraph 7 were relevant. At the very outset it was stated that the reasonings of paragraph 7 were based on a purported search conducted on 07.10.2023 at the premises of the petitioner no. 3. Such statement was contradictory to records. Also, the relied upon documents containing 64 pages did not find any mention of the name of the petitioners. No role and or transactions had been referred to in connection with the present petitioners. So far as the demat account holdings of the petitioners were concerned, no reasons to believe had been recorded by the Adjudicating Authority to freeze the same. It had not been stated that the demat holdings of the petitioners' demat accounts were 'proceeds of crime'. The entire show-cause notice and 'recording of reasons' by the Adjudicating Authority' had been done in a mechanical manner, without any application of mind and were a result of copying and pasting of information as had been made over by the ED. This had prevaricated the two-tier process of satisfaction and 'recording of reasons' as postulated under PMLA, 2002. Reliance was placed on (vii) J.K. Tyre and Industries Ltd. Vs. Directorate of Enforcement. [2021 SCC Online Del 4836].

3. Learned counsel representing the Enforcement Directorate submitted as follows. The petitioners in the present writ petition prayed and during hearing pressed, inter alia, for quashing of Freezing Order dated 10.09.2023 as passed by respondent no. 2 i.e., the Joint Director, ED1, Raipur Zonal Office, Chhattisgarh u/s 17(1A) of PMLA, 2002, quashing of Continuation Notice dated 09.10.2023 as issued by respondent no. 4 i.e. Assistant Director, ED, Raipur, declaration that the Continuation Order dated

10.09.2023 was de hors any jurisdiction conferred under the Act and thus, was void-ab-initio, and, declaration that the Freezing Order dated 10.09.2023 had ceased to be in operation after thirty days from its issuance i.e. 09.10.2023 and subsequent improper SCN dated 12.01.2023 by the Adjudicating Authority u/s 8 of the Act made also be declared void. The petitioners did not press any other prayer with respect to return of seized cash and/or jewellery and/or exclusion of the petitioners or their properties from the proceeding in OA No. 1012/2003 and 1014/2023 and there was no interim prayer by the petitioners. In as many as in 26 (Twenty six) grounds in the writ petition the petitioners repeated and reiterated that the search and seizure u/s 17 of PMLA, 2002 was conducted without appropriate 'Reason to Believe' by the respondent authority and hence, the Freezing Order dated 10.09.2023 and the Continuation Order dated 09.10.2023 issued by the respondent no. 2 and 4, respectively herein were illegal. It was contended by the petitioner that Mukesh Kumar, the Assistant Director had no authorisation to issue the Continuation Order dated 09.10.2023 and hence, the same deserved to be quashed. It was further contended that the order directing continuation of the Freezing Order dated 10.09.2023, as passed by the respondent no. 4 was de hors jurisdiction conferred upon the respondents under any provisions of the Act, 2002. The appellants also contended that SCN dated 12.10.2023 issued by the Adjudicating Authority was bad in law as neither statutory period of thirty days had been given to the petitioners to submit their reply nor the Adjudicating Authority had provided a copy of relied upon documents based on which the respondent

no. 3 was seeking permission to retain unilaterally freezing security holding of the petitioners. This Court should entertain the present writ petition on the ground of territorial jurisdiction vis-a-vis forum convenience and availability of statutory remedy to the petitioners against their purported grievance. The Raipur Zonal Office of ED at Chhattisgarh initiated an investigation under ECIR No. RPZO/10/2022 against Mahadev Book Online and seven others under PMLA, 2002 on the basis of C/S No. 157/2022 dated 29.07.2022 filed by Chhattisgarh Police of Thana: Mohan Nagar, Durg u/s 420/120B of IPC against several persons for being involved in online betting through Mahadev Book App. Multiple FIRs across the country alleging illegal online betting through Mahadev Book App as registered by the police personnel at different locations, such as FIR No. 206/2023 dated 02.06.2023 registered by Cyber Crime, Andhra Pradesh Police, Visakhapatnam Commissionerate; FIR No. 336/2023, 37/2023, 206/2023, 86/2023 & 685/2023 all registered by the Chhattisgarh Police, were made part of the said ECIR. In course of said investigation under PMLA, 2002, it revealed that huge amounts of money were collected from the general public by way of flouting different online games at Mahadev Book App by the perpetrators of offence and such illegally gotten 'proceeds of crime' had been diverted/siphoned off through several associates which constituted offence of money-laundering u/s 3 of PMLA, 2002. The respondent ED conducted as many as total 88 (Eighty eight) searches at 8 (Eight) different States of India which included the search and seizure/freezing at the place of the petitioners herein at West Bengal. Admittedly, the entire investigation was

being conducted by the respondent ED of Raipur and the petitioners had questioned part of such investigation. Since the petitioners had been found to be involved in the process of money-laundering and were in active possession of the proceeds of crime involved in the present case, searches were conducted at the residence and office of the petitioners at Kolkata which resulted into seizure/freezing of the properties found to be part of proceeds of crime or value thereof. Location of petitioners leading to the search and seizure/freezing of properties at Kolkata as part of the said pan India investigation being carried out by ED, Raipur could not even be considered as generation of part cause of action enabling the petitioners to ventilate their grievance, if any, before this Court under Article 226 of the Constitution of India against the respondents located beyond the territorial jurisdiction of this Court. More particularly, when all the prayers of the petitioners are directed against the respondents located beyond the territorial jurisdiction of this Court, the writ petition should not be entertained on this ground alone. Further, if any person aggrieved by any search and seizure/freezing as effected by the respondent ED of Raipur was allowed to invoke the jurisdiction under Article 226 of the Constitution of India before the Hon'ble High Court on the basis of place of search and seizure arising out of such a pan India investigation should be seriously *prejudiced*. The respondent authority filed an OA No. 1014/2023 before the Adjudicating Authority praying thereby for holding the frozen properties under Freezing Order dated 10.09.2023 as issued SCN dated 13.10.2023 u/s 8(1) of PMLA, 2002 to the petitioners herein asking them to show cause

as to why the so frozen properties should not be retained by ED in terms of Section 17(4) of PMLA, 2002. Copy of recorded 'Reason to Believe' u/s 8(1) of PMLA, 2002 was also duly provided by the Adjudicating Authority along with such SCN dated 13.10.2023. The petitioner no. 3 herein, being defendant no. 1 thereat, on 07.11.2023 filed his detailed Reply consisting of 46 pages to the said SCN dated 13.10.2023 before the Adjudicating Authority. On 18.01.2024, the respondent Deputy Director filed rejoinder to the said Reply dated 07.11.2023 of the petitioner no. 3 herein before the Adjudicating Authority. As such, the Adjudicating Authority under PMLA, 2002 was presently in *seisin* of the matter relating to the Freezing Order dated 10.09.2023, amongst others, and the petitioners had also duly participated in the said adjudication process as provided under PMLA, 2002 and hence, at this stage the petitioners should not be allowed to ventilate grievance, if any, with respect to said Freezing Order dated 10.09.2023 before this Court during pendency of the adjudication proceeding under the SCN dated 13.10.2023 u/s 8 of the PMLA, 2002. Though there was no specific ground in the writ petition, it was pleaded on behalf of the petitioners before this Hon'ble Court that there was no Authorisation and/or 'Reason to Believe' u/s 17(1) of PMLA, 2002 on the part of the Deputy Director who had authorised the Assistant Director to carry out the process of search and seizure at the office premises of petitioner no. 1 herein and to issue the Seizure Memo dated 10.09.2023 in Form II. It was also pleaded that the Continuation Order dated 09.10.2023 had also been passed by the respondents without any 'Reason to Believe'. In response, it was submitted

that the respondent Assistant Director had duly filed a Report dated 29.01.2024 before this Court through their Retainer Counsel wherefrom it would be evident that the Director, ED vide Circular Order (Tech) No. 03/2011 dated 27.09.2011 had duly authorised the Deputy Director as statutory authority for enactment of provisions related to search and seizure under PMLA, 2002. On 08.09.2023 the respondent Deputy Director of ED, Raipur had duly recorded his 'Reason to Believe' u/s 17(1) of PMLA, 2002 for conducting searching at the office of petitioner no. 1 at 1, India Exchange Place, Room No. 215, Kolkata – 700 001. Such 'Reason to Believe' dated 08.09.2023 was duly forwarded to the Adjudicating Authority under Letter dated 05.10.2023 (submitted on 06.10.2023) by the respondent Deputy Director in compliance to Section 17(2) of PMLA, 2002. In pursuance to such 'Reason to Believe', on 08.09.2023 respondent Deputy Director issued Search Authorisation No. 116 of 2023 thereby authorising one of the Assistant Director of ED to conduct search at the said office premises of petitioner no. 1 herein and further to seize or freeze any record or property which was considered relevant for the purposes of the proceeding under PMLA, 2002. Accordingly, the said Assistant Director conducted the search at the said premise in accordance with law and at the conclusion of the said search issued Seizure Memo dated 10.09.2023 in Form II enclosing thereby three Freezing Orders, amongst others, as issued u/s 17(1A) of PMLA, 2002. One of such Freezing Order dated 10.09.2023 so issued by the authorised Assistant Director in accordance with law was related to the present petitioners. There was no Freezing Order dated 10.09.2023 issued by the

respondent no. 2 herein i.e. the Joint Director, as prayed for quashing by the petitioners in the writ petition and as such, question of quashing of such non-existent Order, could not arise. On 09.10.2023 the respondent Deputy Director recorded his 'Reason to Believe' u/s 20(1) of PMLA, 2002 for continuation of the Freezing Order and also passed a Retention Order dated 09.10.2023. The said decision of continuation of the Freezing Order in terms of Section 20(1) of PMLA, 2002 was duly communicated by the respondent Assistant Director to the petitioners herein through e-mail dated 09.10.2023. Such email of the Assistant Director was only the communication of continuation of the Freezing Order. Thus, the contention of the petitioners that Assistant Director had no authority u/s 17(1A) of PMLA, 2002 to issue the continuation order dated 09.10.2023, fell flat. It appeared that the petitioners had abandoned their contentions that respondents had illegally assumed the jurisdiction not vested in him and has passed the impugned order dated 09.10.2023 without any force of law. It would be evident that there was no infraction of law and/or procedure on the part of the respondent ED with respect act of search and/or seizure/freezing u/s 17(1) and/or 17(1A) both of PMLA, 2002 and with respect to extension of the Freezing Order dated 10.09.2023 vide Retention Order dated 09.10.2023 u/s 20(1) of PMLA, 2002 in the present case. With respect to contention of the petitioners that format of Form II appended to the Rules of 2005 r/w Rule 2(c) thereof required the Deputy Director to issue the Seizure Memo after recording the details of Authorisation issued by the Director, it would be submitted that u/s 17(1) of PMLA, 2002 it was

primarily the Director who was required to have the 'Reason to Believe' for search and seizure and thereafter, he could authorise any officer subordinate to him to execute the act of search and/or seizure/freezing and hence, the format of Form II appended to the Rules of 2005 was providing such option. However, the Director in terms of Section 17(1) of PMLA, 2002 could delegate such authority upon any other Officer not below the rank of Deputy Director for the purpose of having 'Reason to Believe' and whenever such delegation took place, the Seizure Memo in Form II substituted the word 'Director' with the designation of the Officer not below the rank of Deputy Director as so authorised by the Director. In the present case, the Director duly authorised the Deputy Director for the purpose of Section 17(1) of PMLA, 2002 and after having the 'Reason to Believe', the Deputy Director duly authorised the Assistant Director, being subordinate to him to execute the act of search and/or seizure/freezing at the office premises of petitioner no. 1 herein. Section 17(1) and/or 17(1A) *ibid*, duly empowered the so authorised Assistant Director to seize/freeze any record or property found as a result of such search. Accordingly, the so authorised Assistant Director in the present case issued the Freezing Order dated 10.09.2023 and Seizure Memo dated 10.09.2023 in accordance with law. The authority of the so authorised Assistant Director was derived from the statutory provision of Section 17(1) and/or 17(1A) of PMLA, 2002 and even if there was any apparent inconsistency in the Rule with the provision of the Act, it was well settled that the amended provision of the Act must prevail. While discussing the provisions of 'Search and Seizure' under PMLA, 2002 the

Larger Bench of the Hon'ble Supreme Court of India in the case of Vijay Madanlal Choudhary & Ors. V. Union of India 7 Ors. [2022 SCC Online SC 929] had so held specifically. Hence, there was no illegality in the said Freezing Order dated 10.09.2023 or Seizure Memo dated 10.09.2023 as were issued by the Assistant Director in the present case. It was argued on behalf of the petitioners that the SCN dated 13.10.2023 issued by the Adjudicating Authority u/s 8(1) of PMLA, 2002 was bad in law since there was no proper 'Reason to Believe' on the part of the Adjudicating Authority and no copy of RUDs had been provided to them. Though there was no such ground in the Writ Petition, it was submitted that from the writ petition itself it would be evident that copies of recorded reason was duly provided to the petitioners by the Adjudicating Authority. The RUDs to the SCN was annexed to the writ petition by the petitioners themselves. More particularly, part of such RUDs specifically pertained to the present petitioners. As such, the contention of the petitioners in this regard had no leg to stand. In view of the above there was no merit in the writ petition and hence, the same deserved to be dismissed with cost.

4. Learned counsel representing the Union Of India opposed the application and substantially adopted the submissions of the Enforcement Directorate.

5. I heard the learned counsels for the parties and perused the writ petition and the written notes of submission.

6. At the outset, it is necessary to decide the preliminary objection to the hearing of this writ petition by this Court raised on behalf of the

Enforcement Directorate. It was contended on behalf of the Enforcement Directorate as a preliminary point that this Court lacks territorial jurisdiction to hear the writ petitioner as the FIRs in relation to the predicate offence were lodged in Chhattisgarh and ECIRs were lodged at Raipur. Hence, only the Chhattisgarh High Court shall have the jurisdiction to entertain the present writ application.

7. Article 226 (2) of the Constitution of India confers the power to the High Courts to entertain a writ petition wherein full or a part cause of action arises within its jurisdiction. As contended on behalf of the petitioners, the search and seizure took place and the freezing of bank amount and its continuation have been communicated within the jurisdiction of this Court. More importantly, the petitioners suffered of legal and financial injury within such jurisdiction. On this, reliance was placed on *Aasma Mohammed Farooq (supra)* and *Anr. Vs. Union of India and Ors. (supra)*. In *Nawal Kishore Sharma*, it was inter alia held that in order to maintain a writ petition as to establish that a legal right claimed by the writ petitioner has been infringed by the respondents within the territorial limits of the Court's jurisdiction. Therefore, this should be sufficient ground for the writ petition to be maintainable before this Court.

8. Therefore, it is not in doubt that this Court has the power to maintain such a writ petition although the original case might have been generated in another State. Afterall, the fundamental rights of the petitioner/claimant were allegedly violated within the jurisdiction of this Court.

9. On merits, the investigating-in-question under the PML Act, 2002 revealed that huge sums of money were collected from the public by floating different online games at the Mahadeve Book App by the alleged offenders and such illegally gotten 'proceeds of crime' had been diverted/siphoned off through several associates which constitutes offence of money-laundering u/s 3 of the said Act. About 88 (Eighty eight) searches at 8 (Eight) different States of India including search, seizure and freezing in West Bengal. However, the entire investigation was conducted by the Enforcement Directorate at Raipur. Therefore, the search, seizure and freezing of property in Calcutta was a part of the entire investigation that was being carried out by the Enforcement Directorate, Raipur.

10. As has been contended on behalf of the Enforcement Directorate, it appears that the respondent Assistant Director duly filed the report dated 29.01.2024 from which it would be evident that the Director, Enforcement Directorate, vide search order (Tech) No. 03/2011 dated 27.09.2011, had duly authorised the Deputy Director as statutory authority for enactment of provisions related to search and seizure under the PMLA, 2002. On 08.09.2023 the respondent Deputy Director of ED, Raipur duly recorded his reason to believe u/s 17(1) of the PMLA, 2002 for conducting search at the office of petitioner no. 1 at 1, India Exchange Place, (Room No. 215, Kolkata – 700 001). Such reason to believe dated 08.09.2023 was duly forwarded to the Adjudicating Authority vide a letter dated 05.10.2023 that was submitted on 06.10.2023 in compliance of Section 17(2) of the said Act. In pursuance of such reason to believe, on 08.09.2023 respondent Deputy

Director issued search authorisation No. 116 of 2023, thereby authorising one of the Assistant Directors of ED to conduct search at the office premises of petitioner and further to seize or freeze any record or property considered relevant. Accordingly, the said Assistant Director conducted the search at the said premises and after such search, issued seizure Memo dated 10.09.2023 in Form II enclosing thereby three freezing orders, amongst others, as issued u/s 17(1A) of the Act. One of such freezing orders issued by the authorised Assistant Director related to the present petitioners. Incidentally, there is no purported freezing order dated 10.09.2023 issued by the respondent no. 2 i.e., Joint Director.

11. It also appears that on 09.10.2023, the respondent Deputy Director recorded his reason to believe in terms of Section 20(1) of the PML Act for continuation of the freezing order and also passed a retention order dated 09.10.2023. The said decision of continuation was duly communicated to the petitioners through e-mail dated 09.10.2023. In view of the above, the contention of the petitioners that the Assistant Director had no authority under Section 17(1A) of the Act to issue continuation order cannot be sustained.

12. From a plain reading of Section 17(1) of the PML Act, it is clear that if the Deputy Director is to record his reason to believe, he has to be first authorised for such purpose by the Director. This is exactly the procedure that has been followed here.

13. Under Section 17(1) of the PML Act, it was primarily the Director who was required to have the reason to believe for the search and seizure and

thereafter, he could authorise any subordinate officer to execute the Act. Hence, the format of Form II appended to the Rules of 2005 was providing for such option. However, the Director could delegate such authority upon any officer not below the rank of Deputy Director for the purpose of having reason to believe and whenever such delegation took place, the seizure memo in Form II would be deemed to substitute the word director with the designation of the officer authorised by the Director. In the instant case, the Director had authorised the Deputy Director and after having the reason to believe the Deputy Director duly authorised the Assistant Director, being subordinate to him, to execute the acts of search, seizure and freezing at the office premises. In fact, the Assistant Director so authorised issued the freezing order dated 10.09.2023 and the seizure Memo dated 10.09.2023.

14. Besides, the authority of the so authorised Assistant Director was derived from the statutory provision of Section 17(1) and/or 17(1A) of the said Act and even if there was any apparent inconsistency with the Rules, it is the Act that would prevail.

15. In this context, it may be germane to mention that in *Vijay Madanlal Chowdhury* (supra), the Hon'ble Apex Court, inter alia, held that the precondition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment.

16. Apparently, the copies of recorded reason were provided to the petitioners by the adjudicating authority. The RUDs to the SCN were annexed to the writ petition. Thus, there is hardly any merit in the

contention that the show cause notice dated 13.10.2023 issued by the adjudicating authority under Section 8(1) of the PML Act was bad in law.

17. Therefore, it does not appear that the above referred sequence of steps taken by the Enforcement Directorate is at all inconsistent with the statutory provisions.

18. In view of the above discussions, I do not find any merit in the application. Accordingly, the same is dismissed.

19. However, there shall be no order as to costs.

20. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)