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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1309/2024 & CRL.M.A. 12818/2024 Stay

NUPOWER RENEWABLES PRIVATE LIMITED Petitioner

Through: Mr. Vikram Chaudhri, Sr. Adv. with
Mr. Rishi Sehgal, Ms. Hargun
Sandhu, Ms. Arveen Sekhon, Ms.
Nikita Gill & Ms. Muskaan Khurana,
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ravi Prakash, GCS with Ms.
Arpita Rawat, GP & Mr. Ali Khan,
Adv. for UOI.
Mr. Zoheb Hossan, Special Counsel
with Mr. Vivek Gurnani, Mr. Kartik
Sabharwal & Mr. Antik Majumker,
Adv. for ED.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

06.05.2024

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1. The present petition under Article 226/227 of the Constitution of India seeks the following prayers:-

- “i. Direct the Respondent No. 2 Appellate Tribunal constituted under The Prevention of Money Laundering Act, 2002 ('PMLA') to adjudicate upon the issues raised in the applications MP-PMLA-8028/DLI/2021 (Misc.) dated 29.12.2020 and MP-PMLA-451/DLI/2024 dated 02.02.2024 pending before it as regards the very maintainability of the appeal FPA-PMLA- 3802/DLI/2020 filed in terms of section 26 of the Act by Respondent No. 3 Deputy Director, Enforcement Directorate and to finally decide the said issue of maintainability of the said appeal by way of a reasoned order prior to embarking upon the adjudication of the main appeal on merits;
- ii. Pass any such other or further order(s) and/or direction(s) as this Hon'ble Court may deem fit, in the interest of justice.



AND FOR THIS ACT OF KINDNESS AND JUSTICE,
APPELLANTS AS IN DUTY BOUND SHALL EVER PRAY.”

2. A perusal of the record reflects that an order dated 12.04.2023 was passed in the proceedings before the learned Appellate Tribunal observing as under:-

After arguing the application to some length, the learned counsel for the respondents prayed for its withdrawal with liberty to file afresh with better particulars. As prayed, the application is dismissed as withdrawal with liberty to file afresh. We find that appeal is mature for final hearing and would be listed on 12th May, 2023 thus, parties are directed to come prepared for final hearing of the appeal on the aforesaid date. It is made clear that the issue of maintainability of the appeal would be heard first however, if it is found to be maintainable then parties would argue even the other issues on merit finally thus, parties would come prepared on all the issues to be argued before the Tribunal.”

3. The said order was challenged by the co-defendant of the present petitioner in MISC. APPEAL(PMLA) 4/2023 wherein the learned Division Bench *vide* order dated 12.04.2023 held as under:-

1. Learned senior counsel for the appellant submits that since the impugned order lists the appeal for hearing and directs that the issue of maintainability of the appeal would be heard first and only if the appeal is found to be maintainable that the arguments on merits would be heard, he does not press the appeal and seeks leave to withdraw the same, reserving the right of the appellant to raise all issues available in law before the Tribunal.

2. Appeal is accordingly dismissed as withdrawn. It is clarified that this Court has neither considered, nor commented upon the merits of the contention of either party. All rights and contentions of the parties are reserved.”

4. Learned Senior Counsel appearing on behalf of petitioner submits that



subsequent to the said order being passed by the learned Division Bench, the matter was heard by the learned Appellate Tribunal on the maintainability of the appeal filed by the respondent and thereafter the appeals were listed for hearing on 10.04.2024 *vide* order dated 26.02.2024 without giving any decision with regard to maintainability of the appeal as challenged in the application filed on behalf of petitioner as well as the co-defendant.

5. The said order was thereafter challenged by the present petitioner before the Hon'ble High Court of Judicature at Bombay in Criminal Writ petition (ST) No. 7399/2024. The said petition was disposed of by the learned Division Bench of the Hon'ble High Court observing as under:-

9. In view of Mr. Housen's objection, that earlier, a petition was filed before the Delhi High Court, by one of the parties, and since the prayers in the present petition are similar to the prayers in the earlier petition, the petitioner ought to have approached the Delhi High Court, Mr. Chaudhari seeks leave to withdraw the petition, with liberty to file a petition before the Delhi High Court, seeking the same reliefs, as sought for in this petition."

6. Learned Senior Counsel appearing on behalf of the petitioner submits that the learned Appellate Tribunal after hearing the arguments on the application for maintainability has not passed any order and has now posted the appeal for final hearing. It is submitted that in the order passed by the learned Division Bench of this Court dated 08.05.2023, the Court observed that the learned Appellate Tribunal had itself directed that the issue of maintainability would be heard first and only if the appeal was found to be maintainable then the arguments on merit would be heard.

7. It is submitted that in view of the aforesaid observation, the said appeal filed by the co-defendant of the present petitioner was dismissed as



withdrawn without any finding on merits. In view of the above, it is submitted that the learned Tribunal has not followed its own order and therefore, the present writ petition.

8. *Per contra*, learned Special Counsel for ED on advance notice, challenges the maintainability of the present writ petition. It is submitted that the aforesaid Miscellaneous Appeal filed on behalf of the co-defendant of the present petitioner made similar prayers as has been sought in the present writ petition. It is submitted that since the prayer in the writ petition as well as the appeal filed by the co-defendant of the present petitioner is similar in nature and in view of the fact that the said appeal was dismissed as withdrawn *vide* order dated 08.05.2023, the present petition is not maintainable.

9. Heard learned counsel for the parties and perused the record.

10. It is matter of record that the co-defendant of the present petitioner had preferred an appeal i.e Misc. Appeal (PMLA) 4/2023, the paper book of the said appeal has been handed up in court and the same is taken on record.

The prayer in the said appeal is as under:-

(i) Call for the records of FPA-PMLA-3802/DLI/2020 titled "The Deputy Director, Directorate of Enforcement vs. Ms. Chanda Kochhar & Ors." pending before the Appellate Tribunal (PMLA) constituted under the Act and pass the following order(s) and/or direction(s):

A. Set aside the order dated 12.04.2023 passed by the Appellate Tribunal, PMLA whereby without first and foremost adjudicating upon the issue of maintainability of the appeal filed by the Respondent herein, the Tribunal has proceeded to post the matter for final hearing on both issues of maintainability as well as on merits on the same date as the order so passed is manifestly unjust and unwarranted;

B. Issue appropriate directions for the disposal of the issue relating to the maintainability of the appeal filed by the Respondent prior to proceeding any further with the hearing of the appeal on merits pending before the Appellate Tribunal.



(ii) Pass such other or further order(s) or direction(s) that this Hon'ble Court may deem fit and proper in the interest of justice.”

11. It is not in dispute that the order dated 12.04.2023 was not set aside in the aforesaid Miscellaneous Appeal. The grievance of the petitioner by way of present writ petition is with respect to an order dated 26.02.2024 wherein it has been recorded as under:-

“List the appeal on 10th April, 2024 for arguments.”

12. It is also matter of record that the petition filed at the instance of the present petitioner before the Hon’ble High Court of judicature at Bombay was withdrawn with liberty to file a fresh petition in view of the fact that a similar petition had already been disposed of by learned Division Bench of this Court as mentioned hereinabove.

13. In view of the above, this Court is of the considered opinion that since the proceedings initiated on behalf of the co-defendant of the present petitioner by way of Miscl. Appeal (PMLA) 4/2023 as mentioned hereinabove was disposed of by Division Bench of this Court, the appropriate remedy if any would be to approach the Hon’ble Division Bench as a matter of judicial propriety.

14. In view of the above, the present petition is dismissed as not maintainable without observing anything on merits.

15. With the aforesaid directions, the petition stands disposed of.

16. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

MAY 6, 2024/nk

Click here to check corrigendum, if any