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

Date of Decision: 30th July, 2024

+ **W.P.(C) 10466/2024 & CM APPLs. 43054-43056/2024**

NIUM INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Sidharth Luthra and Mr. Siddharth Aggarwal, Senior Advocates with Mr. Ankoosh K. Mehta, Mr. Nikhil Varshney, Mr. Abirat Sahai, Ms. Pragya C., Mr. Sriharsh Raj, Mr. Alok Agrawal, Mr. Karan Dhalla, Mr. S. Shankaran, Mr. Sougat P., Mr. Kaustubh Chouhan and Ms. Tanishka Khatana, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Shivam Sachdeva, G.P. for R-1. Mr. Anurag Jain, Mr. Vivek Gurnani and Mr. Kanishk Maurya, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner is a duly incorporated company having its registered office at Cama Industrial Estate, Goregaon East, Mumbai 400063. They are engaged in the specialised sector of financial services. The core of its



business operations involves providing services to Nium Pte Limited.¹ The primary service offered by the Petitioner includes the collection of payments from buyers within India in exchange for digital goods and services. These goods and services are supplied by merchants that have been integrated into Nium Singapore's operations through their proprietary platform known as Instarem Masspay.

2. On 23rd-24th February, 2024, during the investigation under ECIR/KCZO/06/2024,² Respondent No. 2– Assistant Director, Directorate of Enforcement authorised a search at the office premises of Petitioner under Section 17(1) of the Prevention of Money Laundering Act, 2002.³ This operation culminated in an order dated 24th February, 2024 directing freezing of nine bank accounts of Petitioner under section 17 (1-A) of the PMLA. Following the search, Respondent No. 2 filed an Original Application with Adjudicating Authority– Respondent No. 3. Pursuant thereto, the Petitioner was issued a Show Cause Notice⁴ dated 4th April, 2024, along with copy of 'reasons to believe' that outline the grounds for enforcement under section 8 of the PMLA. The Petitioner contends that the full set of Relied Upon Documents⁵ and the detailed 'reasons to believe' justifying the search under Section 17(1) of the Act were not initially provided, which led to multiple requests for these documents addressed to Respondents No. 2 and 3. It was not until 3rd May 2024 that the Petitioner was granted access to the Original Application and the RUD. However, not all relevant documents were disclosed, including specific annexures

¹ "Nium Singapore"

² "ECIR"

³ "the PMLA"

⁴ "SCN"



referenced in a letter dated 27th February 2024 from Respondent No. 2 to Respondent No. 3. Petitioner then filed an application dated 09th May, 2024 before Respondent No. 3 seeking inspection of complete set of documents and the Original Application. During inspection on 14th May, 2024, the Advocates of Petitioner were informed orally that annexures to letter dated 27th February, 2024 which were supplied by Respondent No. 2 to Respondent No. 3 in a sealed envelope, would not be made available for their review. Continued requests for access to these and other documents have reportedly been denied, hindering the Petitioner's ability to fully assess the basis for the actions taken against them. Petitioner also sent letter dated 24th May, 2024 seeking inspection/copies of complete set of documents including annexures to 27th February, 2024 letter, 'reasons to believe' of Respondent No. 2 and any additional documents which were placed by Respondent No. 2 with Respondent No. 3. Further request to this effect was also made on 24th May, 2024 and 10th June 2024. However, Respondents No.3 have refused to open the sealed envelope and provide an inspection to the Advocates of Petitioner.

3. After the service of the instant petition on Respondent No. 3, the Petitioner was notified *via* an email dated 11th July, 2024, of hearing scheduled on 12th July, 2024 treating the letter dated 10th June, 2024 as Miscellaneous application seeking inspection of documents. It is submitted that despite presenting cogent reasons, their requests for disclosure of critical documents, specifically the 'reasons to believe' by Respondent No. 2, were not addressed. Subsequently, through an order dated 15th July, 2024 (mentioned as 16th July 2024 in the petition), the Petitioner's request was

⁵ "RUD"



explicitly denied on the grounds that the documents were kept in a sealed envelope and were deemed confidential. Petitioner then escalated the matter by preferring an appeal before the Appellate Tribunal seeking directions to set aside the order of 15th July, 2024. Alongside, Petitioner also filed the stay application seeking relief of stay of proceedings in Original Application, pending disposal of the appeal. The Petitioner also pursued an urgent hearing by contacting Respondent No. 3 *via* email on 23rd July, 2024. This communication requested an adjournment of the hearing scheduled for 30th July, 2024, in the Original Application, to prevent proceeding without resolution of the outstanding appeals. However, the Petitioner received no response to this request, further impeding their ability to prepare and present their case adequately.

4. The Petitioner then preferred an urgent listing application, which was mentioned before the Appellate Tribunal on 23rd July, 2024 and accordingly, the appeal and the stay application were heard on 25th July, 2024. Petitioner asserts that the Appellate Tribunal refused to grant stay, as prayed by Petitioner and adjourned the matter for hearing to 21st November, 2024. It is asserted that till date, copy of the order of Appellate Tribunal dated 25th July, 2024 has not been provided to them. Petitioner has applied for inspection of the records of Appellate Tribunal, however, that request has also not been acceded to.

5. In the above circumstances, Petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India.

6. Mr. Sidharth Luthra and Mr. Siddharth Aggarwal, Senior Counsel representing the Petitioner, argue that that lack of documentation severely undermines the Petitioner's ability to comprehend and effectively respond to



the Original Application before Respondent No 3. The lack of critical documentation, specifically the “reasons to believe” which form the foundation of the Adjudicating Authority’s show cause notice under Section 8(1) of the Act, is a substantial impediment that jeopardizes the fairness and transparency of the proceedings. The Authorities below had acted in contravention of Article 14 and 21 of the Constitution of India, 1950 by denying access to “reasons to believe” which are relevant for the Petitioner to effectively defend the proceedings. Thus, fundamental rights of Petitioner have thus been violated. They highlight that the refusal to grant a stay of proceedings in the Original Application forces the Petitioner to participate in the hearings unprepared and unaware of the foundation of the allegation against them, which is fundamentally unfair and unjust. This situation, as per the counsels, demonstrates a failure of the Authorities below to appreciate the systemic deprivation of the Petitioner’s statutory rights to document inspection and “reasons to believe”, previously recognized by this Court. Petitioner’s right to access RUD and “reasons to believe” has been judicially recognised by this Court in ***JK Tyres and Industries Ltd. vs the Directorate of Enforcement***⁶ and ***J. Sekar v. Union of India and Ors.***⁷

7. Respondent No.1 and 2, on the other hand, have raised objection regarding maintainability of the present petition by placing reliance on Section 42 of the PMLA. They urge that there is an alternate efficacious remedy available with Petitioner to assail the order of Appellate Tribunal before the concerned High Court where the Petitioner ordinarily resides. To substantiate their contention, they place reliance on the judgment of Division

⁶ (2021) 284 DLT 580

⁷ (2018) 246 DLT 610.



Bench of this Court in *Aasma Mohammed Farooq and Anr v. Union of India and Ors.*⁸ Further reinforcing their position, the respondents point out that the aforementioned judgment was upheld by the Supreme Court on 14th December, 2018 in SLP(C) 32941/2018. Based on the afore-noted precedents and statutory provisions, the Respondents assert that the Petitioner should pursue the statutory remedies provided under the PMLA rather than seeking intervention through a writ petition.

8. Responding to the contention urged on the maintainability of the present petition, Mr. Aggarwal argues that Respondents' argument regarding the non-maintainability of the writ petition is misplaced. He challenges the assertion that the availability of an alternative remedy inherently precludes the maintainability of a writ petition under Article 226 of the Constitution. To substantiate his argument, Mr. Aggarwal cites precedents where this Court has indeed entertained writ petitions despite the availability of statutory appellate remedies. They refer to order dated 02nd June, 2022 passed in *M/s Incred Financial Services Ltd. v. Deputy Director, Directorate of Enforcement*.⁹ Further bolstering this argument, Mr. Luthra refers to the Supreme Court in *Radha Krishan Industries v. State of Himachal Pradesh and Others*¹⁰ which elucidates circumstances under which courts may intervene despite the existence of alternative remedies. Both Mr. Luthra as well as Mr. Aggarwal argue that in cases where fundamental rights are at stake or where there are significant legal flaws in the administrative or tribunal proceedings, the courts have not only the authority but also the obligation to intervene. This ensures that justice is not

⁸ 2018 SCC OnLine Del 12800

⁹ W.P.(C) 6354/2022



only done but seen to be done.

Analysis and Findings

9. The Court has carefully considered the aforementioned contentions. The Court acknowledges the need for a preliminary determination of its jurisdiction to entertain the present writ petition. This is a threshold issue that must be resolved before any substantive examination of the merits of the case can be undertaken. The jurisdictional inquiry centres on whether the existence of alternative remedies, as stipulated under Section 42 of the PMLA and as argued by the Respondents, precludes this Court from exercising its discretionary powers under Article 226 of the Constitution. If the Court finds that the appellate remedies provided under the PMLA are adequate and efficacious to address the Petitioner's grievances, it may uphold the Respondents' objection regarding maintainability.

10. In the instant case, the challenge is made to the order of Appellate Tribunal against which a statutory appeal lies under Section 42 of PMLA. In considering the Respondents' objection, the Court must evaluate the statutory language and its implications for the present case which reads as under:

"42. Appeal to High Court.

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation. For the purposes of this section, High Court means

¹⁰ (2021) 6 SCC 771



- (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and*
- (ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.”*

11. The statute clearly outlines that appeals can be filed to the High Court within sixty days from the date the decision or order is communicated to the aggrieved party, addressing any question of law or fact arising out of such order. For the purpose of this Section, ‘High Court’ has been defined to be the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain. The Petitioner is based in Mumbai, conducting business and presumably working for gain there. Consequently, based on the explicit language of Section 42, the High Court of Bombay would ordinarily have jurisdiction to hear appeal against decision passed by the Appellate Tribunal on 25th July, 2024.

12. The situation which emerges in the present case was also considered, in ***Aasma Mohammed Farooq (Supra)***, which is evident from the following portion of the judgment:

“10. Mr. Chaudhri may be right in contending that the notice under Section 8 of the Act has been issued by the Authority in Delhi, so jurisdiction is there for this Court to entertain the writ petition. But merely because a part of cause of action has arisen under the jurisdiction of this Court, whether this Court needs to exercise its jurisdiction is the question need to be answered. This Court is of the view “that it should not”, for more than one reason; that it is not in dispute that the petitioner is based in Mumbai. The provisional attachment order has been passed in Mumbai. The complaint though, filed before the adjudicating authority in Delhi, it encompasses all the facts that have arisen in Mumbai. The properties are in Mumbai. It is only after filing of the original complaint as contemplated under Section 5(5) of the Act before the adjudicating authority, which is



located in Delhi that the impugned notice has been issued from Delhi but the fact remains that nothing has happened in Delhi. Only notice to show cause has been issued. After the adjudicating authority decides the issue, there is a forum of appeal available to the petitioner. Even thereafter, the remedy of appeal to the High Court is also available under Section 42 of the Act, which has already been enumerated above. In other words, in the case in hand, if an order is passed by the Appellate Authority it shall be the Bombay High Court, which shall have the jurisdiction for both, i.e. the person aggrieved and the Central Government against the order is passed by the Appellate Authority. Therefore, in view of the aforesaid factual / legal aspect, this Court is of the view that instead of two Courts considering set of facts originating in Mumbai and leading to issuance of a provisional attachment order / complaint before the adjudicating authority, it should be the High Court, which is more convenient and where if a party aggrieved against the orders passed by the Appellate Authority shall approach, in terms of Section 42 of the Act, shall be the “forum conveniens”. In this case, it shall be the Bombay High Court and accordingly this Court is of the view that it should not entertain the present writ petition. The petitioner shall be at liberty to approach the Bombay High Court for appropriate relief. Accordingly, we refrain from going into the merits of the case.”

13. The aforementioned judgment in ***Aasma Mohammed Farooq*** (Supra) was considered by the Supreme Court in ***Mohammed Farooq Mohd. Hanif Shaikh and Anr. v. Union of India and Ors.***¹¹ wherein the Supreme Court expressly approved the view taken by this Court to the following effect:

“The High Court of Delhi has, by the impugned judgment, decided that as a matter of forum conveniens, the petitioners should approach the High Court of Bombay.

We are in agreement with what has been stated therein.

The interim protection, that has been granted by the High Court of Delhi till 15.12.2018, will continue for one more month from today so that the petitioners may approach the High Court of Bombay and ask for interim relief.

The Special Leave Petition is disposed of accordingly.

Pending applications stand disposed of”

14. The factual scenario in the instant case parallels the ***Aasma***

¹¹ SLP (C) No. 32941/2018



Mohammed Farooq case in some ways. The Petitioner in the present case is also based in Mumbai. However, the present challenge is directed against an order of the Appellate Tribunal, for which a statutory appeal pathway is explicitly outlined in Section 42 of the PMLA, suggesting that the Bombay High Court would be the appropriate forum for such an appeal.

15. That said, the Court must also consider the order dated 02nd June, 2022 passed in **M/s Incred Financial Services Ltd.** (*Supra*) wherein the preliminary objection raised by Directorate of Enforcement relating to maintainability of the writ petition, premised on the decision of the Division Bench in **Aasma Mohammed Farooq** (*Supra*), was rejected.

16. In **M/s Incred Financial Services Ltd.** (*Supra*), the Court diverged from the precedent set in **Aasma Mohammed Farooq**, focusing on the specific circumstances of the cases before and overruled objection of maintainability of the petition on the ground of territorial jurisdiction. The reasoning is discernible from the following extract:

“4. The Court notes that in W.P.(C) 6354/2022 an appeal has already been filed. The Tribunal is yet to be constituted and it is in the aforesaid backdrop that the petitioner has instituted the present writ petition. Insofar as W.P.(C) 7656/2022 is concerned the challenge is to the authority of the Adjudicating Authority to proceed further in terms of Section 8 of the Prevention of Money Laundering Act, 2002 [PMLA] as more than 180 days have lapsed since the passing of the provisional order of attachment. It is in that backdrop that learned has placed reliance on the decision rendered by a learned Judge of the Court in **Vikas WSP and Others vs. Directorate Enforcement and Another** [2020 SCC Online Del 1732]. Although the decision in **Vikas WSP** forms subject matter of pending LPA No. 362/2020, the Division Bench, in that appeal has also extended interim protection.

5. In view of the aforesaid facts, this Court is of the opinion that since the Appellate Forum has already been approached and the petitioner in W.P.(C) 6354/2022 stands deprived of his right to pursue the remedy available, it cannot be said that the Court would lack territorial jurisdiction.

6. Insofar as W.P.(C) 7656/2022 is concerned, the Court



notes that a direct challenge is made to the Authority and jurisdiction of the Adjudicating Officer to proceed further in terms of Section 8 of the PMLA. The Adjudicating Authority is undisputedly situate within the territorial jurisdiction of this Court. The objection raised in the said writ petition would not sustain.”

17. In W.P.(C) 6354/2022, in paragraph no. 4 above, the Court noted that although an appeal had been filed, the Appellate Tribunal was not yet constituted, which significantly impaired the Petitioner’s ability to obtain timely relief. This factual distinction underscored the necessity of the Court’s intervention to prevent justice from being thwarted by procedural delays. In that backdrop, the Court observed that Petitioner could not be deprived of his right to pursue remedies available and therefore, it could not be said that this Court would lack territorial jurisdiction. As regards W.P.(C) 7656/2022, as noticed in paragraph no. 6 above, the challenge was directly against the authority of the Adjudicating Authority to proceed under Section 8 of the PMLA after a lapse of 180 days since the issuance of the provisional order of attachment. The direct challenge to the authority’s jurisdiction, within the territorial jurisdiction of the Court, highlighted a substantive legal question that warranted immediate judicial review.

18. Before us, the Petitioner is assailing the order of the Appellate Tribunal. They have invoked the jurisdiction of this Court based on the presence of the Appellate Authority within its geographical bounds. This fact, while establishing a basic criterion for territorial jurisdiction, does not inherently justify overlooking the structured remedies provided under statutory law. The legal framework provided by Section 42 of the PMLA specifies that appeals against decisions of the Appellate Tribunal are to be filed at the High Court within the jurisdiction where the aggrieved party



resides or conducts business. The Petitioner cannot override the statutory mechanism by relying on the geographical location of the Appellate Authority within this Court's jurisdiction. There is no basis for the Court to conclude that the alternate remedy is not equally efficient and adequate. The Petitioner is also unable to demonstrate that the appeal remedy is not efficacious. There is no ground to justify bypassing the clear appellate mechanisms set out in the PMLA. Doing so could undermine the legislative intent and the efficacy of the legal framework designed for handling such appeals. Thus, the Court concludes that the mere location of the Appellate Authority within its territorial bounds does not provide sufficient ground to deviate from the prescribed statutory appellate route. The Petitioner can easily pursue their grievances through the statutory appellate process as stipulated in Section 42 of the PMLA, by following the hierarchal judicial process intended by law.

19. The proposition as articulated by Mr. Luthra, based on the ***Radha Krishan Industries*** (*Supra*), correctly identifies the balance between statutory remedies and the discretionary powers of the High Court under Article 226 of the Constitution. It is indeed well-established that the existence of an alternative remedy does not categorically preclude the High Court from exercising its writ jurisdiction. However, this intervention is ordinarily reserved for cases where there is a clear absence of any other adequate, efficacious remedy, or where adherence to alternative remedies would result in manifest injustice or undue delay that could cause irreparable harm. The availability of alternative remedies generally dissuades the High Court from exercising its jurisdiction under Article 226, but it is not an absolute bar. The Court retains the discretion to issue writs even when



alternative statutory remedies are available if the case presents extraordinary circumstances that justify such an intervention. The rule regarding the exhaustion of statutory remedies is indeed a matter of judicial discretion, informed by considerations of judicial efficiency and convenience. In cases where statutory remedies are considered adequate and capable of providing the necessary relief, the courts usually require that these remedies be exhausted before seeking relief under Article 226 of the constitution.

20. In this instance, given the specific statutory remedies provided under the PMLA, particularly the appeal mechanism outlined in Section 42, the court finds that the said remedy is both appropriate and sufficient for addressing the grievances presented by the Petitioner. There is no evidence to suggest that the remedy would be ineffective or lead to an injustice that justifies bypassing them. Thus, considering the established legal framework and the factual circumstances of this case, the Court is not inclined to exercise its discretionary powers under Article 226 of the Constitution. The Petitioner is free to pursue the available statutory remedies, which are deemed adequate for resolving the legal challenges at hand.

21. Dismissed, along with pending applications.

SANJEEV NARULA, J

JULY 30, 2024

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