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

\+ W.P.(C) 989/2025, CM APPL. 4933/2025 (Stay)

SHIVAKRITI AGRO PVT LTD. .....Petitioner

Through: Mr. Dayan Krishnan Sr. Adv. Along with Mr. Samir Malik, Ms. Bani Dikshit, Mr. Uddhav Khanna and Mr. Dhruva Vig, Advs.

versus

DIRECTORATE OF ENFORCEMENT & ANR. .....Respondents

Through: Mr. Zoheb Hossain (Special Counsel for ED), Mr. Manish Jain, (SPP for ED), Mr. Vivek Gurnani (Standing Counsel-ED) along with Mr. Kartik Sabharwal, Mr. Pranjal Tripathi, Mr. Sai Manik Sud, Ms. Snehal Sharda Advs.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **27.01.2025**

CM APPL. 4934/2025

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 989/2025 and CM APPL. 4933/2025 (Stay)

3. The present petition has been filed by the petitioner assailing the Provisional Attachment Order dated 26.08.2024 bearing no. F no. ECIR/GNZO/09/2021 (hereinafter 'PAO') issued under Section 5 (1) of the Prevention of Money Laundering Act, 2002 (hereinafter "PMLA") and

consequential actions/proceedings emanating thereto, including the Original Complaint filed under Section 5(5) of the PMLA by respondent no. 1.

4. It is pointed out that the PAO is qua certain immovable properties under the use, enjoyment and possession of the petitioner under the aegis of a Facility Agreement dated 30.09.2019 entered between the petitioner and Umaiza Infracon LLP/successful resolution applicant (hereinafter referred to as 'Umaiza').

5. The background of this matter is that the petitioner entered into a job-works agreement with Sunstar Overseas Limited (hereinafter referred to 'SOL'), on 30.04.2018. Under this arrangement, the petitioner was allowed to use SOL's facilities for processing, milling, storage, and transport of rice at Bahalgarh, Haryana.

6. Subsequently, SOL faced financial distress and was admitted into Corporate Insolvency Resolution Process (CIRP) by an order dated 20.07.2018, passed by the National Company Law Tribunal (NCLT) and Umaiza's resolution plan was approved by the Committee of Creditors and subsequently by NCLT on 12.09.2019.

7. As per the approved resolution plan, Umaiza was required to pay INR 196 Crores within 30 days. To fulfil this financial obligation, Umaiza sought financial assistance from the petitioner. Consequently, the said Facility Agreement was executed, between Umaiza and the petitioner. Under this agreement, certain identified assets of SOL were to be dealt with as per the terms of the Facility Agreement, and in the event of non-repayment, the petitioner was granted the right to purchase 100% shares of SOL from Umaiza and its partners.

8. Following the execution of the Facility Agreement, the petitioner disbursed INR 130 Crores. The petitioner also disbursed an additional INR 16 Crores in February 2020, with the assurance that in case of any disagreement regarding the additional assets, this amount would be refunded with interest. In total, the petitioner had disbursed INR 146 Crores to Umaiza.

9. However, Umaiza failed to comply with their obligations under the Facility Agreement, compelling the petitioner to issue a legal notice on 20.05.2021. The notice demanded the execution of the securities transfer documents within 15 days. However, with no compliance forthcoming, the petitioner approached this Court in June 2021, seeking interim relief under Section 9 of the Arbitration and Conciliation Act, 1996. The Court granted an ad-interim injunction on 09.06.2021, which was later confirmed and continued by a subsequent order on 09.12.2021.

10. Further, the Petitioner filed an arbitration petition (Arb. Pet. No. 839/2021) before this Court, seeking the appointment of an arbitrator to resolve the dispute. On 09.12.2021, a Sole Arbitrator was appointed in the said petition. In the ensuing arbitration proceedings, the arbitrator granted interim relief to the petitioner on 15.01.2022.

11. In a separate development, between January 16 and January 18, 2024, the respondent no. 1 conducted search and seizure operations at multiple locations, including the property in the petitioner's possession.

12. Following these searches, the petitioner received a Show Cause Notice on 21.02.2024, from the Adjudicating Authority under the Prevention of Money Laundering Act (PMLA), 2002. The notice alleged that the Facility Agreement dated 30.09.2019, was suspicious. The petitioner refuted

these allegations in its reply, maintaining that the financial transactions were legitimate.

13. However, on 21.06.2024 the Adjudicating Authority allowed the Directorate of Enforcement's application (OA No. 1139/2024), permitting them to retain documents and devices seized by them during the search and seizure exercise carried out between 16.01.2024 and 18.01.2024.

14. In response, the petitioner filed an appeal (FPA-PMLA-1517/DLI/2024) before the PMLA Appellate Tribunal, arguing that the order was passed mechanically without establishing any link to 'proceeds of crime.' The appeal remains pending before the Tribunal.

15. In the meantime the respondent No. 1 issued a Provisional Attachment Order under Section 5(1) of the Prevention of Money Laundering Act, 2002 (PMLA), alleging that the petitioner was formed to take over the business of SOL and that the Facility Agreement was a sham document.

16. Given the aforementioned developments, the petitioner has now moved this Court, seeking appropriate relief qua the measures initiated against it under the provisions of the Prevention of Money Laundering Act (PMLA).

17. It is pointed out that the PAO has been issued in relation to the investigation being carried out by the respondent no.1 in ECIR bearing No. ECIR/GNZO/09/2021. The said ECIR has been registered pursuant to the FIR no. RCHG2020A0021 dated 31.12.2020 registered by CBI basis a complaint made to the CBI by Punjab National Bank concerning the account of Sunstar Overseas Limited (hereinafter 'SOL').

18. It has been alleged that there has been a diversion of funds in the account of SOL and as such Punjab National Bank took recourse to the RBI 'Master Directions on Frauds-Classification and Reporting by Commercial Banks and FIs' dated 03.07.2017 bearing no. DBS.CO. CFMC.BC.No.1/ 23.04.001/ 2016-17 and declared the account of SOL as 'fraud' following which registration of FIR was mandated under the said Master Circular.

19. It is submitted on behalf of the petitioner that the said FIR does not contain any allegation qua the petitioner. Moreover, the investigation by CBI has resulted in charge-sheet being filed which also does not name the petitioner as an accused.

20. Learned senior counsel for the petitioner submits that the PAO is premised on the unsubstantiated ground that one of the director/shareholders of the petitioner was an ex-employee of the SOL and also that the petitioner had advanced money to Umaiza under the said Facility Agreement dated 30.09.2019 at the behest of the promoters/ex-directors of SOL, and hence the Facility Agreement dated 30.09.2019 is a sham.

21. It is the case of the petitioner that the PAO fails to consider that the petitioner is a third party which has entered into a commercial arrangement with Umaiza whereby the petitioner had provided financial assistance to Umaiza to implement its resolution plan for SOL as per the direction of the National Company Law Tribunal (NCLT).

22. It is further submitted that the commercial arrangement between Umaiza and the petitioner is encapsulated in the Facility Agreement dated 30.09.2019 entered into in the ordinary course of business using own resources whereby on the failure of Umaiza to make repayments, certain assets of SOL were to be transferred to the petitioner.

23. It is contended that the funds advanced to Umaiza, INR 146 crores, have been wrongly considered to be 'proceeds of crime' alleged to have been generated by SOL.

24. It is further pointed out that the PAO evidently disregards the factual background of the Facility Agreement as also the proceedings under Section 9 and 11 of the Arbitration and Conciliation Act, 1996 in respect thereof, and also the ongoing arbitral proceedings before learned sole arbitrator.

25. The impugned PAO is subject matter of consideration by the concerned adjudicating authority in terms of Section 8 of the PMLA.

26. After some hearing, with the consent of respective counsel, the present petition is disposed of with the direction that the adjudicating authority shall provide an opportunity of hearing to the petitioner; the petitioner shall be at liberty to urge all grounds in support of its contentions, and make submissions as regards legality / validity of the said POA dated 26.08.2024 bearing no. ECIR/GNZO/09/2021.

27. It is further agreed that all relied upon documents which have been provided to Umaiza, and also such documents to which the petitioner may be entitled under law, shall be duly provided to the petitioner within a period of ten days from today. It is directed accordingly.

28. Petitioner shall be permitted to give a written response within a period of two weeks from the date of receipt of the said documents. Learned counsel for the petitioner assures and undertakes on behalf of the petitioner that no extension of time shall be sought by the petitioner for this purpose.

29. The adjudicating authority shall afford adequate opportunity of hearing to the petitioner and shall pass an order within the period contemplated under Section 5 r/w Section 8 of the PMLA.

30. With the above directions, the present petition is disposed of.

31. All rights and contentions of the parties are kept open for consideration by the adjudicating authority.

SACHIN DATTA, J

JANUARY 27, 2025/*sv, at*