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

Date of Decision: 21st March, 2025

+ **MISC. APPEAL(PMLA) 13/2025 & CM APPL. 16592/2025**

KOTAK MAHINDRA BANK LTDPETITIONER

Through: Mr. Ashwani Kr., Advocate.

versus

**DIRECTORATE OF ENFORCEMENT
& ORS.**

.....RESPONDENTS

Through: Mr. Ravi Prakash, Sr. Advocate with
Mr. Manish Jain, SPP, Ms. S.
Ganguly, Ms. Snehal, Ms. Mimansa
Pragya and Mr. Ali Khan, Advocates
for R-1.

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant- Kotak Mahindra Bank Ltd under Section 42 of the Prevention of Money Laundering Act, 2002 (hereinafter, 'PMLA'), challenging the order dated 19th December, 2024 passed by the Prevention of Money Laundering ("Appellate Tribunal").
3. ING Vysya bank (now merged with the Petitioner bank) had sanctioned a loan of Rs. 2,30,00,000/- vide sanction letter dated 24th March, 2015 to the Petitioner - Mr. Gurcharan Singh. The same was sanctioned



under a Master Facility Agreement dated 28th April, 2015. As a collateral for the said loan, security was given of property i.e., Plot bearing No. 1111, Basement and Ground Floor, DLF Phase-4, Gurgaon, Haryana (hereinafter, 'property').

4. A provisional attachment order was passed on 18th December, 2015 and on 01st June, 2016 the same was confirmed by the PMLA Adjudicating Authority. Then certain proceedings under the PMLA were commenced against the borrower and notice dated 12th January, 2016 was issued by the Respondent No. 1- Directorate of Enforcement to the Appellant to appear before the Adjudicating Authority.

5. The Appellant had filed a reply before the Adjudicating Authority and since the borrower had not paid the outstanding amount, the account was also classified as a Non-Performing Asset (hereinafter, 'NPA'), despite the objections raised by the bank. The loan was also recalled and the borrower was asked to pay the outstanding amount.

6. In the meantime, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SRFAESI') were also commenced in respect of the said property.

7. The said bank had thereafter merged with Kotak Mahindra Bank in April, 2015. Subsequently, order dated 01st June, 2016 was received by the erstwhile branch of Transferor Bank i.e. ING Vysya, which was the bank which had extended the loan. During the period of implementation of the merger and the accompanying modalities, a delay occurred in challenging the order confirming the provisional attachment.

8. As the delay was more than 700 days, the Id. Tribunal rejected the



appeal of the Appellant on the ground of delay in the following terms:

“14. The Appellant Bank has preferred the appeal on 08.05.2018 which resulted in a delay of 708 days. The reason provided for the delay has been the inadvertent oversight of the concerned official who was looking after the concerned loan accounts and as a result the Appellant Bank remained unaware of the Impugned Order of the Ld. AA. In the revised affidavit of Shri Sarwan Singh, Authorised representative of the Appellant Bank filed on 13.06.2023, it has been stated that due to the amalgamation of ING Vysya Bank with Kotak Mahindra Bank Limited, the Appellant Bank underwent restructuring and management change. As a consequence of the same, there was an unavoidable and unintentional delay in filing the appeal on time.

15. On examination of the judgements cited by the Appellant Bank for the delay in filing the Appeal, it is to be noted that in the matter of Madras Port Trust vs. Hymanshu International by its proprietor V. Vekatadri by LRs [(1979) 4 Supreme Court Cases 176] and Rajendra Shankar Shukla and others vs. State of Chhattisgarh and others (2015) 10 Supreme Court Cases 400), the Hon'ble Supreme Court categorically states that the plea of limitation should not be ordinarily taken up by the Government or a public authority unless the underlying claim being made by the claimant is not well founded. We find that the Appellant Bank has filed the Appeal much beyond the limitation period stipulated under PMLA, 2002. The Appellant Bank was a party and participated in the proceedings of the Ld. AA. It was therefore, the responsibility of the Appellant to follow up on the proceedings which culminated in passing of the impugned order. To state that the merger with the ING Vysya Bank caused inter branch transfers of the personnel is not convincing as to be accepted as sufficient cause for the long delay of over 700 days.



The Appellant Bank has not been diligent enough to take steps on the impugned order which it received on 03.06.2016 till the date of filing of the Appeal on 08.05.2018. Even if we take that the length of the period of delay in filing the Appeal may not be the sole consideration, the sufficiency of the cause of such delay is a significant factor which cannot be ignored.

16. In the facts and the circumstances of the present Appeal, we do not find that the Appellant Bank has satisfactorily explained the delay of 708 days in filling the Appeal. Therefore, we dismiss the Application for Condonation of Delay and, consequently, the Appeal is also dismissed.”

9. Ld. Counsel for the Appellant has brought to the notice of this Court that under Section 26 of the PMLA, the initial limitation period for filing of an appeal before the Appellate Tribunal is 45 days. He further contends that there is no outer limit prescribed under the PMLA Act for filing an appeal, and if sufficient cause is shown, the delay is liable to be condoned, unless the same is not justified.

10. Mr. Ravi Prakash, Id. Senior Counsel for the Respondent No.1, on the other hand submits that the delay in this case is quite long and the bank was well aware of the confirmation of the provisional attachment.

11. Heard. There is no doubt that the order, confirming the provisional attachment was passed on 01st June, 2016 and it is the admitted position that the same was received on 03rd June, 2016 by the bank.

12. In the opinion of this Court, the merger of the Transferor Bank (ING Vysya Bank) with Kotak Mahindra Bank in April, 2015, is a justifiable reason and cause that could have resulted in the delay.

13. The market value of the property is stated to be more than 5.5 crores.



14. Upon the perusal of Section 26 of the PMLA, it would show that after the initial period of 45 days, there is no outer limit prescribed and the question would be whether there is sufficient cause or not. The relevant provision is set out below:

“26. Appeal to Appellate Tribunal-

[...]

(3) - Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may after giving an opportunity of being heard entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.”

15. A perusal of the above provision would show that firstly, there is no outer limit and there is also no negative stipulation that delay beyond a particular period would not be condonable.

16. A Coordinate Bench of this Court, in ***CRL. M.A. 1413/2017*** titled ***‘Directorate of Enforcement v. O P Nahar’***, while adjudicating an appeal from an order of the Appellate Tribunal wherein the appeal under Section 26 of the PMLA was rejected due to delay of 204 days in its filing. The Court condoned the delay and *inter alia* held that the Appellant therein sufficiently explained the delay for not filing the appeal within the prescribed period. The relevant portion of the said judgment reads as under:

“9. In any event, question as to whether the delay has



been explained or not is dependent on the peculiar facts of each case. Supreme Court in the above referred case has also not laid down as a proposition of law that delay in all cases cannot be condoned. The Court has to examine, in facts and circumstances of each case, as to whether delay has been sufficiently explained or not. Further, it is noticed that in that case the delay sought to be condoned was of 1724 days.

10. In view of the facts of the case, as also the explanation rendered for the delay, we are of the opinion that Appellant has sufficiently explained the delay for not filing the appeal within the prescribed period. Consequently, the appeal is allowed.”

17. This Court takes into consideration the fact that the Appellant is a bank and since it was going through the merger process, it cannot be said that the delay is completely inexplicable. Mergers of banks would involve complicated processes, technological integration, customer integration, staff related issues, compliances etc., have to be put in place. This could have delayed the filing of the appeal due to various procedural and administrative reasons.

18. A bank represents the public interest and many of its depositors, and under such circumstances, the present case deserves to be heard on merits.

19. Accordingly, the delay in filing the appeal before the Appellate Tribunal is condoned, subject to the payment of Rs. 50,000/- as costs to the Delhi High Court Legal Services Committee which shall be deposited within two weeks.

20. The appeal shall now be restored to its original number before the Appellate Tribunal and shall be adjudicated on merits in accordance with law.



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21. Let the parties appear before the Appellate Tribunal on 28th April, 2025.
22. The present appeal is disposed of. Pending applications, if any, are also disposed of.
23. Copy of this order be communicated to the Registrar, Appellate Tribunal.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 21, 2025/MR/ck