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

\+ MISC. APPEAL(PMLA) 5/2024, CM APPL. 17990/2024, CM APPL. 17992/2024

SANDEEP TYAGI & ORS. .....Appellants

Through: Mr Manav Gupta, Mr Sahil Garg, Mr Ankit Gupta and Mr Mithil Malhotra, Advocates

versus

DIRECTORATE OF ENFORCEMENT, GOVERNMENT OF INDIA .....Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel for ED, Mr. Manish Jain, Special Public Prosecutor for ED, Mr. Vivek Gurnani, Panel Counsel for ED, Mr. Kartik Sabharwal, Mr. Pranjal Tripathi, Ms. Ilma Khan, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **26.05.2025**

1. The present appeal seeks to challenge the Common Order dated 29.01.2024 passed by the Appellate Tribunal, PMLA confirming the Provisional Attachment Order No.07/2023 dated 10.07.2023.

2. In the appeal before the Appellate Tribunal, the Appellants herein had only prayed for an interim order restraining the sale of shares and mutual funds by the Respondent. The relevant portion of the Order dated 29.01.2024 passed by the Appellate Tribunal reads as under:-

"At this stage, the Learned Counsel for the Appellant prayed for an interim order restraining the Respondent to sale the mutual funds. A reference of the order of this Tribunal dated 23rd August, 2019 in Appeal bearing No. FPA-PMLA-3121/DLI/2019 and application bearing no. MP-PMLA- 6204/DLI/2019 has been given to show stay on the sale. It is stated that therein mutual funds were sold by the I.O. This Tribunal therefore directed the parties to maintain the status quo. The Tribunal later on passed an order of status quo ante in the light of the fact that Special Court had released the attached property however CBI had preferred Appeal in the High Court but without the permission of the High Court, the mutual funds were sold by the I.O. therefore the Tribunal passed an appropriate order. In the light of the aforesaid order the stay may be granted in this case also so that the Respondent may not sale the mutual funds during the pendency of the Appeal."

3. The prayer of the Appellant was thereafter rejected by the Appellate Tribunal by observing as under:-

"We have considered the submissions of the Learned Counsel for the Appellant and have gone through the order dated 23rd August, 2019 passed by this Tribunal in Appeal bearing No. FPA-PMLA- 3121/DLI/2019. We do not find a reference of sale of the mutual funds by the Respondent during the pendency of the said application thus Counsel for the Appellant has made mis-statement of facts at bar. Reference of encashment of the mutual funds by the I.O. cannot be treated as a sale. We otherwise find that encashment of mutual funds in the said case was prior to an order of the status quo by the Tribunal. By virtue of status quo, the Tribunal could have passed an order of status quo ante. We otherwise find facts of that case to be peculiar in the light of the order passed by the Special Court. Since there is no element of sale of mutual funds in this

case, we do not find any ground for an interim order. It is more so when the property is attached, it cannot be transferred or alienated by either of the parties thus for all the reasons, application for interim relief is dismissed with the cost of Rs. 5,000/- (Rupees Five Thousand Only) for making mis-statement of facts before the Tribunal. The cost would be deposited within two weeks."

4. The said order has been challenged in the instant appeal.

5. When the present appeal came up for hearing on 22.05.2024 regarding how the mutual funds and shares would be kept in possession of the Enforcement Directorate (ED), this Court on 22.05.2024, passed the following Order:-

> *"1. Counter affidavit has been filed on behalf of Director of Enforcement.*
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> *2. Paragraph 4 of the counter affidavit refers to Rule 4(4) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority), Rules, 2013, and reads as under:-*
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> > *"4. Manner of taking possession of movable property-(1)... (2)... (3)... (4) Where the attached property conformed by the Adjudicating Authority is in the form of shares, debentures, units of mutual fund or instruments, the authorized officer shall cause to get such shares, debentures, units of Mutual Fund or instruments to be transferred in favour of Director of Enforcement."*
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> *3. As per the affidavit of respondents, the manner of taking possession of attached property, which is in the form of shares, debentures, units of mutual fund or instruments, the authorized officer is to cause to get*

such shares, debentures, units of mutual fund or instruments transferred in favour of Director of Enforcement. The affidavit further states that the respondent department shall transfer the said mutual funds in its name in accordance with the said Rules.

4. Learned counsel for petitioner submits that in the past, the mutual funds were not merely transferred in favour of Director of Enforcement but were liquidated and the sale proceeds of such mutual funds were transferred to the account of Director of Enforcement, which is contrary to the Rules cited by the respondents themselves. He states that without prejudice to his rights and contentions, he would have no objection in case the subject shares and mutual funds are transferred in the name of Director of Enforcement subject to further orders and in case the petitioner succeeds, the same are transferred back to the petitioner.

5. Learned counsel for respondents prays for some time to take instructions.

6. List on 25.07.2024.

7. In the meantime, as stated in the affidavit of respondents, respondents may without prejudice to the rights and contentions of the parties, cause the shares and mutual funds to be transferred in favour of Director of Enforcement, however, the same shall not be liquidated till the next date of hearing. "

(Emphasis supplied)

6. Learned Counsel for the Enforcement Directorate states that in view of the submissions made by the learned Counsel for the Appellants that the Appellants should not have any objection in case the subject shares and

mutual funds are transferred in the name of ED, subject to further orders and in case the Appellants succeed, the same shall be transferred back to the Appellants.

7. Learned Counsel for the Appellants states that though on 22.05.2024 he had given consent, in law, the ED cannot transfer those shares and mutual funds in their name as it would amount to depriving the Appellants of the property, which would not be permissible.

8. This Court, at this juncture, is not inclined to accept the submission of the learned Counsel for the Appellants for the reason that Rule 4(4) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority), Rules, 2013, specifically permits that where the attached property is confirmed by the Adjudicating Authority is in the form of shares, debentures and units of mutual fund or instruments, then the authorized officer shall cause to get such shares, debentures, units of mutual fund or instruments to be transferred in favour of Director of Enforcement.

9. However, in order to ensure that the interest of both sides are protected, this Court directs as under:-

i. Lien shall be marked in favour of ED on the subject Mutual Fund units which are in physical form belonging to the Appellants.

ii. The Asset Management Company (AMC) is directed to hold on to the units, till an order to the contrary is passed in appeal or trial under the PMLA.

iii. The Counsel for the Appellants shall give an undertaking before this Court on affidavit that the subject Mutual Fund units shall not be alienated, transferred, nor any charge or encumbrance on the same shall be created by the Appellants till further orders.

iv. Insofar as the mutual funds in the demat form lying in the name of the Appellants are concerned, the same shall be transferred in the name of ED in terms of Rule 4(4) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority), Rules 2013. The said mutual fund units shall not be sold or liquidated by the ED and will be held by ED subject to final outcome of the appeal pending before the Tribunal.

10. It is made clear that this order has been passed in the peculiar facts and circumstances of this case and the question of law is kept open.

11. This order would be in force till the conclusion of main trial in the PMLA proceedings.

12. The cost of Rs.5,000/- imposed on the Appellants by the Appellate Tribunal is set aside.

13. With these observations, the appeal is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

MAY 26, 2025
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