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

+ W.P.(C) 5391/2025

SUMIT AGARWAL & ANR.

.....Petitioners

Through: Mr. Shubhankar Jha, Adv.

versus

ASSISTANT DIRECTOR, ENFORCEMENT DIRECTORATE

.....Respondent

Through: Mr. Rahul Tyagi, SC for ED
alongwith Mr. Karan Grover, Mr.
Priyansh Raj and Mr. Aniket Kumar
Singh, Advocates for ED.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

28.07.2025

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1. The present petition has been filed by the petitioners being aggrieved by the seizure order dated 01.03.2022 passed by the respondent / Directorate of Enforcement under Section 37A(1) of Foreign Exchange Management Act, 1999 (hereinafter referred to as "*FEMA, 1999*") in file bearing F.No. T3/CEZO-I/59/2020.
2. It transpires during the course of hearing that the said seizure action has been approved by the competent authority as contemplated under Section 37A(3) of the FEMA, 1999 *vide* order dated 17.08.2022 in Petition No. 08/2022. Further, the petitioner no. 1 has already taken recourse to the appellate remedy with regard thereto by filing an appeal bearing no. FPA-FE-74/CHN/2022 before the concerned appellate tribunal.
3. The grievance of the petitioners is that the concerned adjudicating authority has not complied with the provision of Section 37A(4) of the



FEMA, 1999,¹ in as much as it has not issued appropriate directions as regards “further action as regards seizure made under sub-section (1)”. It transpires during the course of hearing that an application (attached as Annexure-8 to the present petition), raising this grievance viz. has been filed by the petitioner no. 1 on 24.07.2024 in his appeal FPA-FE-74/CHN/2022, pending before the concerned appellate tribunal, which is presently seized of the matter.

4. In the circumstances, the present petition is disposed of with a request to the respective appellate authority to bestow its urgent consideration to the

¹ “37A. Special provisions relating to assets held outside India in contravention of section 4.—

(1) Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

(2) The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.

(3) The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

Explanation.—While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

(4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under sub-section (1).

(5) Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.

(6) Nothing contained in section 15 shall apply to this section.”



aforesaid application of the petitioner and dispose of the same as expeditiously as possible, preferably within a period of 3 months from today.

5. Needless to say, the same shall subject to legal rights and remedies of the parties.

6. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

JULY 28, 2025/at