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

Date of decision: 19th SEPTEMBER, 2023

IN THE MATTER OF:

\+ **LPA 167/2023 & CM APPL. 11254/2023**

GOLD CROFT PROPERTIES PVT LTD ..... Appellant

Through: Mr. Vijay Aggarwal, Mr. Shekhar Pathak, Mr. Mukul Malik and Mr. Pankush Goyal, Advocates.

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Zoheb Hossain, Mr. Ravi Prakash, Ms. Astu Khandelwal and Mr. Vivek Gurnani, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Appellant seeks to challenge the Judgment dated 20.02.2023 passed by the learned Single Judge in W.P. (C) 2191/2023 upholding the Order dated 25.01.2023 passed by the Adjudicating Authority under the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as 'PMLA'*) disposing of an application filed by the Appellant herein wherein the Appellant had prayed for deferment of the proceedings before Adjudicating Authority on the ground that the Bench at that point of time suffered from *"coram non-judice"* as no Adjudicating Authority had been

constituted in terms of Section 2 (a) read with Section 6 (1) and (2) of the PMLA, 2002.

2. The facts as stated by the Appellant in the writ petition are that the State Bank of India lodged a complaint on 25.08.2020 alleging that the accused had committed diversion of funds for the purposes other than the funds were availed from the State Bank of India. An FIR bearing No. RC2232022A0002 dated 07.02.2022 was registered by CBI for the commission of the alleged offence under Section 409, 420 r/w Section 120-B of IPC, 1860 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. It is stated by the learned Counsel for the Appellant that the Appellant was not named as an accused in the aforesaid FIR. The Respondent/Enforcement Directorate (ED) registered an ECIR bearing No. ECIR/AMZO/11/2022 dated 15.02.2022 against the Appellant and other accused persons. A Provisional Attachment Order bearing No.08/2022 dated 21.09.2022 was passed under Section 5(1) of the PMLA, 2002. Original Complaint bearing No.1824/2022 was filed by the Respondent/Enforcement Directorate on 19.10.2022 before the Adjudicating Authority for adjudication of the complaint and for passing Orders by confirming the Provisional Attachment Order (PAO).

4. It is also stated by the Petitioner that a chargesheet has been filed by the CBI with respect to the predicate offence before the Ld. Special Judge, Rouse Avenue District Court, New Delhi. The Petitioner, thereafter, filed an application, from which the instant proceedings arise, before the Adjudicating Authority contending that:

(1) the quorum of the Adjudicating Authority is not functional in terms of Section 2 of the PMLA, 2002;

(2) that the Petitioner has not been supplied with a copy of 'Reasons to Believe' by the Respondent/Enforcement Directorate because of which the Provisional Attachment Order has been passed under Section 5(1) of the PMLA. The said application was rejected by the Adjudicating Authority by an Order dated 25.01.2023.

The said Order dated 25.01.2023 was challenged by the Appellant herein by filing a writ petition i.e., W.P. (C) 2191/2023 before this Court by contending, *inter alia*, that (a) the petitioner was not given any hearing in the application which had been rejected by the Adjudicating Authority *vide* Order dated 25.01.2023 which is contrary to the principles of natural justice; and (b) the said application could not have been heard by the Chairperson sitting singly as the Bench was not in consonance with the provisions of PMLA, 2002. The learned Single Judge dismissed the writ petition on the grounds that (a) the Petitioner ought to have approached the Appellate Tribunal under Section 26 of the PMLA and a writ petition is not the remedy; (b) under Section 6(5)(b) of the PMLA, a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two members as Chairperson and it is possible to have a single Member Bench; and (c) Section 6(7) of the PMLA does not contemplate an application being moved by a party to seek constitution of a two Member Bench and if such an application is permitted, it may lead to a situation where a Party/entity will in every case move an application for constitution of such a Bench merely to delay the proceedings. It is this Judgment dated 20.02.2023 passed by the learned Single Judge which is under challenge in the present appeal.

5. Mr. Vijay Aggarwal, learned Counsel for the Appellant, submits that the Appellant had moved an application under Section 6(7) of the PMLA

contending that the matter is of such a nature that it ought to be heard by a Bench consisting of two members. He further contends that the application ought not to have been decided without affording a hearing to the Appellant.

6. The present appeal came up for hearing before this Court on 07.03.2023 and same was reserved for pronouncement of Judgment. However, certain clarifications were required and the matter was again placed for hearing on 05.04.2023, 11.04.2023 and on 12.04.2023, the matter was reserved for pronouncement of Judgment.

7. Section 5 of the PMLA postulates that where the Director or any other officer not below the rank of Deputy Director authorised by the Director, on the basis of material on possession has reason to believe which has to be recorded in writing that any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings, he may, by order in writing, provisionally attach such property for a period not exceeding 180 days from the date of the order.

8. This Court has perused the Provisional Attachment Order bearing dated 21.09.2022 and the complaint dated 25.08.2020. The PAO has considered the FIR registered by the CBI, written complaint dated 25.08.2020 given by the Bank, Forensic Audit Report prepared by the Ernst and Young LLP, the ECIR recorded by the ED, statements given by about 42 persons and various other documents and the material on record. The Provisional Attachment Order also meticulously contains the details of diversion of funds by the accused which are proceeds of crime. A perusal of the Provisional Attachment Order clearly brings out the details of properties purchased in the name of the Appellant by using the funds of the accused. This Court, at this Juncture, is desisting from noting the several instances

where the name of the Appellant figures in the Provisional Attachment Order and the purchase of properties by the Appellant by using the diversion of funds of the accused as it can affect the rights of the Appellant in the proceedings under the PMLA. The Provisional Attachment Order passed by the Deputy Director gives in detail the "reason to believe" that the Appellant is in possession of the proceeds of crime and such proceeds of crime have concealed, transferred or dealt with in a manner which can result in frustrating any proceedings under the PMLA. The particulars of the Provisional Attachment Order also forms a part of the complaint before the Adjudicating Authority for confirming the PAO under Section 8 of the PMLA.

9. A perusal of the Provisional Attachment Order and the complaint shows that the PAO itself contains all the reasons with the competent authority to believe that the properties which have been purchased in the name of the Appellant by using the funds of the accused are proceeds of crime, and therefore, the substantive satisfaction arrived at by the authority under Section 5 of the PMLA does not warrant any interference under Article 226 of the Constitution of India. The PMLA does not postulate a separate 'reason to believe' for each of the property which stands attached under the in the Provisional Attachment Order under Section 5(1) of the PMLA.

10. Section 6 of the PMLA deals with the composition of the adjudicating authority and powers of the Adjudicating Authority. Section 6(2) of the PMLA provides that an Adjudicating Authority shall consist of a Chairperson and two other Members.

11. The question, therefore, as to whether there can be a Bench consisting of a Single Member is no longer a *res integra* and has been settled in a

Judgment dated 11.01.2018 passed by the Division Bench of this Court in a batch of petitions i.e., **W.P. (C) 5320/2017 etc**. in the case of J Sekar vs. Union of India & Ors etc. Paragraph Nos.79 and 80 of the said Judgment reads as under:

> *"79. The Court next takes up the question of the composition of the AA on which extensive arguments were advanced by the learned counsel for the Petitioners. In this context, it must be noticed that under Section 6 PMLA, the AA is supposed to consist of the Chairperson and two other members – one of whom shall be a person having experience in the field of law. Section 6(3) further sets out what the qualifications for appointment as a member of an AA should be. One of those qualifications is that the person has to be qualified for appointment as a District Judge or a person in the field of law or a member of an Indian Legal Service. The other qualification is possession of a qualification in the field of finance, accountancy or administration as may be prescribed. It is, therefore, not the case that all the members of the AA should be judicial members.*
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> *80. It is seen that under Section 5 PMLA, the jurisdiction of the AA —may be exercised by the Benches thereof'. Under Section 6(5)(b) PMLA, a Bench may be constituted by the Chairperson of the AA "with one or two members" as the Chairperson may deem fit. Therefore, it is possible to have single-member benches.* ***The word 'bench' therefore does not connote plurality. There could, even under Section 6(5)(b) PMLA, be a 'single member bench'. When Section 6(6) PMLA states that a Chairperson can transfer a member from one bench to another bench, it has to be understood in the above context of there also being single-member benches****."*
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> (emphasis supplied)

12. In view of the above, the application filed by the Appellant that the quorum of the Adjudicating Authority was not complete cannot be accepted.

13. Section 6(7) of the PMLA provides if at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

14. A perusal of the Order of the Adjudicating Authority shows that at the time when the application of the Appellant was considered by the learned Chairperson, the case was only at a nascent stage. Further, a perusal of the material on record and the application filed by the Appellant does not indicate that the issue involved at that stage was of such a nature that it ought to be heard by a Bench of two Members. Section 6 does not postulate filing any application for reference to a larger Bench. When the adjudication under Section 8 of the PMLA commences and during the hearing of the matter if the Chairperson sees that the matter is of such a nature that it should be heard by a Bench of two Members then the Chairperson needs to constitute a two Member Bench.

15. In fact, it has rightly been noted by the learned Single Judge that the application itself was not maintainable. Further, the Judgment of the learned Single Judge discloses that the matter was ready for final hearing before the Adjudicating Authority, and therefore, this Court is of the opinion that no interference is required at this juncture.

16. Section 26 of the PMLA provides for an appeal before the Appellate Tribunal against any Order passed by the Adjudicating Authority. There was a fully functional Appellate Tribunal at the time when the Order dated

25.01.2023 was passed by the Adjudicating Authority, and therefore, the writ petition was not maintainable before the learned Single Judge.

17. The Apex Court in Commissioner of Income Tax and Ors vs. Chhabil Dasss Agarwal, **(2014) 1 SCC 603** has observed as under:

> *"**13.** In Nivedita Sharma v. Cellular Operators Assn. of India [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp. 343-45, paras 12-14)*
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> *"12. In Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)*
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> *'7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'*
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> *13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11)*

'11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

"... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd. [1935 AC 532 (PC)] and Secy. of State v. Mask and Co. [(1939-40) 67 IA 222 : (1940) 52 LW 1 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.'

14. In Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

'77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and

curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'"

(See G. Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : AIR 1952 SC 192] , CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , Ramendra Kishore Biswas v. State of Tripura [(1999) 1 SCC 472 : 1999 SCC (L&S) 295] , Shivgonda Anna Patil v. State of Maharashtra [(1999) 3 SCC 5] , C.A. Abraham v. ITO [AIR 1961 SC 609 : (1961) 2 SCR 765] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons [1992 Supp (2) SCC 312] , Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] , Tin Plate Co. of India Ltd. v. State of Bihar [(1998) 8 SCC 272] , Sheela Devi v. Jaspal Singh [(1999) 1 SCC 209] and Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569] .)

***14.** In Union of India v. Guwahati Carbon Ltd. [(2012) 11 SCC 651] this Court has reiterated the aforesaid principle and observed: (SCC p. 653, para 8)*

"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta [(1979) 3 SCC 83 : 1979 SCC (Tax) 205] . In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23)

'23. ... [when] a revenue statute provides for a person aggrieved by an assessment thereunder, a

particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.'"

15. *Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*

16. *In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial*

> *relief. In Ram and Shyam Co. v. State of Haryana [(1985) 3 SCC 267] this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.*

18. In view of the above, the writ petition before the learned Single Judge was itself not maintainable.

19. This Court is of the opinion that the Judgment of the learned Single Judge confirming the Order dated 25.01.2023 passed by the Adjudicating Authority does not warrant any interference by this Court.

20. Resultantly, the LPA is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

SEPTEMBER 19, 2023
S. Zakir