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

Date of Decision: 20th February, 2023

+ **W.P.(C) 2191/2023 and CM APPL. 8329/2023, 8330/2023**

M/S GOLD CROFT PROPERTIES PVT. LTD. Petitioner

Through: Mr. Vijay Aggarwal, Advocate.

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. Zoheb Hossain, Counsel for
Directorate of Enforcement, Mr.
Ravi Prakash, CGSC with Mr.
Vivek Gurnani, Mr. Kavish Garach,
Mr. Farman Ali and Mr. Yash
Agarwal, Advocates. (M:
9769842146)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

CM APPL.8330/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 2191/2023 & CM APPL.8329/2023

3. The present petition challenges the impugned order dated 25th January, 2023 passed by the Appellate Authority (*hereinafter* 'AA') under the Prevention of Money Laundering Act, 2002 (*hereinafter* 'PMLA'). By the impugned order, the Appellate Authority has rejected an application filed by the Petitioner seeking transfer of the proceedings to a bench in terms of Section 6(7) of the PMLA.

4. A provisional attachment order dated 21st September, 2022 was

passed against the Petitioner by the Directorate of Enforcement (*hereinafter* 'ED') through which various properties and other assets of the Petitioner were attached. The matter was pending before the Appellate Authority, at which stage, the Petitioner moved an application seeking that the case ought to be transferred to the bench consisting of two Members under Section 6(7) of the PMLA and the same has been rejected by the impugned order dated 25th January, 2023, which is under challenge in this petition.

5. The submissions of Mr. Aggarwal, Id. Counsel for the Petitioner are as under.

- i. The present writ petition is maintainable before this Court as the Appellate Authority is located in Delhi and is under broad superintendency of this Court.
- ii. Though the Appellate Authority can consist of one member, however whenever an application under Section 6(7) is moved, the same would have to be considered only by two members.
- iii. The application was rejected without affording an oral hearing.
- iv. The alternate remedy before the Appellate Authority would not be efficacious remedy as there has been a violation of principles of natural justice.

6. Mr. Aggarwal, Id. Counsel relies upon the provisions of the Act, especially Section 6 of PMLA as also the decisions of this Court in *W.P.(C) 6354/2022* titled *M/s. Incred Financial Services Ltd. v. Deputy Director, Directorate of Enforcement dated 2nd June, 2022* and *W.P.(C) 37/2009* titled *Smt. Malini Mukesh Vora v. Union of India & Ors. dated 03rd July, 2009*. It is his further submission that even in *W.P.(C) 5320/2017* titled *J Sekar v. Union of India & Ors., dated 11th January, 2018*, a Division

Bench of this Court has clearly held that the location of the Appellate Authority would be relevant for entertaining the writ petition before this High Court.

7. Finally, reliance is placed by Id. counsel on the judgment dated 1st February, 2023 of the Supreme Court in *W.P.(C) 5393/2010* titled '*M/s. Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority & Ors.*', to argue that only when there is a question of law involved, the matter ought to be decided by the High Court instead of dismissing the writ petition on the ground of the availability of an alternate remedy. It is urged that there has been a violation of the principles of natural justice due to the fact that the application for transfer to a bench consisting of two Members under Section 6(7) of the PMLA was not heard.

8. On behalf of the Respondent, Mr. Zoheb Hossain, Id. Counsel for the Respondent relies upon the decision in *J. Sekar (supra)* to argue that in the said judgment, it has been clearly held that the bench of the Appellate Authority consisting of one member can hear the proceedings under the PMLA Act. It is his submission that this position has been confirmed and reiterated in order dated 12th September, 2022 in *W.P. (C) 12243/2022* titled *Alaknanda Realtors Pvt Ltd and Ors. v. Deputy Director, Directorate of Enforcement*. He finally relies upon the decision of this Court in *Sanjay Jain v. Directorate of Enforcement, 2023/DHC/000078* and *Dr. U.S. Awasthi v. Adjudicating Authority PMLA & Anr., 2023/DHC/000265* to argue that the Petitioner ought to be relegated to the Appellate Tribunal.

9. The Court has heard the Id. Counsel for the parties.

10. On the first aspect, i.e., territorial jurisdiction of this Court, the judgment in *J Sekar (supra)* clearly covers the issue. The Adjudicating

Authority is located in Delhi and in terms of the ratio in *J Sekar (supra)*, this Court has the jurisdiction to entertain the present petition. The relevant extract of the judgement in *J Sekar (supra)* is extracted as under:

38. *There is a preliminary objection raised by the Union of India in some of these petitions as to their maintainability on the ground that no cause of action has arisen within the jurisdiction of this Court.*

39. *The Court does not agree with the Union of India on this aspect because of the judgment of five Judges of this Court in Sterling Agro Industries v. Union of India, 2011 (124) DRJ 633. In that decision, the five-judge Bench of this Court affirmed the Full Bench decision in New India Assurance Company Limited v. Union of India MANU/DE/0868/2009 : AIR 2010 Del 43 (FB) after noting that the Full Bench had held that: "...as the appellate authority is situate in New Delhi, the Delhi High Court has the jurisdiction under Article 226 of the Constitution of India and, therefore, there was no occasion for the learned Single Judge to apply the principle of forum non conveniens to refuse exercise of jurisdiction".*

40. *The five-judge Bench in Sterling Agro Industries v. Union of India (supra), inter alia, held:*

"(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd.. v. State Bank of Sikkim, (2007) 11 SCC 335. (c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The

High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens."

41. In the present cases, with the AA being located in New Delhi, it cannot be said that no part of the cause of action has arisen within the jurisdiction of this Court. Therefore, the Court disagrees with the Union of India as regards the above submission. Moreover, as far as the scope of the present proceedings is concerned, since it involves pure questions of law that arise in all of these petitions, in some of which the Union of India has not raised any preliminary objection as to maintainability, this Court is of the view that the preliminary objection should not come in the way of the Court deciding those questions of law.

11. Insofar as the issue of alternate remedy before the Appellate Tribunal constituted under the PMLA is concerned, the power of the Appellate Tribunal as held in *Sanjay Jain (supra)* and *U. S. Awasthi (supra)* is wide. The Tribunal adjudicates appeals arising out of orders passed by the Adjudicating Authority on a daily basis.

12. In the present case, the Petitioner seeks the constitution of a Bench under Section 6(7), consisting of two members at the Adjudicating Authority level for the purpose of deciding the confirmation of the impugned Provisional Attachment order. Section 6(7) of the PMLA reads as under: -

“(7) 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.”

13. A perusal of the said provision would show that it is only at the time of hearing in any matter, if the Chairperson or a member feels that the matter or case is such a nature that it ought to be heard by a Bench of two members, then the Chairperson may assign a two-member Bench for hearing of the said order. In the present case, there has been no opinion expressed by the Adjudicating Authority to the effect that the matter is so complex so as to require a two-member Bench. The Petitioner in this case has moved an application seeking constitution of two-member Bench, the maintainability of which itself could be suspect inasmuch as there has been no opinion expressed by any member of the A that such a Bench is required.

14. In fact, in the opinion of this Court, the proceedings under the PMLA Act in general of such a nature that they involve analysis of both accounts and finances. It, therefore, cannot be said that a bench consisting of one member cannot adjudicate the dispute until and unless a special case is made out for transfer to a bench of two members.

15. A bare perusal of the relevant provision, Section 6(7) of the PMLA would itself reveal that it does not contemplate an application being moved by a party to seek constitution of two-member Bench. If such applications are permitted, it may lead to a situation that in every case, the concerned parties/entity would move an application for constitution of such a Bench merely to delay proceedings. Time is of the essence under the provisions of the PMLA Act and decisions in respect of provisional attachments have to be taken within the prescribed time which is usually 180 days. Under such circumstances, the moving of an application as has been done in the present case would be nothing but a delaying tactic, purely with an intent to delay the matter.

16. The Adjudicating Authority has rejected the application filed by the Petitioner and the matter is now stated to be for final hearing before the Adjudicating Authority. In such a situation, this Court is of the view that an application under Section 6 and 7 would not even be maintainable.

17. In any event, even if the said order of the Adjudicating Authority is to be challenged, an appeal under Section 26 would be the appropriate remedy and not a writ petition. There are no grounds that have been raised in this case for exercise of the extraordinary writ jurisdiction under Article 226.

18. Before parting, this Court would like to add that the AA plays a significant role under the PMLA. This Court takes judicial notice of the fact that there are a large volume of cases pending under the PMLA. The Act contemplates the existence of a Chairperson and other members as per Section 6(2) of PMLA. It also contemplates the constitution of separate Benches. Though, as held in *J. Sekar (supra)* one member can constitute an Adjudicating Authority for the purpose of the Act, there is clearly a dire need for constitution of multiple Benches of the AA to function simultaneously.

19. Accordingly, the Central Government ought to take expeditious steps for appointing Chairperson and other members of the AA within a period of 8 weeks.

20. With these observations, the present petition with all pending applications is disposed of. Needless to add, the present opinion shall not be construed as an opinion on merits.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 20, 2023/dk/am
[Corrected and uploaded on 28th February, 2023]