

2023:DHC:3448

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision:- 15th May, 2023.+ **W.P.(C) 6334/2023 and CM APPL. 24873/2023, 24874/2023**

J.C. FLOWERS ASSET RECONSTRUCTION PRIVATE LIMITED
ACTING IN ITS CAPACITY AS TRUSTEE OF JCF YES TRUST
2022-23/14 Petitioner

Through: Mr. Rajshekhar Rao, Sr. Advocate
with Mr. Chitranshul A. Sinha, Mr.
Jaskaran Bhatia and Ms. Tammana
Malik, Advocates (M: 7042660245).

versus

DIRECTORATE OF ENFORCEMENT, (THROUGH THE DEPUTY
DIRECTOR) & ORS. Respondents

Through: Mr. Zoheb Hossain, Spl. Counsel for
ED, Mr. Kavish Garaich, Ms. Sejal
Aneja, and Mr. Baibhav, Advts. (M:
8375964138).

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner company challenging the impugned order dated 27th January, 2023 passed by the Adjudicating Authority under PMLA Act, 2005 in OC 1794/2022 in PAO No. 14/2022 dated 2nd August, 2022. The question raised in this petition is whether the Adjudicating Authority consisting of only one technical member can hear the cases under the PMLA Act, 2005 and pass attachment orders.
3. Ld. Counsel for the Petitioner has placed reliance on the recent judgment of the Telangana High Court in **W.P.(C) 34238/2022** titled **M/s**

Hygro Chemicals Pharmtek Pvt. Ltd. v. Union of India & Anr., and the batch of judgments. It is the contention of the Id. Counsel for the Petitioner that in the said case the Court has not agreed with the view expressed by the Id. Division Bench of this Court in ***J Sekar v. Union of India & Ors., 2018 SCC OnLine Del 6523***. The argument is that in the said judgement, the Court has held that functions of a body like the Adjudicating authority are quasi-judicial in nature and have trapping of judicial functions and that such such functions can only be decided by a person having legal experience.

4. This Court considered the legal position laid down in ***J Sekar v. Union of India & Ors. (supra)*** which was passed by Id. Division Bench of this Court and has also been followed subsequently in ***WP(C) 12243/2022*** titled ***Alaknanda Realtors Pvt. Ltd. & Ors. V. Directorate of Enforcement*** as also ***Gold Croft Properties Pvt. Ltd v. Directorate of Enforcement 2023/DHC/001436*** and ***Sanjay Jain (IN JC) v. Directorate Of Enforcement, 2023/DHC/000078***. Admittedly, the order which is under challenge is a final attachment order which has been passed by the Adjudicating Authority.

5. Mr. Hossain, Id. Sr. Standing Counsel submits that an appeal has been filed by the Aggrieved person before the Tribunal. Mr. Rao, Id. Sr. Advocate, on the other hand, submits that the Petitioner was not given an opportunity and there was a violation of principles of natural justice.

6. The court has heard both Id. Counsels for both the parties. This Court has already taken the view that under Section 26 of PMLA Act, any person aggrieved by an order is entitled to approach the Appellate Tribunal. The relevant portion of the judgement dated 4th January, 2023 in ***Sanjay Jain (IN JC) v. Directorate Of Enforcement, 2023/DHC/000078*** is set out below:-

“7. Heard. Admittedly, Sh. Pankaj Jain and Sh. Sanjay Jain are brothers. They own equal shares in the properties listed above. The ED is seeking eviction of the occupants from the properties, qua the share of Sh. Pankaj Jain, but the same are under occupation of the family of Sh. Sanjay Jain or tenants. The appeal filed by Sh. Pankaj Jain against whom the attachment order has been finally confirmed, is presently pending before the Appellate Tribunal constituted under Section 25 of PMLA.

8. Appeals to the PMLA Appellate Tribunal are provided for in Section 26 of PMLA. Section 26 of PMLA reads as:

26. Appeal to Appellate Tribunal.

*(1) Save as otherwise provided in sub-section (3), the Director or **any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.***

(2) Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the 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.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the

concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

9. A perusal of Section 26 of the Prevention of Money Laundering Act, 2002 shows that orders of attachment passed by the Adjudicating Authority are appealable to the Appellate Tribunal at the instance of 'any person aggrieved'. In the opinion of this Court, Sh. Sanjay Jain who is the Petitioner before this Court would also be a 'person aggrieved' who would be entitled to approach the Appellate Tribunal and challenge the attachment order or object to the impugned notices issued pursuant to the attachment order. “

7. In the recent decision of the Supreme Court in **M/S. South Indian Bank Ltd. & Ors. v. Naveen Mathew Philip, 2023 SCC OnLine SC 435** the Court has observed that the statutory mechanism needs to be followed and writ jurisdiction ought to be exercised with caution. The relevant extract of the judgement in **M/S. South Indian Bank Ltd. (supra)**, is extracted below:

“13. In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute. We are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a regular supply of cases before this Court. One such High Court is that of Punjab & Haryana.

14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel. We wish to place reliance on the decision of this Court in *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, (1955) 1 SCR 1104.

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16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. **When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative.** We wish to quote with profit a recent decision of this Court in *Radha Krishan Industries v. State of H.P.*, (2021) 6 SCC 771.

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18. **While doing so, we are conscious of the fact that the powers conferred under Article 226 of the**

Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

8. Accordingly, the opinion of the Court is that the Petitioner who claims a beneficial interest in the property ought to approach the Appellate Tribunal under Section 26 of the Act. At this stage, Id. Counsel for the Petitioner submits that he may be permitted to approach the Appellate Tribunal.

9. Accordingly, the petition is dismissed as withdrawn with liberty to approach the Appellate Tribunal constituted under Section 26 of the PMLA Act. It is made clear that this Court has not considered the merits of the matter.

MAY 15, 2023
mr/am

PRATHIBA M. SINGH
JUDGE