

(2023) 08 ATPMLA CK 0003

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-3234/KOL/2017, FPA-PMLA-1690/KOL/2017

Indian Bank

APPELLANT

Vs

Joint Director, Directorate Of
Enforcement, Kolkata

RESPONDENT

Date of Decision: Aug. 17, 2023

Acts Referred:

- Prevention Of Money Laundering Act, 2002 - Section 26

Hon'ble Judges: G. C. Mishra, Member; Rajesh Malhotra, Member

Bench: Division Bench

Advocate: Brijesh Kumar Tamber, Vinay Singh Bist, Prateek Kushwaha, N K Matta, Mehul Prasad

Final Decision: Disposed Of

Judgement

MP-PMLA-3234/KOL/2017 (COD) IN FPA-PMLA-1690/KOL/2017

1. The aforesaid appeal has been filed u/s 26 of the Prevention of Money Laundering Act, 2002 (PMLA, 2002) on 06.03.2017 against the impugned order dated 01.06.2015 passed by the Ld. Adjudicating Authority (AA) under PMLA, 2002 with following prayers :-

- To quash/set aside the impugned order dated 01.06.2015 passed by the Ld. Adjudicating Authority in OC No. 411/2015 to the limited extent wherein the said orders provide for the attachment of RIP (TDR A/C No. 979966481 in the name of Seashore Denkanal and Angul Multipurpose Co-operative Ltd./Respondent No.6) for an amount of Rs.100.00 lakhs which was opened on 06.09.2011 at the Patia Branch, Bhubaneshwar of the applicant bank with a maturity value of Rs.1,09,57,583.00 as on dated 06.09.2012.
- Remand the matter back to the Ld. Adjudicating Authority to pass a fresh reasoned order after giving notice and opportunity to the applicant herein or
- Pass any other order/direction, which may be deemed fit in circumstances of the present case. Alongwith appeal an application for condonation of delay (CoD) has been filed to condone the delay of 597 days in filing the appeal on the grounds in the appeal and application for CoD.

2. It is contended in the memo of appeal and the application for CoD that the applicant was not made a defendant before the Ld. AA and that the applicant was not aware of the said proceedings and that the applicant Bank came to know about the said proceedings/impugned order when a letter dated 04.08.2015 sent by the respondent ED, received by the applicant Bank on 07.08.2015. The other grounds of the applications are mentioned in para Nos. 4 to 15.

3. During the course of hearing, it is submitted by the applicant Bank that the property mortgaged with the Bank has been attached without hearing the appellant and that there is bona fide mistake on the part of the counsel on account of mis-communication and there are other factors mentioned in the application, which contributed towards the delay in filing the appeal. It was also submitted that the connected matters filed by the borrower of the applicant Bank are still pending before this Tribunal and that the applicant Bank will be prejudiced and there will be irreparable loss and injury if the delay is not condoned.

In the circumstances, it is prayed by the Ld. Counsel for the applicant Bank to condone the delay.

4. On the other hand, reply to the CoD has been filed by the respondent wherein dismissal of the CoD application is sought raising objections for condonation of delay, *inter alia*, stating that the Ld. AA has despatched the impugned order on 01.06.2015 as per their record and that the delay is intentional and deliberate to frustrate the very objective for attachment of property under PMLA, 2002.

5. Heard both sides and perused the materials available on record. It is seen from the record that the applicant Bank has advanced over draft facility to a tune of Rs.90 lacs against the pledge of TDR No.979966481 for Rs.100.00 lakhs standing in the name of Seashore Dhenkanal & Angul Multi-Purpose Co-operative Ltd., at Ganesh Bazar, Post and District Dhenkanal, Odisha. The overdraft facility was enhanced to Rs.97 lakhs on the request of the aforesaid borrower and that the aforesaid deposit of Seashore Dhenkanal & Angul Multi-Purpose Co-operative Ltd. has been attached as proceeds of crime by the respondent ED by way of Provisional Attachment Order (PAO) and confirmation of same was made by the Ld. Adjudicating Authority and that due to the Bank has been increased to Rs.1,63,89,441/- as on 10.12.2017.

On perusal of the impugned order, it is seen that the respondent has made 33 defendants as party, wherein the present applicant Bank is not a party.

6. It is important to note that if the application is not allowed then the applicant Bank would suffer irreparable loss and injury. At the same time there is an admitted huge delay of 597 days in filing the appeal. To advance substantial justice to the case and in the interest of justice the appeal is required to be heard on merit.

Accordingly, considering the grounds mentioned in the appeal/application and the facts and circumstances of the case including the pendency of the connected appeals, the present application of CoD is allowed in the interest of justice, equity and good conscience, subject to payment of cost of Rs.30,000/- to be paid to the respondent ED within six weeks.

7. The application for CoD is accordingly disposed of and the appeal is taken on record, subject to payment of cost of Rs.30,000/- within six weeks.

Pronounced in open Court.

List the appeal for further proceedings on