

Deputy Director Directorate Of Enforcement Vs Kamal Mehta & Ors.

Court: Appellate Tribunal Under Prevention Of Money Laundering Act

Date of Decision: Dec. 12, 2023

Hon'ble Judges: Munishwar Nath Bhandari, Chairman; Rajesh Malhotra, Member

Bench: Division Bench

Advocate: Chandra Prakash, Somi Sharma, Malak Bhatt, Neha Nagpal, Samridhi, Aditya Wadhwa, Shivansh Aggarwal, Sarthak Sharma

Judgement

Heard the application for vacation of the stay order dated 25/03/2021. The application has been filed by the respondent no. 4 M/s G.D. Goenka Pvt.

Ltd.

The learned counsel for the respondent no. 4 submits that Adjudicating Authority has passed a detailed order denying confirmation of the attachment

of fixed deposit of Rs. 40 lakhs in the hands of respondent no. 4. It is precisely for the reasons that the commission of offence by respondent no. 1 to

3 was in the year 2012 to 2014 whereas the amount of Rs. 40 lakhs was paid by M/s Kushal Education Trust to the respondent no. 4 in the year 2011,

that is prior to the commission of offence. Thus the amount aforesaid could not have been taken towards the proceeds of crime and accordingly,

confirmation of the attachment of the FD of respondent no 4 was denied. Looking to the merit of the case, the Tribunal ought not to have been passed

an interim order. An application was filed to seek its vacation. The respondent no. 4 would otherwise suffer because he cannot use the amount of FD

during the pendency of the appeal. Therefore, the interim order may be vacated. It is more so when the ex-parte interim order was passed without

touching the merit of the case.

It is also stated that amount of Rs. 40 lakhs paid by M/s Kushal Education Trust in the year 2011 was as advance. The remaining amount of 40 Lakhs

was to be paid thereupon but M/s Kushal Education Trust failed to perform their part of obligation thus amount of 40 lakhs was forfeited on the expiry

of period of three years when its recovery became im-permissible in the hands of M/s Kushal Education Trust. The prayer is accordingly to accept

the application.

The application has been contested by the appellant department. It is submitted that M/s Kushal Education Trust and Jodhpur National University

were involved in issuing fake and forged certificates to the students all over India to grab huge amount. The advance was paid for franchise of various

schools which includes franchise of respondent no. 4 -M/s G.D. Goneka Pvt. Ltd. M/s Kushal Education Trust did not execute any agreement with

the respondent no. 4 rather it was only an MOU having no clause for forfeiture. Thus amount of 40 lakhs was attached towards the value of proceeds

of crime generated by the accused. However, the Adjudicating Authority has taken MOU to be a contract and therefore did not endorse the forfeiture

of Rs. 40 lakhs without there being a clause for forfeiture of amount thus appellant department attached the said amount. In view of the above, the

appeal was preferred to challenge the order of the Adjudicating Authority. The Tribunal passed an interim order after hearing the appellant

department and finding that if the interim order is not passed, the amount would be withdrawn by the respondent no. 4 rendering the appeal as

infructuous. Therefore to protect the substance of the appeal, an order of *Interim Status-Quo* was passed. The FD is lying with the respondent no. 4

and earning interest thus no prejudice is caused to them. The prayer is to dismiss the application.

We have considered the rival submissions of the parties and perused the record. It is a fact that this Tribunal passed an interim order on 25/03/2021 to

direct the parties to maintain *Interim Status-Quo* for the amount so attached by the appellant department. The Tribunal found that if stay order is not

passed then the amount of FD may be withdrawn or dealt with leaving no amount in the account. In that case, it would frustrate the appeal and

accordingly interim order was passed.

The counsel for the respondent no. 4 has referred to the merit of the case and submitted that proceeds of crime in the hands of respondent no. 1 to 3

was generated in the year 2012 to 2014 whereas advanced paid to the respondent no. 4 by M/s Kushal Education Trust is in the year 2011 and

therefore, the Adjudicating Authority rightly denied confirmation of the attachment of FD for a sum of Rs. 40 lakhs.

It is to be clarified that it not that proceeds of crime alone can be attached but it can be an equivalent amount if proceeds are not available with the

accused and in that case period of commission of crime would not be relevant.

This Tribunal was not intend to enter into the merit of the case at this stage as it may affect the parties at the time of final hearing but on the

insistence of counsel for the respondent no. 4, we are recording our reasons for passing this order. We find that there was no agreement between M/s

Kushal Education Trust and the respondent no. 4 rather it was only a MOU for giving franchise of M/s G.D. Goenka Pvt. Ltd. It is also a fact that

there was no clause for forfeiture of the amount of 40 lakhs given in advance to the respondent no. 4. If we go with the consequence of the aforesaid,

the amount was returnable to M/s Kushal Education Trust. There was no question of forfeiture and it could not have been prior to expiry of period of

3 years which is said to be a period to initiate the proceedings for recovery. The appellant said to have forfeited the amount of 40 lakhs prior to expiry

of 3 years and in fact no forfeiture took place. There exist no formal agreement between the parties subsequent to the MOU. We are not recording

our final opinion but if consequences to follow, the amount should have gone back to M/s Kushal Education Trust and as serious allegation exists

against the said trust for issuing fake certificates to the students and money received out of it was laundered, attachment of FD was made.

In view of the above, we find no reasons to vacate the interim order which otherwise may result in making the appeal infructuous because after

vacation of the order, the respondent no. 4 may withdraw the money or use it keeping no amount in the F.D. Accordingly, we find that Tribunal was

justified in passing the interim order. It is otherwise a fact that FD is lying with the respondent no. 4 itself and is earning interest on it. Though it is a

fact that they are unable to use the amount lying therein but due to checkered history of the case, we don't find that interim order deserves to be

vacated. Accordingly, application filed by respondent no. 4 is dismissed.

The reply to the appeal has been filed by respondent no. 1, 2 and 3. The respondent no. 4 does not want to file reply to the appeal as they can contest

it by the oral arguments being the first appeal.

In view of the above, let the appeal be listed for final hearing on 18th March, 2024. In the meanwhile, the appellant may file rejoinder within four

weeks, if they so wish. The parties would come prepared for final arguments on the next date of hearing as it would not be adjourned further on the

next date looking to the order of High Court for expeditious disposal of the appeal.