

(2023) 10 ATPMLA CK 0004

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-5509, 5510, 5498, 5499/DLI/2019, 8602/DLI/2021, FPA-PMLA-2808, 2816/DLI/2019

M/S. Food World

APPELLANT

Vs

Deputy Director, Directorate Of
Enforcement

RESPONDENT

Date of Decision: Oct. 19, 2023

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2)
- Indian Penal Code, 1860 - Section 120B, 420
- Prevention Of Money Laundering Act, 2002 - Section 5(1)

Hon'ble Judges: Munishwar Nath Bhandari, Chairman; V. Anandarajan, Member

Bench: Division Bench

Advocate: Gautam Khaanch, Kumar Vaibhaw, Aditya Singla, Sahil Sharma

Judgement

FPA-PMLA-2816 /DLI/2019 & FPA-PMLA-2808/DLI/2019

1. These two appeals have been filed against the common order dated 03.12.2018 passed by the Adjudicating Authority, confirming the provisional attachment order dated 13.06.2018.
2. Since common question of law have been raised in the two appeals, we are deciding it by this judgement.
3. The learned counsel for the appellant submits that a tripartite agreement was entered between the appellant, Indian Railways and IRCTC for catering and service of packaged drinking water in the specified trains.
4. According to the counsel for the appellant, initial agreement was executed on 17.12.2002, with one of the license. The condition was to serve packaged drinking water. The brand name of the packaged drinking water was not mentioned.
5. The contract was extended from time to time. The agreement with new caterer was also executed on the same conditions.
6. There was no condition to supply "Rail Neer", but was packaged drinking water with the approval of the Railway authorities. The last agreement in reference to this case was executed on 07.03.2014. A condition to serve "Rail Neer" was inserted for the first time. The allegation against the appellant is for non-supply of "Rail Neer" despite a mandatory condition of the agreement. It was alleged to be a case of breach of trust by the appellant in connivance with the Railway Officers. The CBI accordingly registered the case not only for the offence under section 420 and 120 B of the Indian Penal Code

but under Section 13 (1) (d) and Section 13(2) of the Prevention of Corruption Act, 1988 (for short, „the PC Act, 1988“). The investigation was caused by the CBI.

7. The ECIR was thereafter recorded followed by investigation. An order of provisional attachment of the bank accounts of appellant was issued by the respondents. It was ignoring that mere violation of the terms of agreement would not lead to criminality, and otherwise there was no proceeds of crime. Thus, a case of money laundering was not made out.

8. The respondents yet passed the order of provisional attachment, though the railway did not endorse a case of criminality so also the loss to the exchequer. They even took opinion of CVC which did not recommend action against the railway officers. The sanction for prosecution was however granted followed by an order of cognizance by the Special Court. The order of cognizance so also the sanction for prosecution remain subject matter of Litigation before Delhi High Court where both the orders were quashed with remand of case to the Competent Authority for afresh consideration of sanction for prosecution.

9. It is also stated that even a Special Appeal has been preferred before the Supreme Court by few accused, where trial has been stayed against those who preferred the appeal.

10. The interim order was passed considering the fact that while an allegation of breach of trust in not supplying the “Rail Neer” has been levelled, the IRCTC was not producing “Rail Neer” to the extent of the requirement rather it was only to the extent of 25% to 30% to the requirement. The appellant had supplied other packaged drinking water mainly for that reason. The Railways reimbursed the amount endorsing the action of the appellant. Ignoring the aforesaid, not only provisional attachment order was passed but confirmed by the Adjudicating Authority.

11. The Adjudicating Authority even failed to consider that the provisional attachment order has been passed without compliance of mandatory condition of Section 5 (1) of the Prevention of Money Laundering Act, 2002, (in short, the Act of 2002). As the compliance of legal provision was not made, there was no reason to confirm the order of provisional attachment.

12. The Adjudicating Authority has passed stereotyped order to confirm the provisional attachment order. It is even without determining the proceeds of crime, if any. The respondents quantified the proceeds of crime by taking cost of packaged drinking water reimbursed at the rate of Rs.15/- per bottle without deduction of the cost of the other packaged drinking water supplied by the appellant. The entire payment was taken to be the proceeds of crime. The respondents failed to take note that in place of “Rail Neer”, the other packaged drinking water was supplied after its purchase from the market.

13. The cost of it was similar to what was paid by the Railways towards packaged drinking water but without deducting the amount incurred by the appellant for the purchase of packaged drinking water, the payment towards the “Rail Neer” has been taken to be the proceeds of crime. This shows non application of mind and therefore prayer is to set aside the orders impugned herein.

14. The learned counsel for the respondents have contested the appeal not only on the facts, but even on legal grounds. The agreement for catering services between the parties entered from time to time. According to the learned counsel for the respondents, the appellant had agreed to supply “Rail Neer” and accordingly agreement was executed but in breach of the terms of agreement, other packaged

drinking water was supplied.

15. The learned counsel for the respondent refuted the statement of learned counsel for the appellant that there was no condition to supply "Rail Neer" and it was for any packaged drinking water with the approval of the Railways. The learned counsel for the respondents made a reference of the letter dated 6.10.2007 addressed to the caterers and specifically to M/s Food World to direct for supply of "Rail Neer" in the Rajdhani and Shatabdi Express trains. Despite of the specific direction, the appellant supplied other packaged drinking water while seeking reimbursement of those packaged drinking water at the rate of Rs.15/- fixed for "Rail Neer".

16. The CBI accordingly registered the FIR and investigated the case. They assessed the loss of exchequer and illicit gain becoming proceeds of crime.

17. The counsel for the respondents further submitted that the Railways had not declined to grant sanction for prosecution though initially they did not find a case to cause enquiry against the railway officers.

18. The sanction for prosecution was however granted finding connivance of the railway officers with the appellants resulting in loss to the public exchequer and gain to the appellant and the railway officers.

19. The cognizance of the offence was taken by the Court though it was set aside by the Delhi High Court along with the order of sanction for prosecution. It is however with the remand of the case to the Competent Authority to reconsider the matter for grant of sanction for prosecution. It is thus not a case where no predicate offence exist against the appellant. The FIR and ECIR have not been quashed by any of the Court. The matter is however pending in the Apex Court where trial has been stayed against few accused who approached the Supreme Court.

20. It is mainly in reference to the argument that IRCTC was not producing "Rail Neer" to the extent of requirement. The statement was made out of context because production of "Rail Neer" was much more than required in Rajdhani and Shatabdi, however if it is taken for supply in all the trains than it may be short than the requirement.

21. The shortage of "Rail Neer" in reference to all the trains was misquoted for Shatabdi and Rajdhani Express. The matter is however pending before the Apex Court.

22. The learned counsel for the respondents have further contested the issue of non-compliance of mandate of Section 5(1) of the Act of 2002. It is submitted that the reasons to believe were recorded in writing before issuance of the provisional attachment order.

23. The FIR was registered for the offence under Section 420 (1), 120 (B) of Indian Penal Code and 13 (1) (d) and 13(1) (2) of the Prevention of Corruption Act, 1988. The CBI had quantified the proceeds of crime in the investigation and subsequent to it, the order of provisional attachment was issued.

24. In view of the above, the order impugned are in conformity to the Section 5 (1) of the Act of 2002 according to the respondents.

25. The learned counsel for the respondent has further submitted that the appellant had claimed and received Rs.15/-per bottle payable towards supply of a "Rail Neer" whereas other packaged drinking water was supplied. There being illegal gain out of it thus amount received by the appellant was quantified to be the proceeds of crime and thereby order of attachment was rightly issued.

26. The other issues raised by the appellant and has also been contested by the respondent would be dealt with by this Tribunal while drawing the conclusions.

27. We have considered the rival submissions of the parties and scanned the matter carefully. The challenge to the order of Adjudicating Authority so also the order for provisional attachment has been made on various factual and legal grounds.

28. It is not in dispute that an agreement was entered between the parties where appellant agreed to extend catering services in Rajdhani and Shatabdi trains. It was even for supply of packaged drinking water. According to the appellant, initial agreement was not having a condition to supply "Rail Neer" as a packaged drinking water. Reference of initial agreement dated 17.12. 2002 and extended from time to time has been given.

29. The perusal of the initial agreement provides for service of packaged drinking water and therein reference of "Rail Neer" does not exist. The agreement was extended from time to time and even new agreements were executed.

30. We however find that a letter was sent to the appellant on 08.10.2007 clarifying that they are required to serve "Rail Neer". There is no correspondence by the appellant to contest the aforesaid. It has been admitted that subsequently when the catering policy underwent a change, a specific condition to supply "Rail Neer" was inserted. It was followed by agreements in March, 2014. The period involved in this case for alleged breach of contract and thereby commission of offence under section 420, 120 B IPC is for the year 2013 and 2014. It was thus fairly conceded by the learned counsel for the appellant that part period is covered by the new agreement where there was a specific condition to supply "Rail Neer" in Rajdhani and Shatabdi Express.

31. The appellants could not contest the case in reference of the allegation of non-supply of "Rail Neer" for the part period. However, they have justified supply of other package of drinking water in place of "Rail Neer" after showing shortage of "Rail Neer" though it could be shown for the Shatabdi and Rajdhani Express but overall shortage, if it is taken for all the trains.

32. In view of the above, a prima facie case of breach of trust is made out on account of violation of the terms and condition of the agreement. We are not recording final opinion upon it, rather it would be recorded in the trial and otherwise the matter is pending for consideration before the Supreme Court but, at this stage we are not in agreement with the appellant that a case of breach of trust is not made out so also the case of money laundering.

33. It is however with the clarification that even if in the past, agreement was not mandating supply of "Rail Neer", it was clarified by the Railways rather a direction was issued in the year 2007 for supply of "Rail Neer" and was not protested by the appellant.

34. The next issue for our consideration is as to whether mandate of section 5 (1) of the Act of 2002 has been carried out by the respondents or not.

35. The allegation for non-compliance has been made alleging that no reasons to believe has been recorded in detail.

36. The perusal of the record shows that the Competent Authority recorded the reasons to believe in writing, as required under section 5(1) of the Act of 2002. Thus, we do not find a case for violation of the said provision.

37. The question however remains that as to whether respondents have quantified the proceeds of crime after taking into account the material on record. The allegation against the appellant is for supply of packaged drinking water other than "Rail Neer" and yet claimed and received Rs.15/- per bottle. The entire amount towards it could not have been taken to be proceeds of crime.

38. A detailed statement about it has been given in the provisional attachment order and even recorded by the Adjudicating Authority.

39. However, from the record, it is not coming out that the amount incurred by the appellant towards supply of packaged drinking water other than "Rail Neer" has been accounted for. The obligation was on the authorities to quantify the proceeds of crime, which we do not find to have been done.

40. The Adjudicating Authority has also failed to take note of the aforesaid issue while confirming the order of attachment.

41. The quantity of packaged drinking water bottles has been referred in the impugned orders but without disclosure of the actual amount incurred by the appellant on it so as to be deducted from the amount reimbursed to them, if they had incurred less amount than received towards the packaged drinking water. For the aforesaid para 8.6 of the order is quoted hereunder:-

As per the IRCTC records, the subject licensees have picked – up total "Rail Neer" $8,41,045 \times 12 = 1,00,92,540$ bottles and the price claimed from Railways as per the rate of Rs. 15/- per bottle for "Rail Neer" $= 1,00,92,540 \times 15 = 15,13,88,100/-$. However, licensees got Rs. 34,69, 27,117/-against the total PDW supply. Therefore, total loss to Railways during Jan' 2013 to Dec' 2014 = Rs. 34,69,27,117/- (total claimed from Railways) –Rs. 15,13,88,100/- (actual claim for "Rail Neer") =Rs. 19,55,39,017/- (Rupees Nineteen Crore Fifty Five Lakhs Thirty Nine Thousand Seventeen only).

42. The aforesaid does not show deduction of the amount incurred by the appellant thus, we find it appropriate to remand the case back to the Adjudicating Authority to consider the issue afresh to determine the proceeds of crime.

43. It is to be clarified that for determination of the alleged proceeds of crime, the amount received by the appellant towards the supply of packaged drinking water @ of Rs. 15/- per bottle would be taken into consideration and thereafter the amount incurred by it to find out the difference of amount to be the proceeds of crime.

We are making it clear that other issues dealt up by us would not be opened by either parties before the Adjudicating Authority rather it would decide the limited issue referred to above and to that extent only, the order of Adjudicating Authority is set aside. The parties are directed to appear before the Adjudicating Authority on 22.11.2023