

(2023) 10 ATPMLA CK 0005

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-5494, 5495, 5496, 5497, 6535, 6536/DLI/2019, FPA-PMLA-2806,
2807/DLI/2019

M/S. R.K. Associates & Hoteliers
Pvt. Ltd. & Ors.

APPELLANT

Vs

Deputy Director, Directorate Of
Enforcement

RESPONDENT

Date of Decision: Oct. 19, 2023

Acts Referred:

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

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

Bench: Division Bench

Advocate: Kumar Vaibhav, Gautam Khazanchi, Vaibhav Dubey, S.Uday Bhanu, Aditya Singla,
Sahil Sharma

Final Decision: Disposed Of

Judgement

FPA-PMLA-2806 & 2807/DLI/2019

By this Appeal, a challenge has been made to the order dated 03rd December, 2018 passed by the Adjudicating Authority confirming the Provisional Attachment Order dated 13th June, 2018.

The impugned order in both the Appeals are common and is based on the same facts thus we are deciding both Appeals by a common order.

The Learned Counsel for the Appellant has given brief facts of the case. It is stated that an agreement was executed between the Railways, IRCTC and License Caterers including the Appellant for providing meals and packaged drinking water in Rajdhani and Shatabdi express trains. The packaged drinking water, "Rail Neer" is produced by IRCTC, a subsidiary of Indian Railways. The agreement between the parties was renewed from time to time and the controversy in the present case is for the year 2013-2014.

The allegations against the Appellant is for breach of agreement where licensee agreed to supply "Rail Neer." It is alleged that instead of supplying "Rail Neer", the Appellant supplied other packaged drinking water and thereby breached the terms and conditions of the Agreement. The CBI registered the case and proceeded with the investigation. After the investigation, sanction for prosecution was sought and given as Railway Officers were also involved in the case. It remain subject matter of litigation. The sanction for prosecution followed by an order of cognizance by the Court were set

aside by Delhi High Court with remand of the case to Railways for afresh consideration of sanction for prosecution.

The Learned Counsel for the Appellant submits that there are many grounds for challenge to the order but Appellant is pressing only one ground after reserving his right to press other grounds if the first ground is not accepted. The Provisional Attachment Order and also the order of the Adjudicating Authority are not sustainable in the eyes of law in absence of satisfaction of the ingredient of Section 5(1)(b) of the Prevention of Money Laundering Act, 2002 (in short "the Act of 2002").

It is submitted that alleged proceeds of crime in these two Appeals is of Rs. 10,01,97,810/- (Rupees Ten Crore One Lakh Ninety Seven Thousand and Eight Hundred Ten Only). Rs. 2,64,00,330/- (Rs. Two Crore Sixty Four Lakh Three Hundred Thirty Only) is of M/s. R.K. Associates and Hoteliers Pvt. Ltd. and Rs. 7,37,97,480/- (Rupees Seven Crore Thirty Seven Lakh Ninety Seven Thousand Four Hundred Eight Only) belongs to M/s. Brandavan Food Products Ltd. The amount aforesaid is said to be proceeds of crime and accordingly an order of attachment of the bank account to the extent of alleged proceeds of crime could have been made.

The Provisional Attachment Order reveals that a sum of Rs. 15,28,24,890/- (Rupees Fifteen Crore Twenty Eight Lakh Twenty Four Thousand Eight Hundred Ninety Only) amount exist in Fixed Deposit in name of SP CBI pursuant to the order dated 25th July, 2017 and 12th September, 2017 of Special Judge (PC Act), Patiala House, New Delhi. The proceeds of crime has been secured by the Special Judge (PC Act), Patiala House, New Delhi. When Fixed Deposit lies with the CBI pursuant to the detailed order passed by the Special Judge (PC Act), Patiala House, New Delhi, there remains no question of concealment or transfer of amount to frustrate the confiscation. It is a case of non-application of mind on the part of the Competent Officer in passing the order of Provisional Attachment, thus it deserves to be set aside.

The Appellant reserves his right to argue other issues of challenge to the impugned order but first ground is sufficient to quash it. If the first ground is not accepted, the other grounds be taken into consideration, for which the written arguments have already been submitted. The prayer is, however, to decide the first issue as a preliminary issue.

The Appeals have been contested by the Learned Counsel appearing for the Respondent. It was stated that the CBI registered a case against the Appellant and others for the offence under Section 120B read with Section 420 of IPC and Section 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. It was for breach of the terms of the agreement in connivance with the Railways Officers. The FIR was registered and was followed by an ECIR. After investigation, the CBI filed charge sheet. The cognizance of the offence was taken by the Court on grant of sanction for prosecution against public servant. It is true that sanction for prosecution so also the order of cognizance was subject matter of challenge before High Court and were set aside with remand of the case. The Learned Counsel has admitted pendency of the SLP where Trial has been stayed qua few accused. It is however submitted that the FIR or the ECIR have not been quashed thus Provisional Attachment Order was rightly passed and confirmed by the Adjudicating Authority.

The relevant facts have already been referred, however, elaborating those facts, it is submitted that during the course of search Rs. 27,18,21,390/- (Rupees Twenty Seven Crore Eighteen Lakh Twenty One Thousand Three Hundred and Ninety Only) were recovered by the CBI from the residence of Shri Rahul Agrawal and from the office of the Company. It remain subject matter of an order passed by the Special Court (PC Act),

Patiala House, New Delhi on 25th July, 2017 and 12th September, 2017. The Special Court allowed release of Rs. 12,90,25,900/- (Rupees Twelve Crore Ninety Lakh Twenty Five Thousand and Nine Hundred Only) and remaining amount was retained and has been kept in the Fixed Deposit. The Fixed Deposit was created in the name of S.P. CBI, New Delhi pursuant to the order of the Special Court dated 12th September, 2017 and has been attached to secure the proceeds of crime.

The challenge to the Provisional Attachment Order and the order of the Adjudicating Authority has been made alleging non-compliance of Section 5(1)(b) of the Act of 2002.

The Learned Counsel for the Respondent submits that Fixed Deposit in the name of SP, CBI would remain till the conclusion of the proceedings of the predicate offence and if any order is passed for release of the said amount by Special Court, (PC Act), Patiala House, New Delhi or any other Court, the Respondent ED would not be in a position to secure the amount of proceeds of crime and it may frustrate the proceeding for confiscation thus bank Account was rightly attached by the Respondent. The prayer is not to accept the argument raised by the Learned Counsel for the Appellant for challenge to the impugned order rather the Appeal may be dismissed. If at the prayer aforesaid is accepted then this Tribunal may deal with other issues and for which Respondent has already submitted written arguments.

We have considered the rival submission of the parties and perused the records. The relevant facts of the case have been referred while narrating the rival submissions of the parties thus it is not required to be repeated. We would accordingly deal with the legal issue raised by the Learned Counsel for the Appellant in reference to relevant facts.

The challenged to the impugned order has been made in reference to the Section 5(1)(b) of the Act of 2002 and accordingly aforesaid provision is reproduced here under for ready reference:-

"Section 5

Attachment of property involved in money laundering.-

(1) Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed"

The perusal of Section 5(1) would show that when the Directors or any other officers not below the rank of Deputy Director authorized by the Directors has reason to believe to be recorded in writing that a person is in possession of proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating the proceedings of confiscation, and order for attachment can be issued. The order for the Provisional Attachment of the property would be for a period not exceeding 180 days.

In the instance case, the Respondent have alleged that the Appellant was in possession of the proceeds of crime out of the breach of Agreement by not supplying "Rail Neer" rather supplied other packaged drinking water yet claimed and received Rs. 15 per bottle.

The first issue is as to whether the amount of proceeds of crime is likely to be concealed, transferred or dealt with in a manner which may frustrate the proceeding for confiscation. It is required to be ascertained for satisfaction of the ingredients of Section 5(1) (b). The facts on records shows that the alleged proceeds of crime attached by the Respondent is lying in a Fixed Deposit in the name of SP, CBI, New Delhi. A total sum of Rs. 27,18,213,90/- was recovered in this case and out of it, Special Court (PC Act), Patiala House, New Delhi ordered to release Rs. 12,90,25,900/- on 25th July, 2017. By the order dated 12.09.2017, the remaining amount was ordered to be kept in Fixed Deposit which was created in the name of SP, CBI, New Delhi. The question is as to whether the proceeds of crime lying in Fixed Deposit in the name of SP, CBI, New Delhi can be concealed, transferred or dealt with by the Appellant to frustrate the proceeds for confiscation. In our opinion, till the amount is lying in Fixed Deposit in the name of SP, CBI, New Delhi there is no likelihood of its concealment or transfer, thus ingredient of Section 5(1) (b) are not satisfied in the instant case.

The Learned Counsel for the Respondent could not satisfy this Tribunal as to how the Competent Authority could record reasons to believe about the concealment or transfer of the money lying in the Fixed Deposit in the name of S.P. CBI pursuant to the order of Special Court dated 25th July, 2017 and 12th September, 2017. The order of Provisional Attachment of Fixed Deposit was passed without application of mind.

In view of the above, we do not find that the Provisional Attachment Order can sustain on the first ground itself. We are not recording our opinion on other grounds as order is not sustainable on the first ground itself. For the reasons given above, the impugned order of Provisional Attachment so also the order of the Adjudicating Authority are set aside qua the Appellants.

It is however with liberty to the Respondent that in case the Special Court or any other Court orders for release of the amount lying in the Fixed Deposit in the name of SP, CBI New Delhi, they would be at liberty to attach the said amount, if necessity so arises and for which they would be at liberty to pass fresh order after satisfying the requirement of Section 5 of the Act of 2002 and for the aforesaid, this order would not come in there way. The Appeals are disposed of with the aforesaid.