

M/S Prakash Industries Ltd. & Anr vs Directorate Of Enforcement on 3 March, 2022

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 14999/2021 & CM APPLs. 47329/2021, 553/2022,
10949/2022
M/S PRAKASH INDUSTRIES LTD. & ANR.
versus

DIRECTORATE OF ENFORCEMENT Re

+ W.P.(C) 15000/2021 & CM APPLs. 47331/2021, 547/2022,
10952/2022
M/S HI-TECH MERCANTILE INDIA PVT. LTD & ORS. ...

versus

DIRECTORATE OF ENFORCEMENT

Through: Mr.Kapil Sibal, Sr. Adv. with Mr.Ankur Chawla,
B. Bansal, Mr.Gurpreet Singh, Mr.Aamir Khan,
Mr.Shiv Tyagi, Advs. for petitioners.
Mr.Asheesh Jain and Mr.Amit Mahajan, CGSC with
Mr.Adarsh Kumar Gupta, Mr.Keshav Mann, with
Mr.Imon Bhattacharya, Advs. for respondent n
matters.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 03.03.2022 CM APPL. 10950/2022 (for exemption) in W.P.(C) 14999/2021 CM APPL.
10953/2022 (for exemption) in W.P.(C) 15000/2021 Allowed, subject to all just exceptions.

The applications shall stand disposed of.

CM APPL. 10948/2022 (for amendment of petition) in W.P.(C) CM APPL. 10951/2022 (for amendment of petition) in W.P.(C) The record reflects that the present petition was instituted at a stage when a Provisional Order of Attachment had come to be made in terms of the provisions of Section 5 of the Prevention of Money Laundering Act, 2002 [PMLA]. The submissions of respective parties were noticed in some detail in the order of 06 January 2022. Pursuant to that order, parties were directed to exchange pleadings. Counter and rejoinder affidavits have subsequently come to be filed. By way of the present application for amendment, the petitioners lay challenge to the notices

issued under Section 8 of the PMLA by the Adjudicating Authority.

Learned counsel appearing for the Enforcement Directorate has, at the outset, submitted that in the fitness of things, the petitioners should be called upon to file their replies to the show-cause notices leaving it open to the Adjudicating Authority to decide all contentions which are urged before this Court.

While ordinarily that may have sufficed, this Court notes that, by the order of 06 January 2022, the challenge to the initiation of proceedings under the PMLA on jurisdictional grounds was duly entertained. The Court had taken notice of the challenge mounted on the ground that the offenses which are alleged to have been committed, were not enumerated as a "scheduled offense" at the relevant point of time. In that view of the matter and since the Court has already taken note of the challenge raised, it would be inappropriate to grant liberty to the Adjudicating Authority to independently rule on the questions which are raised here.

The amendments essentially assail further proceedings and steps taken pursuant to the Provisional Order of Attachment. In view of the aforesaid, the amendments as proposed by way of the present application are allowed.

The Court notes that the amended writ petition already exists on the record.

The application shall stand disposed of.

W.P.(C) 14999/2021 & CM APPLs. 47329/2021, 553/2022, 10949/2022 W.P.(C) 15000/2021 & CM APPLs. 47331/2021, 547/2022, 10952/2022 Learned counsel representing the Enforcement Directorate prays for and is granted time to file reply to the added pleadings taken.

For the purpose of considering the prayer for interim relief, the Court takes note of the contentions recorded in the earlier order of 06 January 2022 as well as the submission of Mr. Sibal, learned Senior Counsel appearing for the petitioners, who submits that the offences of which the petitioners are charged did not even form part of scheduled offences as contemplated under the PMLA. Additionally, the Court notes that the recordal of satisfaction by the Adjudicating Authority, prima facie, does not appear to satisfy the requirements of Section 8 of the PMLA. The matter requires consideration.

Till the next date of listing, there shall be stay of further proceedings before the Adjudicating Authority.

Let this matter be posted again on 31.03.2022.

YASHWANT VARMA, J.

MARCH 3, 2022/bh