

# Directorate Of Enforcement vs M/S. Nau Nidh Overseas Pvt. Ltd. & Anr on 4 November, 2022

**Author: Anoop Kumar Mendiratta**

**Bench: Anoop Kumar Mendiratta**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 745/2022, CRL.M.A. 22583/2022 (stay)

DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through: Mr.Zoheb Hossain and Mr.Vivek  
Gurnani, Advocates.

versus

M/S. NAU NIDH OVERSEAS PVT. LTD.

& ANR.

..... Respondent

Through: Mr.Adish C. Aggarwala, Sr. Advocate  
with Mr.H.S. Bhullar, Mr.Amish  
Aggarwala, Ms.Sonia  
Mr.Kuldeep Jauhari, Ms.Puja Sin  
Roy, Ms.Lalima Ghosh, Mr.Anubha  
Tyagi and Mr.Ankit Chauhan,  
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 04.11.2022

1. Petition has been preferred on behalf of the petitioner under Section 397 read with Section 482 Cr.P.C. against the order dated 22.10.2022 passed by learned Special Judge, ASJ-06, Patiala House Courts, New Delhi (Designated Court under The Prevention of Money Laundering Act, 2002) allowing the application filed on behalf of respondents under Section 8(6) of PMLA, 2002 and directing the release of properties attached vide PAO No.01/2022.

2. Issue notice. Mr.H.S. Bhullar, Advocate led by Mr.Adish C. Aggarwala, Sr. Advocate for respondents appear on advance notice and accept notice.

3. Reply, if any, be filed within four weeks with an advance copy to the learned counsel for the petitioner.

4. In brief, as per the case of the petitioner, the Economic Offences Wing, Delhi Police registered FIR No.200/2021 on 24.12.2021 for offences under Sections 420, 468, 471 and 120-B IPC against accused/respondents herein. On the basis of FIR of EOW, Delhi Police, an ECIR No. DLZO-I/58/2021 was registered against accused on 27.12.2021 and respondent No.2 was placed under arrest by Directorate of Enforcement in terms of Section 19 of PMLA, 2002 on 31.12.2021.

Further, vide order dated 30.07.2022, learned Special Judge declined cognizance of the complaint dated 28.02.2022, filed on behalf of the petitioner/prosecution.

The aforesaid order has been challenged before this Court vide CRL.REV.P.605/2022 in which notice has been issued for 21.11.2022.

5. It is further the case of petitioner that pursuant to adjudication in OC No.1662/2022, the provisional attachment order No.01/2022 dated 27.02.2022 has been confirmed by the Adjudicating Authority, PMLA vide order dated 26.08.2022.

However, an application was preferred on behalf of the respondent after passing of the aforesaid order before the learned Special Judge seeking release of the properties attached vide PAO No.01/2022 and against confirmation order dated 26.08.2022 passed by the Adjudicating Authority.

The grievance of the petitioners is that vide order dated 22.10.2022 learned Special Judge has directed to release the properties of the accused which were attached vide PAO No.01/2022.

It is urged that in case, respondents were aggrieved against the aforesaid order dated 26.08.2022, the remedy lay by preferring of an appeal before the Appellate Tribunal as specified under PMLA, 2002 and learned Special Judge was not vested with jurisdiction to release the properties. As such, it is prayed that an ad-interim stay be granted on the operation of the impugned order.

Reference is further made to observations of Hon'ble Supreme Court of India in 'Vijay Madanlal Choudhary and Others vs. Union of India and Others' 2022 SCC OnLine SC 929, in Para (xviii)(a) in conclusion, which may be beneficially reproduced:

"(xviii)(a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime."

6. On the other hand, Mr.Adish C. Aggarwala, learned Sr. Advocate for respondents vehemently opposes the application for interim stay and submits that operation of order dated 26.08.2022 passed by Adjudicating Authority could only continue during the pendency of the proceedings before the learned Special Court and attention is drawn to relevant observations therein, which may be beneficially noted as under:

" a. I, therefore, hereby confirms the attachment of the property made under sub-Section (1) of Section 5 of PMLA. I, therefore, order that the said Attachment shall continue during pendency of the proceedings relating to any offence under the prevention of Money-Laundering Act, 2002 before the Special Court; and become

final after an order of confiscation is passed under sub-Section (5) or sub-Section (7) of Section 8 of PMLA by the Special Court.

b. PAO No.01/2022 dated 27.02.2022 is hereby confirmed."

7. I have given considered thought to the contentions raised. It cannot be ignored that CRL.REV.P.605/2022 already stands preferred on behalf of the petitioners/prosecution against order dated 30.07.2022, whereby cognizance was declined by learned Special Judge. It is imperative that status quo be maintained in respect of properties referred in order dated 26.08.2022 passed by the Adjudicating Authority, in the eventuality, the order passed by learned Special Judge, declining the cognizance, is interfered by this Court.

In the facts and circumstances, the operation of order dated 22.10.2022, passed by the learned Special Judge is stayed till the next date of hearing.

List on 24.01.2023.

A copy of this order be forwarded to the learned Trial Court for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 4, 2022/R