

Salgaocar Mining Industries Private ... vs Deputy Director Directorate Of ... on 26 September, 2023

Author: Subramonium Prasad

Bench: Subramonium Prasad

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 12713/2023
SALGAOCAR MINING INDUSTRIES PRIVATE LIMITED

Through: Mr. Dayan Krishnan,
with Mr. Shreedhar
John, Mr. Piyush Sw
Arshdeep Singh, Adv

ve

DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT
ORS.

Through: Mr. Ripu Daman Bhar
Mr. Kushagra Kumar,
R-3/CBI.
Mr. Manish Jain, Mr
and Mr. Amit Jain,
Mr. Ankur Tiwari, A
for ED.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
ORDER

% 26.09.2023 CM APPL. 50179/2023 (Exemption) Allowed, subject to all just exceptions.

W.P.(C) 12713/2023 & CM APPL. 50178/2023

1. The Petitioner has approached this Court challenging a show cause notice dated 29.08.2023 issued by the Adjudicating Authority under the Prevention of Money Laundering Act (PMLA) and a Provisional Attachment Order No.04/2023 dated 27.07.2023 passed by the Deputy Director, Directorate of Enforcement.

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2. The Respondent No.1/Deputy Director, Directorate of Enforcement by the said Order dated 27.07.2023 has passed a Provisional Attachment Order attaching various assets of the Petitioner given in the schedule of properties given along with Provisional Attachment Order.

3. The facts as narrated by the Petitioner, in brief, are as follows:-

i. The Petitioner was allotted Iron Ore mines in Goa. The Petitioner entered into an agreement with M/s Amalagiris for supply of Iron Ore.

ii. Material on record indicates that the said M/s Amalagiris has in turn sold the Iron Ore to one M/s Alpine Minmetal India Private Limited (AMIPL).

iii. Material on record indicates that the said AMIPL has taken loans from various banks and there are allegations of siphoning off the said amounts which has resulted in initiation of proceedings under the PMLA.

iv. Material on record indicates that the Iron Ore was shipped by AMIPL to a foreign entity in Hong Kong but the foreign company refused to accept the Iron Ore on the ground that the quality of the Iron Ore is at variance with the Iron Ore that is supplied. v. It is stated that the AMIPL resorted to distress sale and the Iron Ore which was worth about Rs.33 crores, was sold only for about Rs. 12 crores.

vi. Proceedings have been initiated against the Petitioner on the ground that the Petitioner is liable to pay money to AMIPL, and, therefore, the amount in hands of the Petitioner is proceeds of crime.

4. It is the contention of Mr. Dayan Krishnan, learned Senior Counsel This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 03/10/2023 at 20:32:25 for the Petitioner, that under the PMLA, only property which is involved in money laundering can be attached. The case of the authorities under the PMLA at the highest can be that the amount owed by the Petitioner to AMIPL is property, which at the highest will be a debt and that debt unless crystallised, cannot become property of the AMIPL.

5. It is contended that AMIPL has initiated criminal proceedings against the Petitioner which was settled, and as on date, only a sum of Rs.83,248/- is reflected in the books of accounts of AMIPL. It is further stated that even if it is assumed that the suit is filed by AMIPL against the Petitioner, then only after the suit is decreed, contested, can the amount which 'if any' payable by the Petitioner be crystallised and only that amount can be attached. He, therefore, states that there was inherent lack of jurisdiction and Respondent No.1 could not have passed the Provisional Attachment Order under Section 5 of the PMLA.

6. Since there is inherent lack of jurisdiction, the Petitioner need not be relegated to the authorities under the PMLA and this Court ought to exercise its jurisdiction under Article 226 of the Constitution of India.

7. Issue notice.

8. Learned Counsels for the Respondents, accept notice.

9. Mr. Manish Jain, learned Counsel for ED, is directed to file its reply.

10. List on 10.10.2023.

11. Needless to state that proceedings before the authority would be subject to the final outcome of the present writ petition.

SUBRAMONIUM PRASAD, J SEPTEMBER 26, 2023 hsk This is a digitally signed order.

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