

(2019) 07 DEL CK 0180

In the Delhi High Court

Case No : Criminal Appeal No. 885 Of 2017, Criminal Miscellaneous Application No. 15618 Of 2017, 28568 Of 2018

Financial Intelligence Unit-Ind

APPELLANT

Vs

National Spot Exchange Ltd

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Prevention of Money-Laundering Act, 2002 — Section 5(5), 8, 42
Foreign Contribution (Regulation) Act, 2010 — Section 27

Citation : (2019) 3 JCC 3118

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Satish Aggarwala, Dayan Krishnan, Ranjan Kumar Pandey, Sandeep Bisht, Rahul Kumar, Anuj Tiwari

Judgement

Mukta Gupta, J

1. By this Appeal the appellant Financial Intelligence Unit-Ind, Department of Revenue, Ministry of Finance, challenges the judgment dated 27 th June,

2017 passed by the Appellate Tribunal, Prevention of Money Laundering Act, New Delhi whereby the appeal of the respondent to the extent of

violation was dismissed. However, since there was no reasoned order for imposing major penalty, the penalty was reduced from Rs. 1 lakh for each

failure of the respondent to Rs. 15,000/- for each failure.

2. At the outset, learned counsel for the respondent has raised an objection to the maintainability of the present appeal on the basis of territorial

jurisdiction before this Court in terms of the requirement of Section 42 of the Prevention of Money Laundering Act, 2002 (in short "PMLA").

Hence, arguments have been heard only on the issue of maintainability.

3. In the application filed by the respondent taking the preliminary objection of maintainability it is contended that as the registered office of the

respondent company is situated at Mumbai where the respondent company carries out business, the appeal could have been filed by the appellant

before the High Court at Mumbai and not as per its convenience before this Court. Reliance is placed on the decision of this Court in 2018 SCC

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4. Section 42 of the PMLA reads as under:

42. Appeal to High Court .â?" Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court

within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of

such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period,

allow it to be filed within a further period not exceeding sixty days.â?"

5. As noted above, by virtue of the explanation even if the Central Government is the aggrieved party, the High Court within the jurisdiction of which

the respondent ordinarily resides or carries on business or personally works for gain would be the High Court which would be competent to entertain

the appeal.

6. Vide the order in Original No.23/DIR/FIU-IND/2015 passed by the Director, Financial Intelligence Unit, India dated 4th November, 2015 the

reporting entity was the respondent, National Spot Exchange Ltd. (in short â?" NSELâ?") with its office at FT towers, CTS No.256 & 257, 4th Floor,

Suren Road, Chakla Andheri (East), Mumbai. NSEL was granted exemption under Section 27 of the FCRA from operation of the said Act for all

forward contracts of one day duration for the sale and purchase of commodities traded on NSEL subject to the conditions as noted in para 3 of the

order dated 4th November, 2015 of the Director, Financial Intelligence Unit.

However, the reports revealed that NSEL undertook activities which were not covered by the exemption granted vide notification dated 5th June,

2007 and hence vide the order in challenge before the Appellate Tribunal penalties were imposed. As noted above, the Appellate Tribunal PMLA vide

the impugned order dated 6th July, 2017 reduced the penalty.

7. It is nowhere the case of the appellant herein, that the respondent company is ordinarily working in Delhi and hence the present appeal would not be

maintainable before this Court for want of territorial jurisdiction. Similar view was taken by this Court in Aasma Mohammed Farooq (supra) wherein

following the mandate of Section 42 PMLA it was held :

11. Mr. Chaudhri may be right in contending that the notice under Section 8 of the Act has been issued by the Authority in Delhi, so jurisdiction is

there for this Court to entertain the writ petition. But merely because a part of cause of action has arisen under the jurisdiction of this Court, whether

this Court needs to exercise its jurisdiction is the question need to be answered. This Court is of the view "that it should not", for more than one

reason; that it is not in dispute that the petitioner is based in Mumbai. The provisional attachment order has been passed in Mumbai. The complaint

though, filed before the adjudicating authority in Delhi, it encompasses all the facts that have arisen in Mumbai. The properties are in Mumbai. It is

only after filing of the original complaint as contemplated under Section 5(5) of the Act before the adjudicating authority, which is located in Delhi that

the impugned notice has been issued from Delhi but the fact remains that nothing has happened in Delhi. Only notice to show cause has been issued.

After the adjudicating authority decides the issue, there is a forum of appeal available to the petitioner. Even thereafter, the remedy of appeal to the

High Court is also available under Section 42 of the Act, which has already been enumerated above. In other words, in the case in hand, if an order is

passed by the Appellate Authority it shall be the Bombay High Court, which shall have the jurisdiction for both, i.e. the person aggrieved and the

Central Government against the order is passed by the Appellate Authority. Therefore, in view of the aforesaid factual / legal aspect, this Court is of

the view that instead of two Courts considering set of facts originating in Mumbai and leading to issuance of a provisional attachment order / complaint

before the adjudicating authority, it should be the High Court, which is more convenient and where if a party aggrieved against the orders passed by

the Appellate Authority shall approach, in terms of Section 42 of the Act, shall be the "forum conveniens". In this case, it shall be the Bombay High

Court and accordingly this Court is of the view that it should not entertain the

present writ petition. The petitioner shall be at liberty to approach the Bombay High Court for appropriate relief. Accordingly, we refrain from going into the merits of the case.

8. Consequently, the application being Crl.M.A. 28568/2018 is allowed and disposed of. The Appeal and the application being Crl.M.A. 15618/2017 are directed to be returned to the appellant to be presented in the Court of competent jurisdiction.