(2018) 02 ATPMLA CK 0005

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-777/DLI/2014, FPA-PMLA-547/DLI/2013

Jagati Publications Ltd. APPELLANT

Vs

Joint Director, Directorate Of Enforcement, Delhi RESPONDENT

Date of Decision : 13-02-2018

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 5, 8
Indian Penal Code, 1860 — Section 120B, 420

Citation : (2018) 02 ATPMLA CK 0005

Hon'ble Judges : Manmohan Singh, J;Anand Kishore, Member

Bench : Division Bench

Advocate : Raghenth Basant, S. A. Saud

Final Decision : Allowed

Judgement

S.

No","NameÂ Â Â Â

of the

Shareholder","DateÂ Â Â Â Â Â Â

of investment","DateÂ Â Â Â Â Â Â Â

of allotment","No.Â Â Â

of shares

allotted","Face

Value

(Rs.)","Premium

(Rs.)","Total

Investment

(Rs.)

1.,"JayalakshmiÂ

Textiles

LtdÂ Â Â Â Â

(T.R.

Kannan)",05.08.2008,21.05.2009,138888,1388880,48610800,49999680

2.,"A.K.

Dandamudi","09.08.2007

10.08.2007",15.10.2007,277776,2777760,97221600,99999360

3.,"Madhav

Ramchandran","09.01.2009

03.02.2009

14.02.2009

11.03.2009",22.11.2009,546110,5461100,191138500,196599600

,Total,,,962774,9627740,336970900,3465998640

vague submission is made that against 3-4 investors, the investigation is still on. But counsel for the respondent is not able to give any satisfactory",,,,,,,

answer why no action is taken against forty other investors.,,,,,,,

13. The investments by the three individuals into the Appellant company pertain to the period between 2006 to March, 2009. More than eight years",,,,,,,

have been passed, none of the three investors have initiated any complaint of cheating nor have filed any suit for recovery of money. It is doubtful",,,,,,,

whether suit after the trial for recovery would now be maintainable or barred by time under the Limitation Act as the period of last investment was,,,,,,,

11th March, 2009.",,,,,,,

14. The schedule offence was added in PML Act, 2002 on 1st June, 2009. There is no evidence and cogent reasons prima facie available on record",,,,,,,

that value of shares at the time of investment was less than as purchased. There were many other investors, who had purchased the shares for the",,,,,,,

same value but no action was taken against them except the statement made by the respondent that the ED may take action against few investors,,,,,,,

where investigation is on.,,,,,,,

15. On behalf of M/s. Jagati Publications Ltd., it was submitted that M/s. Jagati Publications was incorporated on 14.11.2006 as private limited",,,,,,,

company and subsequently became a public limited company from 12.01.2009. All the investments made in Jagati Publications are genuine business,,,,,,,

transactions by the investors and they hold all rights in such investments being held in form of share.,,,,,,,

16. The valuation of Jagati Publicationsâ? shares were arrived after taking the entire enterprise valuation of Sakshi News Paper Project with â??size,,,,,,,

and circulationâ? into effect. Sakshi regional newspaper was launched with a circulation of about 12 lakh copies with 23 printing centers,,,,,,,

simultaneously in States of Andhra Pradesh, Telangana, New Delhi, Karnataka, Tamil Nadu and Maharashtra.",,,,,,,

17. The valuation of Jagati Publicationsâ? shares is based on Discounted Cash Flow Method (DCF, which has been approved by the Reserve Bank of",,,,,,,

India under Foreign Exchange Management Act Notification number FEMA 205/2010 issued on 07.04.2010) which is a futuristic valuation technique,,,,,,,

for valuing a company even before the commencement of its operations.,,,,,,,

18. It was argued that on behalf of the appellant that as the money invested by the investors into M/s Jagati Publications were been utilized by the,,,,,,,

company itself; provisions of the Prevention of Money Laundering Act, 2002 could not have been invoked in the facts of present case as there was no",,,,,,,

laundering of the money invested. The issue of inducement, cheating and pressure to invest the amount is to be decided in the normal course of",,,,,,,

criminal proceedings.,,,,,,,

19. Even as per the investors, they had made investments into M/s Jagati Publications on their own sweet-will. Under these facts of the matter, it is",,,,,,,

difficult to conclude finally in these proceedings that the ingredients of cheating are made out or not. It is the case of appellant that the valuation was,,,,,,,

based on projected calculations of circulation which was achieved and the aspect of cheating and other offence have to be determined by the Court,,,,,,,

under the IPC.,,,,,,,

The investorâ?s grievance that the company did not perform as well as they anticipated may or may not constitute â??cheatingâ? and the investment,,,,,,,

cannot be termed as Proceeds of Crime by any standards. If the answer is yes then the said aspect has to be considered by the Court where the,,,,,,, appellant is facing trial.,,,,,,,

20. From the facts of the present case, at the best if proved, it may be a case of cheating. The suit for recovery of amount has not been filed. Shares",,,,,,,

are with the investors. They have not filed any criminal complaint against the appellant. The period of purchased of shares and investment prior to 1st,,,,,,,

June, 2009. There is no investment after 1st June, 2009. No case is pending against the investors. Thre is no complaint or civil action initiated by them.",,,,,,,

21. It is matter of fact that the money was invested by the three investor in the year 2006, 2007, 2008 and upto March, 2009 i.e. prior to 01.06.2009",,,,,,,

even as per the allegations in the charge sheet (constituting the basis of the impugned order) the alleged crimes, in respect of which allegations are",,,,,,,

made against the Appellants have taken place prior to 2009. The penal provisions, which are sought to be pressed against the accused, were not",,,,,,,

included in the Schedule to the PMLA during the relevant time. They were only included in the Schedule only by way of amendment to PMLA vide,,,,,,,

Act No. 21 of 2009 w.e.f. 01.06.2009. Here is not a case where it could be said that the investors have taken any advantage from the Government of,,,,,,,

Andhra Pradesh. The respondent has not denied the said aspect.,,,,,,,

22. The Provisional attachment order was passed by relying upon the Income Tax Authority assessment order dated 31.12.2010 with respect to the,,,,,,,

allegations of the share premium and the investments by the companies. Actually investigation done by ED in the same lines of additional facts by the,,,,,,,

CBI investigation in the PAO. The said order of PAO was confirmed by the Adjudicating Authority.,,,,,,,

23. Nothing has been discussed in the provisional attachment order about the factual position of the matter as well as by the Adjudicating Authority,,,,,,,

while issuing the notice under section 8 of the Act. If the contentions of the respondent is accepted in the case like this, there would be flood of",,,,,,,

litigations under this Act which is not permissible in law. It was a case of either recovery of amount on civil-side and on the allegation of cheating and,,,,,,,

misrepresentation and criminal complaint on the ground of cheating etc. which is already pending. As far as civil remedy is concerned, no action for",,,,,,,

recovery of the said amount has been filed.,,,,,,,

24. Even otherwise, the attachments of M/s Jagati Publications seem to be wholly unnecessary as the High Court passed Orders dated 23.05.2012",,,,,,,

restraining the alienation of any assets of the company while taking into account that M/s Jagati Publications is a media house and many employees,,,,,,,

are dependent on the functioning of the company. The said interim order is still continuing. Therefore, the provisional attachment in the present case is",,,,,,,

bad and against the law applicable to the facts of the case.,,,,,,,

25. It is admitted by the learned counsel for the respondent that the appellant is running the company after receiving the invested amount and the,,,,,,,

investors have received the shares. We have been informed that the appellant company has a well established business. The investors are holding the,,,,,,,

shares of the company. The market share price is much more than the date of investment.,,,,,,,

26. As far as criminality, if committed, by the appellant is concerned, the allegations mentioned in the charge-sheet has to be determined as per its own",,,,,,,

merit and without any influence of this order.,,,,,,,

27. After having gone through the charge sheet even if the allegations are taken as correct in the predicate charge, no â??schedule offenceâ? was",,,,,,,

prima facie committed for the purposes of PMLA (as defined thereunder). Thus, the Provisional Attachment Order, and confirmation thereof, is not",,,,,,,

sustainable in law. The same is set-aside. The attachment order of attaching the amount is lifted forth-with.,,,,,,,

28. It is clarified that as far as the criminal case of the offences for charges of section 120B and Section 420 IPC is concerned, the same is to be tried",,,,,,,

by the court concerned as per its own merits and without any influence of this judgement which is being passed on the reasoning that no case of,,,,,,,

money laundering PMLA is made out against the appellant.,,,,,,,

29. The appeal is, accordingly, allowed. The impugned order is set-aside. Consequently, the provisional attachment order is also set-aside.",,,,,,,

30. No costs.,,,,,,,