(2011) 08 AHC CK 0222

In the Allahabad High Court

Case No : Writ C No. 34413 of 2010

L.M.L. Limited and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20
Constitution of India, 1950 — Article 14, 19, 226, 226(2), 23
Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 — Rule 4
Foreign Exchange Management Act, 1999 — Section 13, 16, 16(3), 37
Income Tax Act, 1961 — Section 131

Citation : (2011) 08 AHC CK 0222

Hon'ble Judges : Bharati Sapru, J;Ashok Bhushan, J

Bench : Division Bench

Judgement

Ashok Bhushan, J.—Heard Sri R.N. Trivedi, learned Senior Advocate, assisted by Sri Anurag Khanna for the Petitioners, Sri S.K. Mishra, Additional Standing Counsel appearing for Respondents No. 1, 3 and 4 and Sri Ravi Kant, learned Senior Advocate, assisted by Sri Tarun Agarwal, appearing for Respondent No. 2.

2. Petitioner No. 1, M/s. L.M.L. Limited, is a public limited company registered under the Companies Act, 1956 and engaged in the manufacture, marketing and sale of scooters under the brand name "LML" having its registered office, its manufacturing plant and principal place of business at Kanpur. Petitioner No. 2 is Director of the Company.

3. The Petitioners have come up in this writ petition praying for quashing the proceedings and investigation pursuant to notice/ summon dated 29th January, 2007 and notices/summons of subsequent dates last being 11th May, 2010 by which investigation u/s 37 of the Foreign Exchange Management Act, 1999 has been initiated for alleged contravention of the provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as the FEMA), rules, regulations, notifications, directions or orders issued under the FEMA. The Petitioners have

also prayed for a direction restraining the Respondents from proceeding any further in the matter and for closing the case.

4. A Division Bench of this Court (consisting of Hon''ble Rakesh Sharma and Hon''ble Shyam Shankar Tiwari, JJ.) heard the writ petition and by an order dated 9th June, 2010 further proceedings and investigation being carried out by the Respondents were stayed. The Respondents No. 1 to 4, feeling aggrieved by stay of the proceedings, filed special leave to petition before the Apex Court which was converted as Civil Appeal No. 2012 of 2011. The said civil appeal was disposed of by the Apex Court vide order dated 21st February, 2011. The Apex Court set-aside the order dated 9th June, 2010 passed by this Court and remitted the matter to the High Court for fresh consideration. The Respondents No. 1 to 4, who were Appellants before the Apex Court, were allowed time to file counter affidavit and the High Court was directed to dispose of the matter as expeditiously as possible preferably within six weeks from the date of receipt of the order. Although the order of the Apex Court was placed on record by office report dated 4th April, 2011 and by order of Hon''ble the Chief Justice dated 22nd May, 2011 this Bench was nominated but due to adjournments sought by the Respondents (Appellants before the Apex Court) on three occasions, the hearing could be concluded on 16th August, 2011 and the writ petition is being decided today.

5. A counter affidavit has been filed by Union of India to which rejoinder affidavit has also been filed by the Petitioners. The Petitioners have also filed two applications dated 9th May, 2011 and 12th July, 2011 bringing on record all the notices issued by the Respondents beginning from 29th January, 2007 and the reply submitted by the Petitioners to the aforesaid notices which were taken on the record.

6. The respective cases of both the parties as emerge from the pleadings, briefly noted, are; the Petitioners'' case in the writ petition is that Petitioners'' reside and carry on their business at Kanpur and Petitioner No. 1 has its registered office, its manufacturing plant and principal place of business at Kanpur. The Petitioner No. 1 is represented by its Chairman & Managing Director and Petitioner No. 2 is one of the Directors of the Company. The Petitioners'' company had been manufacturing two stroke scooters, however, due to consumers preference moved away from two stroke scooters in favour of four stroke motorcycle, the Petitioners'' company suffered loss and in September, 2000 Petitioner''s company set-up a nominal capacity to manufacture four stroke motorcycles in technical collaboration with DAELIM of South Korea and launched motorcycles. In the year 2001 to fund the expansion of capacity and product range of motorcycle project, the Petitioners submitted proposal to its lenders. The Petitioners'' four proposals submitted to lenders could not succeed. In January, 2005, the Petitioners'' company submitted its fifth proposal to lenders for negotiated settlement based on funding contemplated from new stakeholders. The proposal was agreed to by all the lenders under which all accrued interest

including penal and compound was waived and 100% of the core principal was restructured. A multi-partite agreement dated 28th March, 2005 was entered between the Petitioners'' company and its lenders. The approval to the negotiated settlement was time bound and was contingent on the Petitioners'' company raising from overseas investors (a) Rs. 22.1 crores (approx. US $ 5 million) by way of equity capital as per SEBI Guidelines; (b) US $ 20 million by way of public issues of foreign currency convertible bonds (FCCB) on or before 31st March 2005 and (c) not less than US $ 3 million such as by way of equity capital, FCCB by 31st March, 2006 all of which were satisfactorily achieved. For revival of the Petitioners'' company not only restructuring of the debt of the lenders and mobilization of funds from overseas investors was to be done but it also required substantial change in its organization structure. In the process one Mr. R.D. Jayal, an employee of the company, was also to be moved out. Mr. Jayal made unilateral and extraordinary demand to be paid approximately Rs. 3 crores over and above his legal dues, which was impossible for the Petitioners'' company to meet. Due to Petitioners'' company not being able to pay the above unjustified amount, Mr. Jayal developed serious prejudice against the company and its promotors. Initially Petitioners'' company received a letter from the Registrar of Companies, Kanpur conveying that it had received a complaint that outstanding dues of Mr. Jayal are not being paid. The said letter was satisfactorily replied by the Petitioners. A notice/summon dated 29th January, 2007 u/s 37 of the FEMA was issued for initiating investigation and proceeding regarding, inter alia, the fund raising done by the Petitioners'' company from overseas investors and the negotiated settlement with the lenders. The summons/notices were received by the Company and its Director Anurag Singhania at its representative office situate at Gurgaon. The Chief Managing Director of the Petitioners'' company was pressurised by Respondent No. 2 to contact a person who was well known to Mr. Jayal to act as a mediator and once contact was made with the mediator by the Chief Managing Director, the issue of further notices/summons were stopped. Both, the Petitioners'' company and Mr. Jayal appeared before the mediator but demands of Mr. Jayal could not be met and after failure of mediation again issue of summons/notices started from October, 2007. The Petitioners'' company submitted a detail letter dated 14th November, 2007 to the Director, Directorate of Enforcement, New Delhi narrating the sequence of events. A request was made from the Director to transfer the case from Delhi Zonal Office to Lucknow Zonal Office. On the said letter, the Director transferred the case from Delhi Zonal Office to the Headquarters, but after the transfer of the then Director and his death again the case was retransferred to Delhi Zonal Office in September, 2009. Petitioners'' case further is that a circular has been issued by the Directorate of Enforcement on 25th September, 2008 demarcating the territorial jurisdiction of various zonal and sub-zonal offices. According to the said circular dated 25th September, 2008 the jurisdiction with regard to Petitioners'' company is with the Lucknow Zone and Delhi Zonal Office has no authority or jurisdiction to carry on investigation. Petitioners'' case further is that investigation initiated u/s 37 of the FEMA is nothing but an roving and fishing enquiry whereas there is no material to even prima facie indicate contravention of any provision of FEMA by the Petitioners. It is stated that investigation by the Respondents is ultra vires to Section 37 read with Section 13 of the FEMA and is without jurisdiction. It is stated that Respondent No. 2 has initiated process of investigation to put pressure upon the Petitioners to pay the illegal demand of ex-employee Mr. Jayal to the extent of Rs. 3 crores. It is submitted that in reply to various notices and summons received by the Petitioners, the Petitioners have submitted their detail reply and the Petitioner No. 2 had appeared personally before the authority. The Petitioners have submitted documents to the Respondents running into 5,700 pages and all required information have been submitted from time to time, however, the investigation is being carried on for the last more than forty months which vitally affects the Petitioners'' rights guaranteed under Articles 14, 19, 31 and 23 of the Constitution of India. The Petitioner No. 1 had raised funding from overseas investors in the year 2005 under the automatic approval route and in compliance thereof has been filing the necessary returns with the Reserve Bank of India. There is no contravention which has been pointed out by Reserve Bank of India u/s 13 of the FEMA. On the aforesaid pleadings, the Petitioners pray that investigation which has commenced by notice/summon dated 27th January, 2007 be quashed and the Respondents be restrained from proceeding any further with the case.

7. A counter affidavit has been filed on behalf of the Union of India sworn by Assistant Director, Enforcement Directorate, Delhi Zonal Office. At the very outset, an objection has been raised regarding territorial jurisdiction of this Court. It is stated in paragraph 5 of the counter affidavit that there is no cause of action/part of cause of action which has arisen within the territorial jurisdiction of this Court. It is stated that office of the investigating agency is in Delhi and summons have been issued from Delhi; all summons are addressed to the Petitioners at the Gurgaon, Haryana and the investigation is being carried out in Delhi, hence there is no cause of action within the territorial jurisdiction of this Court. It is further stated that at registered office of the Petitioners'' company at Kanpur, no summons have been sent. It is further stated that writ petition has been filed prematurely for the purpose of interfering and hampering with the investigation sought to be conducted by Respondents under Rule 4 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000. It is submitted that a thorough investigation into any alleged contravention is to be first conducted by investigating officer pursuant to which Adjudicating Authority shall issue notice. The investigation into contravention being still on, no cause of action has yet arisen to the Petitioners to file this writ petition. The investigation so far shows laundering of money and routing the same into debt restructure transactions. Keeping in mind the enormity and deep rootedness of the laundering transactions for the purpose of bringing the investigation to its logical conclusion, letters of requests have been sent to various countries for the purpose of collecting information and evidence. It is submitted that investigations by their very nature are time consuming and same needs full

participation and assistance of the Petitioners. The investigation has been going on since the year, 2007, hence there is no imminent urgency or need for the Petitioner to rush and invoke the jurisdiction of writ Court. Mr. Jayal is neither the complainant nor the person at whose instance the investigation has commenced. It has been denied that investigating officer or Respondent No. 2 or any other officer/authority of the Directorate of Enforcement are acting under the influence of Mr. Jayal. It is stated that in November, 2007 the file was called by the Headquarters of the Directorate and the matter was examined in the Headquarters on various aspects. In the meantime a complaint was made to the Central Vigilance Commission which after preliminary investigation directed Directorate of Enforcement to investigate thoroughly into the matter and send periodic reports. The matter has again been transferred in August, 2009 to Delhi Zonal Office. The allegations in the complaint indicate violation of FEMA by way of over-invoicing in imports and depositing amounts in Swiss Bank Accounts in Zurich (Switzerland). In paragraph 35 of the counter affidavit allegations of complaint have been referred to. It is submitted that Petitioners shall have sufficient opportunity to raise objection when it has valid cause of action. The inquiry by adjudicating authority has not yet begun since the investigation is still on. The Enforcement Department has ample jurisdiction to carry on investigation for contravention of the provisions of FEMA.

8. We heard the learned Counsel for the parties and have perused the record.

9. The preliminary objection, which has been raised by counsel for the Respondents regarding lack of territorial jurisdiction of this Court needs to be considered first.

10. It has been submitted both, by Sri S.K. Mishra, Additional Standing Counsel and Sri Ravi Kant, learned Senior Advocate that this Court has no territorial jurisdiction to entertain the writ petition. Learned Counsel for the Respondents have raised two objections in this regard, firstly it is submitted that investigation is being carried out against Petitioner No. 2 (Anurag Singhania) in his individual capacity and since notices have been served to Anurag Singhania at his Gurgaon office, the writ petition cannot be entertained by this Court and secondly it is submitted that notices having been issued from Delhi office and the same having been served upon Petitioner No. 2 at Gurgaon office, there is no part of cause of action within the territorial jurisdiction of this Court.

11. Sri Ravi Kant in support of his submission, has placed reliance on judgments of the Apex Court in the cases of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, , National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, and Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others,

12. The first objection of the Respondents is that investigation is being carried out against Petitioner No. 2 in his individual capacity.

13. The Petitioners have filed copy of notice dated 29th January, 2007 issued by Assistant Director as Annexure-7 to the writ petition. A perusal of the said notice

issued to the Petitioners indicates that the said notice has been addressed with two separate letters to M/s. LML Limited and Mr. Anurag Singhania. It is useful to extract the contents of the notice, which is to the following effect:

To

M/s LML Limited, 7309, DLF City,Phase-IV, Gurgaon,Haryana

The Directorate of Enforcement is investigating certain cases under Foreign Exchange Management Act, 1999. In relation to the investigation please furnish following information:

1 Copy of restructuring proposal for rescheduling of loan submitted of IFCI over last 5 years.

2 Copy of proposal seeking additional loan from IFCL.

3 Copy of "one time settlement" proposal given to IFCI.

4 Copy of agreement with Credit Suisse.

5 Details shareholding in M/s LML Limited, as on 01.01.2004, 01.01.2005, 01.01.2006 and 01.01.2007.

6 Details of shareholding of M/s Credit Suisse yearwise i.e. as on 01.01.2005, 01.01.2006 and 01.01, 2007.

It has been learnt that M/s Credit Suisse has liquidated its entire share holding in LML Limited. Please furnish complete details of transactions of LML shares undertaken by Credit Suisse. Name and address of the entity which purchase share of LML held by Credit Suisse may also be furnished.

Copy of the agreement with IFCI for availing term loan from IFCI.

Copy of passport of Shri Anurag Singhania.

Details of Credit Cards held by Shri Anurag Singhania including Foreign Credit Cards.

Relationship of Ban Hock Hin Pte Ltd., Singapore with Anurag Singhania/LML Limited.

Copy of summons u/s 37 of Foreign Exchange Management Act, 1999 read with Section 131 of Income Tax, 1961 is enclosed herewith for enforcing compliance. Please note that a written reply furnishing all the details sought above will deem to the proper compliance of the summons u/s 37 of FEMA, 1999.

Yours faithfully, Sd/-Illegible (Sharad Choudhary) Assistant Director.

14. Similar notice has also been addressed to Mr. Anurag Singhania by a different letter number of the same date which is at page 112 of the paper book. Various notices issued subsequently have been brought on the record which indicate that notices were issued to M/s. LML Limited and Mr. Anurag Singhania. In some of

the notices Mr. Anurag Singhania has also been referred to as Director. Other notices have been issued to Mr. R.K. Srivastava, Whole Time Director, LML Limited. All notices were address at the Gurgaon Office of the Company. Some of the summons, which have been issued, also mention that attendance is required in the case of M/s. LML Limited (Re: copy of the summon dated 28th June, 2007). The fact that summons have been issued to M/s. LML Limited, Mr. Anurag Singhania referring him as Director, LML (in some of the summons) and Mr. R.K. Srivastava, Whole Time Director of the LML Limited clearly dispels the case set-up by the Respondents that investigation is being carried out against Mr. Anurag Khanna in his individual capacity.

15. The submission much pressed by the Respondents is that no cause of action has arisen in the territorial jurisdiction of this Court. The territorial jurisdiction of a High Court under Article 226(2) of the Constitution of India came for consideration before the Apex Court time and again. In M/s Kusum Ingots and Alloys'' case (supra) the Apex Court had occasion to consider the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India. Referring to earlier judgments, following was laid down by the Apex Court in paragraphs 9 and 10 of the said judgment:

9. Although in view of Section 141 of the CPC the provisions thereof would not apply to a writ proceedings, the phraseology used in Section 20(c) of the CPC and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the Petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

10. Keeping in view the expressions used is Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

16. Again in National Textile Corporation''s case (supra), the Apex Court had occasion to consider the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution and laid down following in paragraph 10:

Under Clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, it would be necessary for the

Plaintiff to prove in order to support his right to a judgment of the Court. To put it in a different way, it is bundle of facts which taken with law applicable to them, gives the Plaintiff a right to relief against the Defendant. In Union of India and Others Vs. Adani Exports Ltd. and Another, in the context of Clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court''s territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. A similar question was examined in State of Rajasthan and Others Vs. Swaika Properties and Another, Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice u/s 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land u/s 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government u/s 52 of the Act. It was thus held that Calcutta High Court had no jurisdiction to entertain the writ petition.

17. Thus the proposition is well settled that even if part of cause of action arises within the territorial jurisdiction of a High Court, the High Court can entertain the writ petition. The cause of action does not include entire bundle of facts pleaded but only material/integral fact. In the present case, it is clear from the copy of notice dated 29th January, 2007 and subsequent notices addressed to M/s. LML Limited that what is being investigated is the affairs of the company, its financial arrangement, details of shareholding of various shareholders, one time settlement, copy of agreement with various lenders and other allied matters. The company''s registered office is at Kanpur and company''s manufacturing unit factory is also at Kanpur where it carries on its business. When the investigation is being carried out by the Respondents regarding affairs of the company, it cannot be said that at the place where company is carrying its business and where its registered office situate, there is no part of cause of action. At Gurgaon the company has its representative office as stated in its pleadings and mere fact that the notices have been issued at its representative office at Gurgaon cannot lead to inference that cause of action was only at Gurgaon where notices have been issued and at Delhi from where notices have been issued. We are satisfied that part of cause of action did arise within the territorial jurisdiction of this

Court, hence the petition cannot be thrown out on the ground of lack of territorial jurisdiction.

18. In paragraph 4 of the rejoinder affidavit filed by the Petitioners the pleading of lack of jurisdiction has been met. It has also been stated in paragraph 5 of the rejoinder affidavit that although objection regarding lack of territorial jurisdiction was taken by the Respondents before the Apex Court when Civil Appeal No. 2012 of 2011 was filed against the interim order but in the affidavit dated 14th January, 2011 filed by the Respondents before the Apex Court, the objection to the territorial jurisdiction was expressly withdrawn.

19. In view of the above, the preliminary objection raised by the Respondents regarding lack of territorial jurisdiction is overruled.

20. The investigation, which has been initiated by the Respondents is u/s 37 of the FEMA. Section 37 of the FEMA is quoted below:

37-Power of search, seizure, etc.-(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in Section 13.

(2) Without prejudice to the provisions of Sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in Section 13.

(3) The officers referred to in Sub-section (1) shall exercise the like powers which are conferred on income tax authorities under the income tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

21. Section 13 of the FEMA provides for penalty for contravention of any provision of FEMA, rule, regulation, notification, direction or order issued in exercise of the powers under the FEMA or contravention of any condition subject to which authorisation is issued by the Reserve Bank of India. Section 13 of the FEMA is quoted below:

13-Penalties.-(1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization s issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under Sub-section

(1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of hitch the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.-For the purposes of this Sub-section, "property" in respect of which contravention has taken place, shall include -

(a) deposits in a bank, where the said property is converted into such deposits;

(b) Indian currency, where the said property is converted into that currency; and
(c) any other property which has resulted out of the conversion of that property.

22. The adjudication for the purpose of Section 13 of the FEMA is provided for in Section 16. According to Section 16(3) of the FEMA no adjudicating authority shall hold an inquiry under Sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government. From the pleadings of the parties on the record, it is clear that no complaint has yet been filed before any adjudicating authority although investigation u/s 37 of the FEMA has commenced by notice dated 29th January, 2007.

23. As observed above, in this writ petition an interim order was passed on 9th June, 2007 against which Civil Appeal No. 2012 of 2011 was filed which was disposed of by the Apex Court on 21st February, 2011. The Apex Court in its order dated 21st February, 2011 has noted the submission which was made by the Appellants (Respondents No. 1 to 4 in this writ petition). The submission was made before the Apex Court that investigation could have been completed if six months'' time was given to the Appellants for completing the investigation but instead on the very first day the High Court proceeded to stay the investigation thereby virtually allowing the writ petition on very first day itself. It is useful to extract paragraph 5 to 10 of the said judgment:

5. It is contended by the counsel appearing for the Appellants before us that the investigation initiated could have been completed if six months'' time was given to the Appellants for completing the investigation but instead on the very first day, the court proceeded to stay the investigation, thereby virtually allowing the writ petition on the very first day itself.

6 The learned Counsel appearing for the Respondents on the other hand submitted that the Directorate of Enforcement proposed to summon the Respondents so as to extract confessions from them and therefore the writ petition was filed where the impugned order was correctly passed.

7. We are, at this stage, not concerned with the allegations and counter allegations made by the parties as the writ petition is pending for consideration

and disposal in the High Court. The same is required to be considered and disposed of by the High Court in accordance with law. But, we cannot appreciate the manner in which the writ petition was taken up and an interim order was passed by the vacation court and thereby practically allowing the writ petition on the very first day. Some time and opportunity should have been granted to the Appellants herein and thereafter the court could have proceeded with to hear the matter.

8. Be that as it may, in the facts and circumstances of this case we set aside the impugned judgment and order without, however, expressing any opinion on the merits of the dispute between the parties. We send back and remit the matter to the High Court for fresh consideration of the writ petition in accordance with law and without, in any manner, being influenced by the present order passed by us. The parties shall be at liberty to raise all issues before the High Court when the matter is taken up by the High Court. We request the Chief Justice of the High Court to take up the matter in his Board or if the same is not possible for any reason, then the writ petition be listed before an appropriate bench for disposal.

9. Let the writ petition be disposed of as expeditiously as possible preferably within six weeks from the date of receipt of the orders from this Court. Counter affidavit, if any, shall be filed by the Appellant within two weeks from today and the rejoinder, if any, shall be filed within a week thereafter.

10. In terms of the aforesaid order, the appeal is disposed of by setting aside the impugned order and by issuing directions for fresh disposal in accordance with the directions contained herein.

24. Although learned Counsel for the Petitioners has submitted that there is no material with the Respondents to embark upon the investigation u/s 37 of the FEMA since there is no contravention of the FEMA by the Petitioners nor any such alleged contravention has been referred to in various notices/summons, we, however, at this stage are not inclined to enter into various submissions as raised by the counsel for the Petitioners as to whether there is any material for alleging contravention of provisions of the FEMA or not. This is not the stage to embark upon any such inquiry when the investigation as per the Respondents has not yet been completed and the process of investigation is in progress but we cannot loose sight of the fact that investigation commenced by letter dated 29th January, 2007 has not yet been completed although more than four years have passed.

25. Learned Counsel for the Respondents has submitted that since certain information is required from foreign countries where letter of request has been sent and reply is awaited, the investigation is taking time. It is true that statutory authorities under the FEMA have right to hold investigation for purpose of finding out the contravention, if any, of the FEMA and to take appropriate steps for adjudication but the said investigation has to be completed within a reasonable time.

26. In view of the fact that Respondents, who were Appellants before the Apex Court, themselves have submitted that had six months time was allowed to the Appellants for completing the investigation, they could have completed the same, we are of the view that writ petition deserves to be disposed of with the direction to the Respondents to complete the investigation u/s 37 of the FEMA within a period of six months from the date a certified copy of this order is produced before the Director of Enforcement.

27. Learned Counsel for the Petitioners referring to the circular dated 25th September, 2008 (Annexure-C to the rejoinder affidavit) has submitted that Delhi Zonal Office has no jurisdiction to carry on any investigation. He further submits that Respondent No. 2 be directed not to be associated with the investigation in view of the allegation made against him in the writ petition.

28. The Additional Standing Counsel appearing for the Union of India as well as Sri Ravi Kant, learned Senior Advocate, appearing for Respondent No. 2, have stated that Respondent No. 2 has nothing to do with the investigation which is being carried on against the Petitioners. It is submitted that Respondent No. 2 has no role to play in the investigation.

29. As noticed above, the investigation which was initiated at Delhi Zonal Office was withdrawn by the Directorate of Enforcement from where the investigation was restarted and again in August, 2009 it was transferred back to Delhi Zonal Office. We are of the view that it is for the Director of Enforcement to consider and decide as to which authority or which office is to carry out the investigation keeping in view the circular dated 25th September, 2008 and subsequent circulars of the Directorate of Enforcement, if any. We further observe that Director of Enforcement may take appropriate decision in this regard on submission of a certified copy of this order before it. The Director of Enforcement may also take appropriate steps so that investigation be completed within six months as directed above.

30. The writ petition is disposed of with the aforesaid directions. No orders as to costs.