(2018) 02 ATPMLA CK 0003

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-1732, 1733, 1734/HYD/2015, FPA-PMLA-920, 921, 922, 923/HYD/2015

M/S Jagati Publications Pvt. Ltd. & Ors — APPELLANT

Vs

Joint Director, Directorate Of Enforcement, Hyderabad — RESPONDENT

Date of Decision : 13-02-2018

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 3, 8(5), 8(6), 8(7), 24, 50, 58B, 60(2A)
Indian Penal Code, 1860 — Section 34, 409, 420, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(1)(d), 13(2)

Citation : (2018) 02 ATPMLA CK 0003

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

Bench : Division Bench

Advocate : Raghenth Basant, S.A. Saud, K. Sidharth Rao, Yogesh Ravi

Final Decision : Disposed Of

Judgement

FPA-PMLA-920/HYD/2015, FPA-PMLA-921/HYD/2015, FPA-PMLA-922/HYD/2015&FPA-PMLA-923/HYD/2015

1. The Honâ?ble High Court of Andhra Pradesh vide its Order dated 10.08.2011 in Writ Petition Nos.794 & 6604 of 2011 directed CBI for

registration of the case and for thorough investigation in all the aspects of financial misdeeds involving huge magnitude of government largesse,

corporate dealings including huge investments as part of Quid Pro Quo arrangements for the largesse and the benefit obtained by the investors from

the State of Andhra Pradesh and also in all other aspects.

2. The said order dated 10.08.2011 passed by the Honâ?ble High Court of Andhra Pradesh inter alia stated as â??prima facie that it emerges from the

record forming part of the writ petitions including pleadings of the parties that from May, 2004 onwards, respondent No. 52 (Jagan Mohan Reddy)

floated number of companies wherein Quid Pro Quo investments have been made out of the benefits received by the investors / beneficiaries from the

decisions of the State Government in various forms like SEZâ?s irrigation contracts, relaxation / permission for real estate ventures, mines etc. besides

payment of huge premium amounts paid in the shares and invested in the companies by such beneficiaries and the money so paid is nothing but corrupt

money attracting Section 3 of the Prevention of Money Laundering Act, 2002.

3. As per the Order Dated 10.08.2011 of the Honâ?ble High Court of Andhra Pradesh at Hyderabad, in Writ Petition Nos.794 & 6604 of 2011,

Central Bureau of Investigation, ACB, Hyderabad, registered a case vide RC.19(A)/2011-CBI-HYD on 17.08.2011 under Section 120-B, read with

Section 420, Section 409 & Section 477-A of Indian Penal Code, 1860 &Section 13(2) read with Section 13(1)(c)&(d) of the Prevention of Corruption

Act, 1988 against Shri Y.S Jagan Mohan Reddy, the then Member of Parliament, Kadapa and 73 Others.

4. CBI did not file charge sheets against all the persons / entities indicated in the FIR dated 17.08.2011, CBI, Hyderabad filed a Memo dated

23.09.2013 before the Special Judge for CBI Cases, Nampally, Hyderabad wherein it is inter alia stated as -

â??â?¦ 5. It is further submitted that during the course of investigation, in respect of the following issues no quid pro quo could be

established, however, it came to light that the overt acts, irregularities, violations committed by the firms/ individuals coming under the

purview of Enforcement Directorate, Income Tax, Registrar of Companies and Govt. of A.P. Accordingly, matters were referred to the

department concerned for taking necessary action as deemed fit in respect of the following, as the case may be â?

i. M/s Sandur Power Company Ltd.

ii. M/s Carmel Asia Holdings Pvt. Ltd.

iii. M/s PVP Business Ventures

iv. M/s Jubilee Media Communications

v. M/s Classic Realty Ltd. and M/s BrahmaniInfratechPvt. Ltd.

vi. M/s RR Global Enterprises Pvt. Ltd.

vii. M/s Saraswati Power & Industries Ltd.

viii. M/s Mantri Developers â?¦.â??

5. After completion of investigation, CBI has filed 11 Charge Sheets (apart from three supplementary charge sheets in two charge sheets) before the

Principal Special Judge for CBI Cases, Nampally, Hyderabad against Shri Y.S Jagan Mohan Reddy & Others. Out of the above 11 charge sheets, 10

Charge Sheets were filed for quid pro quo arrangements and other one relates to cheating of investors by S/Shri Y.S Jagan Mohan Reddy & Vijay Sai

Reddy.

6. As far as we are concerned, we propose to consider the matter as per material available on record without any influence of the order passed in writ

petition on 10.08.2011

7. It was the case of CBI and ED inter alia that undueÂ favours were allegedly granted to the group companies of Mr. P. Pratap Reddy to the

following effect:-

a) Alienation of Government land to an extent of Ac.234.09 gts in Yadiki Mandal of AnantapurDistrict to M/s Penna Cement Industries Ltd. Vide

G.O.Ms. No. 1490 dated 12.12.2008.

Â b) Grant of prospecting license for limestone to an extent of Ac.304.74 Ac. of land in Kurnool District vide G.O.Ms.No. 91 dated 29.03.2008.

c) Grant of first renewal of mining lease for limestone in favour of M/s WalchandTandur Cement Company Ltd. Vide G.O.Ms.No.76 dated

26.02.2009 and change of name of Company from M/s WalchandTandur Cement Company Ltd. To M/s Penna Cement Company Ltd. Vide

G.O.Ms.No.25.

d) Grant of Permission for Hotel Construction at Banjara Hills and relaxations thereon.

8. Another allegation is that Mr. P. Pratap Reddy, inter alia, invested Rs 45 Cr. through his group company: M/s PR Energy Holdings Pvt Ltd, into

M/s Jagati Publications Ltd. as quid pro quo to alleged favors received from GOAP. As far as this investment is concerned, the same is not denied but

as per appellants, it was a genuine investment.

9. It is further alleged that M/s Jagati Publications has advanced a sum of Rs.11,54,87,968/- and Rs.17,13,05,454 to M/s Janani Infrastructure Pvt Ltd.

and M/s Indira Television Pvt Ltd. respectively from the monies received from M/s PR Energy Holdings Pvt Ltd.

Re: Investment of Rs.23 Cr. by M/s PR Energy Holdings Pvt Ltd into M/s Carmel Asia Holdings Pvt Ltd.

10. The allegations are also that Mr. P. Pratap Reddy, inter alia, invested Rs 23 Cr. through his group company: M/s PR Energy Holdings Pvt Ltd, into

M/s Carmel Asia Holdings Pvt Ltd as quid pro quo to alleged favors received from GOAP M/s Carmel Asia Holdings Pvt Ltd. invested

Rs.11,54,87,968/- and Rs.7,72,00,000/- into M/s Janani Infrastructure Pvt Ltd. and M/s Indira Television Pvt Ltd. respectively from the monies

received from M/s PR Energy Holdings Pvt Ltd.

11. OnÂ theÂ basisÂ ofÂ allegationsÂ madeÂ inÂ theÂ F.I.RÂ byÂ C.B.IÂ after investigation charge sheet was filed and ED in view of

allegations and material the attachments effected in the entire O.C. 276 of 2014 totalling to Rs. 47,00,50,755/-

â?¢ M/s Jagati Publications Ltd: Plant and Machinery valued at Rs.5,59,42,885/-/-

â?¢ M/s Janani Infrastructure Pvt Ltd.: Lands and Buildings valued at Rs. 16,56,02,416.

â?¢ M/s Indira Television Pvt Ltd.: Plant and Machinery valued at Rs. 24,85,05,454/-

12. After examining the matter, the provisional attachment order was confirmed by the impugned order dated 09.04.2015 passed by the Adjudicating

Authority.

13. Appeals have been filed against Order dated 09.04.2015 by Honâ?ble Adjudicating Authority made in Original Complaint No. 396 of 2015

confirming the attachments made vide Provisional Attachment Order No. 04/2014 dated 15.12.2014 (PAO) in ECIR/09/HZO/2011. PAO passed

corresponding to CC No. 26 of 2013 before The Special Judge for CBI Cases, Hyderabad (CBI Case).

The details of appeals are given as under :-

â?¢ FPA-PMLA-920/HYD/2015: M/s Jagati Publications Ltd.

â?¢ FPA-PMLA-921/HYD/2015: M/s Janani Infrastructure Pvt Ltd.

â?¢ FPA-PMLA-922/HYD/2016: M/s Indira Television Ltd.

â?¢ FPA-PMLA-923/HYD/2016: M/s Carmel Asia Holdings Pvt Ltd.

14. It was the case of all appellants who addressed on behalf of appellants that all the investments made into M/s Jagati Publications Ltd and M/s

Carmel Asia Holdings Pvt Ltd are genuine investments and advances made in course of bona fide commercial transactions. The allegations as to

overvaluation and ante-dating of valuation reports with respect to M/s Jagati Publications Ltd. are completely baseless and erroneous. The premium

fixed for the shares of M/s Jagati Publications Ltd. is based on sound commercial analysis, including cogent valuation. The premium fixed

contemporaneously by other market participants would evince that the premium of M/s Jagati Publications Ltd. shares is justified.

15. TheÂ recordÂ circulationÂ hasÂ beenÂ Â achievedÂ byÂ theÂ newÂ paper â??sakshiâ? as soon as it commenced its operations would

evidently show the market capabilities of M/s Jagati Publications Ltd. Many other persons, against whom no allegations exists also invested in M/s

Jagati Publications Ltd. at premium of Rs.350 per share but no actions are taken by the CBI and ED. It is alleged that about 60 investors have made

the investment in the companies but CBI and ED have initiated the action only against few investors which is clear case of discrimination. Counsel for

the respondent has not denied the said fact but it was stated by him that in many of the cases, actions have taken against the investors where they

have taken benefits from the Government.

16. It is also argued on behalf of the appellants that all the investments/ advances by M/s Carmel Asia Holdings Pvt Ltd, and M/s Jagati Publications

Ltd., to M/s Janani Infrastructure Pvt Ltd. and M/s Indira Television Pvt Ltd. are genuine investments made in course of bona fide commercial

transactions.

17. In the impugned order, the following conclusion has been arrived: -

On a thorough perusal of the PAO, Complaint, the FIR and the Charge Sheet, the investigation conducted by the ED and the statements

recorded u/s 50 of the PMLA and on careful consideration of the arguments advanced on behalf of the Complainant & defendants

undersigned comes to the prima facie conclusion that the defendants have committed the Scheduled Offences, generated proceeds of crime

and laundered them. No doubt the properties attached are proceeds of crime or value thereof and are involved in money laundering.

Undersigned therefore orders confirmation of the above Provisional Attachment Order. This order shall continue during the pendency of

the proceedings relating to any offence under this Act before court or under the corresponding law of any other country, before the

competent court of criminal jurisdiction outside India as the case may be and become final after an order of confiscation is passed under

sub-section (5) to subjection (7) of Section 8 or section 58B or sub section 2A or section 60.

18. Section 24 reads as under:

Section 24 Burden of Proof :- In any proceeding relating to proceeds of crime under this Act,-

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary

is proved, presume that such proceeds of crime are involved in money launder; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money laundering.]

19. With regard to the other attachments are concerned, the definition of proceeds of crime reads as follows:

â??proceeds of crimeâ? means any property derived or obtained, directly of indirectly, by any person as a result of criminal activity

relating to a scheduled offence or the value of any such property;

And the definition of â??propertyâ? means any property or assets of every description, whether corporeal or incorporeal, movable or

immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever

located;

It is submitted that the concept is best understood, in the words as beautifully explained in Regina V. Wright (Robert), [2014] 1WLR 2913,

Para 12, by Court of Appeal:

12 We bear in mind that the purpose of the statutory scheme is to strip an offender of benefit derived from an offence, not to compensate

loss. We think it right to return to section 76(4)(5) where the language of the 2002 Act is clearly focused on the obtaining of property, or a

pecuniary advantage as a result of, or in connection with, conduct.â??

20. From the entire gamut of the matter and material placed on record, it appears to us that the allegation of bribe and cheating are yet to be

considered by the Special Court. It is yet to be examined after trial as to whether any criminality is involved or not. There is no denial on the part of

the appellants that the said investments were made.

21. AsÂ regardsÂ theÂ allegationÂ thatÂ Mr.Â P.Â PratapÂ Reddy,Â interÂ alia, invested Rs 45 Cr. through his group company: M/s PR

Energy Holdings Pvt Ltd, into M/s Jagati Publications Ltd. as quid pro quo to alleged favours received from GOAP; as far as investment part is

concerned, the same is not denied but as per appellants, it was a genuine investment.

22. There are versions against the version of the respondent who stated thatÂ theÂ investorsÂ haveÂ obtainedÂ favourÂ fromÂ GovernmentÂ

ofÂ Andhra Pradesh. The said aspect has to be determined at the time of trial as to whether despite of attachment of land of Government of Andhra

Pradesh it was a genuine investment. In view of facts involved in the present appeals theÂ appellantsÂ haveÂ notÂ dischargedÂ theirÂ

burdenÂ fully,Â thusÂ benefitÂ of doubt cannot be given to the appellants in the present appeals at this stage as the respondent is yet to prove the

said allegation before the Special Court about the criminality of the appellant who are allegedly involved in the schedule offences and under PML Act,

2002.

23. The issue of discrimination would also have to be decided by the Special Court. Further, as the burden of proof has not been fully discharged by

the appellant, their request for release of all the properties cannot be acceded to.

24. At the same time, we are in agreement with the submission of the learned senior counsel for the appellants that attachment to an extent of Rs.

2,50,00,000/- in the hands of M/s Indira Television Pvt.Ltd. is ex facie erroneous as the last tranche of investment of Rs. 2,50,00,000/-was made by

M/s Carmel Asia Holdings Pvt. Ltd. into M/s Indira Television Pvt Ltd. from 01.04.2014 to 30.09.2014 The attached properties were, admittedly,

acquired by 31.03.2014.Therefore, without prejudice, we modify the impugned order about the attachment, at least, to an extent of Rs.2,50,00,000/- in

the hands of M/s Indira Television Pvt Ltd. as the said attachment ought not have been done.

25. Similarly the attachment to an extent of Rs.6,94,88,000/- in the hands of M/s Janani Infrastructure Pvt.Ltd.is erroneous as it is the admitted

position that as investment of Rs.6,94,88,000/- into M/s Janani Infrastructure Pvt. Ltd. by M/s Carmel Asia Holdings Pvt. Ltd. (Out of the total

investment of Rs.11,54,87,968) was made on 30.10.2006 and 30.11.2006 even prior to the investment by M/s P.R. Energy Holdings Ltd. into the M/s

Carmel.

26. Therefore, without prejudice, the attachment, at least, to an extent of Rs. 6,94,88,000/- in the hands of M/s Janani Infrastructure Pvt Ltd. is

unconvict, the impugned order for the said attachment is modified so as the P.A.O.

27. Thus, without prejudice except the release of attachment as per details mentioned in 24 and 25 of our order, the remaining attachments would

continue.

28. AllÂ theÂ appealsÂ andÂ miscellaneousÂ applicationsÂ areÂ disposedÂ of accordingly. It is clarified that the Special Court- subject to the

final outcome of challenge made by the few appellants- shall pass the final order without any influence of the judgment passed by us.

29. No costs.

