

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.36939 of 2022

JUDGMENT:-

Heard Sri I.Koti Reddy, learned counsel, representing Sri N.Jeevan Kumar, learned counsel for the petitioners, Sri Josyula Bhaskara Rao, learned Standing Counsel for 1st respondent, Directorate of Enforcement (in short, ED), Ministry of Finance and 2nd respondent, Assistant Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad, Sri D.V.S.Lokeshwara Rao, learned Standing counsel for 3rd respondent, Axis Bank Limited.

2. Sri G.Sudheer Kumar and Sri N.Satyanarayana, learned counsels accepted notice for the respondent No.4, Union Bank of India, Level-3, CO Annex Building, Saifabad, Hyderabad - 500 004, Telangana, but the appearance is not made.

3. This writ petition under Article 226 of the Constitution of India has been filed for the following relief:-

“It is therefore prayed that this Hon’ble Court may be pleased to pass an order orders, directions or writ more particular one in the nature of Writ of Mandamus:

(A) Declaring the action of Respondent No 2 in instructing/directing the Respondent Nos.3 and 4, vide emails dated 18.10.2022, to debit freeze the bank

accounts of Petitioner No.1 bearing A/c No.91102004187524 maintained with Respondent No.3 and A/c No.055231100000858, A/c No.055211100004711, A/c No.055211100002962, A/c No.641301010050403 and A/c No. 641304010000001 maintained with Respondent No.4 as arbitrary, illegal, contrary to principles of natural justice and provisions of the Prevention of Money Laundering Act, 2002 and violative of the Fundamental rights guaranteed Article 19(1)(g) and Article 21 of the Constitution of India; and consequently set aside the instructions/directions in emails dt. 18.10.2022 issued by Respondent No.2.

(B) Declaring the action of Respondent No.2 in instructing/directing the Respondent Nos.3 and 4 vide emails dated 18.10.2022 to debit freeze the bank accounts of Petitioner No.2 bearing A/c No.913010024250012 maintained with Respondent No.3 and A/c No.055230100132315, A/c No.055211100002500 maintained with Respondent No.4 as arbitrary, illegal, contrary to principles of natural justice and provisions of the Prevention of Money Laundering Act, 2002 and violative of the Fundamental rights guaranteed Article 19(1)(g) and Article 21 of the Constitution of India and consequently set aside the instructions/directions in emails dt. 18.10.2022 issued by Respondent No.2.

(C) Declaring the action of Respondent No.2 in instructing/directing the Respondent Nos.3 and 4 vide emails dated 18.10.2022 to debit freeze the bank accounts of Petitioner No.3 bearing A/c

No.919010092209062 maintained with Respondent No.3 and A/c No.055211100003013 maintained with Respondent No.4 as arbitrary, illegal, contrary to principles of natural justice and provisions of the Prevention of Money Laundering Act, 2002 and violative of the Fundamental rights guaranteed Article 19(1)(g) and Article 21 of the Constitution of India and consequently set aside the instructions/directions in emails dt. 18.10.2022 issued by Respondent No.2.

(D) Declaring the action of Respondent No.2 in instructing/directing the Respondent No.3 vide emails dated 18.10.2022 to debit freeze the bank accounts of Petitioner No.4 bearing A/c No.055211100003110 maintained with Respondent No.4 as arbitrary, illegal, contrary to principles of natural justice and provisions of the Prevention of Money Laundering Act, 2002 and violative of the Fundamental rights guaranteed Article 19(1)(g) and Article 21 of the Constitution of India and consequently set aside the instructions/directions in emails dt. 18.10.2022 issued by Respondent No.2.

(E) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."

4. The petitioners are challenging the e-mails dated 18.10.2022 by the respondent No.2, the Assistant Director, Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad to the 3rd respondent, the Axis Bank Limited and to the 4th respondent, the Union Bank of India, requesting them to furnish the balance held in the accounts maintained in those

banks by the petitioner(s)/fixed deposits, with further request not to entertain debit transactions from the said accounts until further directions from the Office of the Enforcement Directorate, informing that the Directorate of Enforcement was investigating a case against the subject entity and others under the Prevention of Money Laundering Act, 2002 (in short, PMLA).

5. M/s. C.Gopal Reddy & Co., the 1st petitioner is a partnership firm engaged in the business of Government works contracts, private sector works contracts and road metal stone crusher units. The petitioner Nos.2 to 4 are the partners of the petitioner No.1.

6. On 22.02.2020, about 42 F.I.Rs were registered at Ananthpur and Kurnool Police Stations by Road Transport Officers under certain provisions of the Indian Penal Code (in short, the IPC) against the 1st petitioner and many others. Pursuant thereto, the ED initiated proceedings under the PMLA and an investigation vide ECIR/HYZ0/33/2020 against many persons, including the petitioner Nos.1 to 3. On 17.06.2022, the officials of ED conducted search at the residential premises of the 2nd petitioner under Section 17 (1) of the PMLA and seized certain items. Thereafter, the ED filed an Original Application (OA) i.e., O.A.No.685 of 2022 before the Adjudicating Authority under Section 17 (4) of the PMLA for retention of the movable

properties and the documents etc., seized during searches dated 17.06.2022. The Adjudicating Authority, Delhi, issued a show-cause-notice dated 02.08.2022, under Section 8 of the PMLA, along with record of reasons, calling upon the petitioner Nos.1 to 3 to show cause as to why the properties seized on 17.06.2022 be not retained by the 1st respondent. The petitioner Nos.1 and 2 submitted their reply dated 17.09.2022 and the matter is pending before the Adjudicating Authority.

7. Learned counsel for the petitioners submitted that the petitioners are not raising any grievance with respect to the proceedings in O.A.No.605 of 2022 in this writ petition which is confined to action vide impugned E-mails/letters.

8. Challenging the Emails of the 2nd respondent, Sri I.Koti Reddy, learned counsel submitted that any order under Section 17 (1-A), PMLA to freeze the Bank accounts, has not been passed, which order is a pre-condition to issue directions to the Bank.

9. Sri I. Koti Reddy further submitted that Section 17 of the PMLA provides for the power to search and seizure of the property where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the said purposes, on the basis of information in his possession, has reason to believe that any person has committed the act(s)

relating to money-laundering, as specified in Clauses (i) to (iv) of sub-section (1), and there is need to seize any record or property found in the search, such property may be seized, recording the reasons for such belief in writing and where it is not practicable to seize such record or property, the officer authorized in Section 17 (1) may make an order to freeze such property. He submitted that when the law prescribes a particular mode of doing a thing, it is to be done in that manner alone and in no other manner. Sending the E-mails to the Banks for stopping the debit transaction from the petitioners' account, without complying with Section 17 (1-A) is unsustainable in law.

10. Sri I.Koti Reddy, learned counsel further submitted that the respondent No.2, who has sent E-mails, even if the same be taken as 'order', is by the Assistant Director, below the rank of the Deputy Director and not competent to pass order, vide E-mails, having the effect of freezing the debit amount. The power to pass such order to freeze the account under Section 17 (1A), is with the Director or an officer not below the rank of Deputy Director authorized by the Director for such purposes.

11. Learned counsel for the petitioners has placed reliance in the cases of ***OPTO Circuit India Limited vs. Axis Bank and***

others¹, J.K. Tyre and Industries Limited vs. Directorate of Enforcement², M/s. Radha Krishna Industries vs. State of Himachal Pradesh and others³ and Directorate of Enforcement vs. Abdullah Ali Balsharaf and others⁴.

12. Sri J.Bhaskara Rao, learned Central Government Counsel, submitted that based on the complaint received from the Deputy Transport Commissioner, Ananthpur District; an FIR No. 28/2020 dated 02.02.2020 was registered under Sections 420, 467, 468, 471 & 472 of IPC, 1860 by ATP-1 Town PS, Anantapur District, Andhra Pradesh Police, against M/s. Diwakar Road Lines represented by Smt. J. C. Uma Reddy, for cheating government authorities by creating forged documents i.e. NOC pertaining to the registered owners of certain goods vehicles and obtaining NOCs by uploading fake Police Clearance Certificate using fake signatures and fake seals belonging to Tadipatri Town Police Station and used it as genuine for wrongful gain which is utilized to transfer their two goods vehicles having registration Nos. AP-02-TC-9666 and TS-09-UB-7034. Since, *prima-facie*, there existed a scheduled offence under Sections 420, 467, 471 & 472 of IPC, 1860, as per the

¹ 2021 6 SCC 707

² 2021 SCC Online Del 4836

³ 2021 6 SCC 771

⁴ 2019 SCC Online Del 7942

schedule-I of the PMLA-2002, investigation was initiated under PMLA, in file No.ECIR/HYZO/33/2020, in which during investigation, it was revealed that several other FIRs were registered, including against the petitioners herein, for fraudulently registering various vehicles on the basis of fake, forged and fabricated documents. Those FIRs were also taken on record in the ongoing investigation under PMLA-2002.

13. Sri J.Bhaskar Rao, further submitted that the Hon'ble Supreme Court of India vide judgment dated 29.03.2017 in WP (Civil) No.13029/1985, ordered that the vehicles which are not compliant to BS-IV emission norms shall not be sold in India by any manufacturer or dealer from 1st April 2017 onwards and the registering authorities were prohibited from registering such vehicles from 1st April 2017. The manufacturing companies, including M/s. Ashok Leyland Ltd, were having stock of BS-III vehicles as on 01.04.2017, which was prohibited for sale and registration in India, but M/s. Ashok Leyland Ltd. sold such BS-III vehicles as scrap, *inter alia*, to M/s. C.Gopal Reddy & Company, the petitioner 1 herein, after 01.04.2017, who purchased 104 such BS-III vehicles as scrap and got these vehicles registered as BS-IV vehicles by submitting fabricated, false and forged documents before the RTO offices at Nagaland, Andhra Pradesh and other states, for which various FIRs/cases

were registered at various Police Stations in Andhra Pradesh, *inter alia*, against the Petitioners 1 to 4. In respect of two of those FIRs, charge sheet has been filed by the Tadipatri Town P.S., Ananthapuramu, i.e. in Crime/FIR No.85/2020 and Crime/FIR No.544/2020 in which the petitioner Nos.2 to 4 are the accused in the Charge sheet in Crime No.85/2020 and petitioner No.2 is an accused in the Charge sheet in Crime No.544/2020 as well. He submitted that the investigation under PMLA revealed that by indulging in the scheduled offence, the petitioner No.1 was in possession of valuable properties in the form of vehicles, projected as BS-IV, derived from the criminal activity of scheduled offence and the Proceeds of Crime (POC). The BS-III vehicles were purchased as scrap but registered as BS-IV, accordingly, the value attributable to those vehicles is not the cost of the BS-III vehicle but equivalent value of BS-IV vehicles. The scrap price of such 104 vehicles amounted to Rs.14,51,90,016/- and the price of equivalent model of BS-IV vehicles was Rs.25,69,01,620/-, which represents part of the proceeds of crime. Further, the petitioners are into transport business and they plied such vehicles as genuine BS-IV vehicles in complete disregard of the orders of the Hon'ble Supreme Court. The Petitioner No.1 utilized such vehicles in his road construction business and also sold some

vehicles, as genuine BS-IV. The financial benefits thus generated is the proceeds of crime in the hands of the petitioners.

14. Sri J. Bhaskar Rao, further submitted that during the course of investigation searches were conducted on 17.06.2022 at various premises of the petitioners in which various properties/records were found and seized. An Original Application dated 15.07.2022 being O.A.No.687 of 2022 under Section 17 (4) of PMLA was filed before the adjudicating authority, New Delhi, for retention of the seized records and properties which is pending and in progress. He submitted that the instructions were issued to the Banks vide e-mails not to entertain debit transactions from the accounts of the petitioners, as a measure to safeguard the balances in the accounts, with a view to issue provisional attachment order under Section 5 (1) of the PMLA, 2002, in respect of those amounts. He submitted that the petitioners acquired proceeds of crime, out of scheduled offences and the E.D. in discharge of its statutory duties is bound to investigate and secure the proceeds of crime or the value thereof. The action taken by the E.D. is bonafide and in good faith.

15. Sri J. Bhaskar Rao, however admitted that no order was passed under Section 17 (1-A) of the PMLA. He referred to

Para 36 of the counter affidavit to submit further that since no order under Section 17 (1-A) was passed, the question of following the provisions of Section 17 (2) & (4) to forward a copy of the reasons recorded or/and filing of the application before the adjudicating authority did not arise at all.

16. Sri D.V.S.Lokeshwar Rao, learned counsel for the Axis Bank Respondent No.3, submitted that in compliance of the e-mails communication of Respondent No.2, the Bank issued information to the petitioners & froze the debit accounts.

17. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

18. The pleading in the writ petition as also the submission of the learned counsel for the petitioners is that any order to freeze the bank accounts under Section 17 (1-A) of PMLA has not been passed. The stand taken in the counter affidavit of Respondent Nos.1 and 2 as also the submission of the learned Counsel for E.D, is that any order to freeze the Bank accounts under Section 17 (1-A), has not been passed.

19. It is undisputed that there is no order passed under Section 17 (1-A) of PMLA to freeze the bank accounts of the petitioners.

20. The point for consideration, therefore, is, "whether, in the absence of any order to freeze the property (Bank Accounts),

under Section 17 (1-A) of the PMLA, the action of the respondents in directing the Bank Respondent Nos.3 and 4, vide the impugned e-mails, not to entertain the debit transactions from the Bank accounts of the petitioners mentioned in the e-mails, is legally sustainable?”.

21. Section 17 of the PMLA, 2002 reads as under:-

“17. Search and seizure:—

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering, [or]

(iv) is in possession of any property related to crime then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

(1A) Where it is not practicable to seize record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt

with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of Section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under this sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”

22. In ***OPTO Circuit India Limited (supra)***, the facts were that the Enforcement Directorate in order to track the money trail relating to the predicate offence and prevent layering of the same had initiated the proceedings under the PMLA. In the said process, the Deputy Director, Directorate of Enforcement through the communication dated 15.05.2020 addressed to the Anti Money Laundering Officer (for short, ‘AML’) of the Banks

instructed them that the accounts maintained by the appellant company therein be 'debit freezed/stop operations' until further orders, with immediate effect. Challenging the communication dated 15.05.2020 writ petition was filed. The High Court upheld the action. The Hon'ble Apex Court held that in so far as the reasoning adopted and the objection raised by the High Court with regard to the power and competence to initiate the proceedings under the PMLA in view of the action taken for predicate offence, the High Court was very much justified. The Hon'ble Apex Court, further observed that the High Court, however, ought to have been examined whether the 'due process' as contemplated under the PMLA was complied so as to make it valid and sustainable in law, though the power under the Act was available. The Hon'ble Apex Court considered the aspect of freezing/defreezing the account, in view of the statutory requirements, even if the freezing of the account was found justified. In the said case, the Directorate of Enforcement in their counter affidavit took stand while explaining their need to freeze the account as stated that the "stop operation" was requested to stop the further layering/diversion of proceeds of crime and to safeguard the proceeds of crime. But in the counter affidavit, the stand taken was that the same was not done under Section 17 (1) of the PMLA. The Hon'ble Apex Court

held that such a stand was contradictory. It was observed and held that the power to “stop operation”, in need to freeze the account, to stop the further layering/diversion of proceeds of crime as also to safeguard the proceeds of crime, is a power available under the PMLA, but the exercise of power by the competent authority should also be shown to be in the manner provided in law i.e. under the PMLA.

23. In ***OPTO Circuit India Limited (supra)***, the Hon'ble Apex Court held that the pre-requisite, is that the Director or such authorised Officer in order to exercise the power under Section 17 of the PMLA should on the basis of information in his possession, have reason to believe that such person has committed acts related to money-laundering and there is need to cease any record or property found in the search and such belief of the Officer should be recorded in writing. Sub-section (1A) of Section 17 of the PMLA, provides that the Officer authorised under sub-section (1) may make an order to freeze such record or property where it is not practicable to seize such record or property, but it was clarified and emphasized that the freezing of the account will also require the same procedure since a bank account having proceeds of crime shall fall, both under the ambit of "property and records".

24. It is apt to refer Para Nos.8 and 9 of **OPTO Circuit India**

Limited (supra), as under:-

“8. A perusal of the above provision would indicate that the prerequisite is that the Director or such other Authorised Officer in order to exercise the power under [Section 17](#) of PMLA, should on the basis of information in his possession, have reason to believe that such person has committed acts relating to money-laundering and there is need to seize any record or property found in the search. Such belief of the officer should be recorded in writing. Sub-section (1-A) to [Section 17](#) of PMLA provides that the Officer Authorised under sub-section (1) may make an order to freeze such record or property where it is not practicable to seize such record or property. Sub-section (2) provides that after search and seizure or upon issuance of a freezing order the Authorised Officer shall forward a copy of the reasons recorded along with material in his possession to the Adjudicating Authority in a sealed envelope. Sub-section (4) provides that the Authority seizing or freezing any record or property under sub-section (1) or (1-A) shall within a period of thirty days from such seizure or freezing, as the case may be, file an application before the Adjudicating Authority requesting for retention of such record or properties seized.

9. For the purpose of clarity, it is emphasised that the freezing of the account will also require the same procedure since a bank account having alleged “proceeds of crime” would fall both under the ambit “property” and “records”. In that regard it would be appropriate to take note of [Section 2 \(1\) \(v\)](#) and [2 \(1\) \(w\)](#) of the PMLA which

defines “property” and “records”. The same read as follows:

2. (1) (v) “property” 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;

2. (1) (w) “records” include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;”

25. In **OPTO Circuit India Limited (supra)**, the Hon'ble Apex Court observed that in that case, except issuing the impugned communication dated 15.05.2020 to Anti-Money Laundering Officer to seek freezing, no other procedure contemplated in law was followed. Such impugned communication also did not even refer to the belief of the authorised Officer. It was held that though it was not the requirement that the communication addressed to the Bank should contain all the details but what was necessary was an order in the file recording the belief as provided under Section 17 (1) of the PMLA before the communication is issued and thereafter the requirements of Section 17 (2) of the PMLA, after the freezing was made, was required to be complied with.

26. In the present case, the basic facts to attract the applicability of the law laid down in **OPTO Circuit India**

Limited (supra), are almost the same. The respondent No.2 herein issued the E-mail/communication to the respondent Nos.3 and 4 Banks, requesting not to entertain debit transactions hence forthwith from the accounts of the petitioners. The communication, though it is not required to mention all the details, containing the reasons for the belief of issuance of such direction to the Bank in the communication e-mails, does not mention about any order to freeze the account as per the procedure prescribed, on the record/file of the ED. The admitted case of the respondents taken in their counter affidavit is that any order under Section 17 (1-A) of PMLA has not been passed.

27. This Court in **Shobha Woollens Pvt. Ltd. and others vs. Union of India and others**, also held that Sine qua none for exercise of the powers under either of the Sections 5 and 17 of the PMLA, is the formation of an opinion, by the competent officer, that the conditions set out in these sections are found to exist and in the absence of such a finding, the exercise of power under these sections would be without basis and cannot survive.

28. Learned counsel for the petitioners also placed reliance in the case of **J.K. Tyre and Industries Ltd (supra)**, to contend that all the accounts should not have been frozen which effects,

day to day working of the petitioners as also the discharge of its statutory obligations of payment.

29. Sri J.Bhaskara Rao, learned counsel for the respondents placed reliance in the case of ***Rose Valley Real Estate And Constructions Limited and another vs. Union Of India & Others***⁵, of the Calcutta High Court, to submit that the orders of freezing the Bank accounts of the persons under investigation are permissible and should be treated as necessary to the investigation under progress. So far as the judgment of the Calcutta High Court is concerned on the point relied upon, the Hon'ble Apex Court has held in ***OPTO Circuit India Limited (supra)*** that such power is available but it will require the same procedure, since a bank account having alleged 'proceeds of crime' would fall under ambit of 'property' and 'records'. Here, no order has been passed following the due procedure. Simply, direction could not be issued to the Bank authorities to freeze the Bank Accounts of the petitioners in the absence of an order as contemplated by Section 17 (1-A) of the PMLA.

30. In view of the aforesaid, this Court is of the considered view that though there is power to direct freezing of the account or to issue the communications as has been issued in the present case to the Banks, under Section 5 or/and Section 17,

⁵ F.M.A.No.4031 of 2014, decided on 30.03.2015

but such power/direction which has the effect of freezing the property/bank account under Section 17 (1-A) is to be exercised as per the law by following the procedure prescribed.

31. It is settled in law by various pronouncements, and reiterated in ***OPTO Circuit India Limited (supra)***, by the Hon'ble Apex Court, that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. It is apt to reproduce Para No.14 of ***OPTO Circuit India Limited (supra)*** as under:-

“14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of [Chandra Kishor Jha vs. Mahavir Prasad](#) {(1999) 8 SCC 266} and in the course of consideration observed as hereunder:

“17. ... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner”.

Therefore, if the salutary principle is kept in perspective, in the instant case, though the Authorised Officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it

would fall foul of the requirement of complying with due process under law.....”

32. In view of the aforesaid consideration, the impugned E-mails cannot be sustained in law and are liable to be quashed. The point for determination is answered accordingly.

33. As this Court found that the impugned E-mails deserve to be quashed on the ground of there being no order passed under Section 17 (1-A), this Court is of the view that there is no need to enter into the submission of the learned counsel for the petitioners that the Assistant Director, the respondent No.2, is not competent to pass the order under Section 17 (1-A) being below the rank of the Deputy Director, though prima facie, the Court is not in agreement, for, the use of the expression the ‘officer authorized’ under sub-section (1) in Section 17 (1-A) in the phrase “the officer authorized under sub-section (1) may make an order to freeze such property”. The ‘officer authorized’ under sub-section (1) are: 1) the Director, by the Act itself; 2) any other officer not below the rank of Deputy Director authorized by the Director for the purposes of Section 17. Now sub-section (1) in Clause (iv) again uses the expression “he may authorize any officer subordinate to him to perform the acts” i.e. as under sub-clauses (a) to (f). Thus, the Director or if any other officer not below the rank of the Deputy Director has been

authorized by the Director under sub-section (1), such officer may further authorize any officer subordinate to him, for the purposes of Clauses (a) to (f). So if the officer not below the rank of the Deputy Director authorized under sub-section (1), by the Director, authorizes any officer subordinate to him for the purposes of sub-clauses (a) to (f) of Clause (iv), such subordinate officer would also be 'an officer authorized under sub-section (1)' for making an order under sub-section (1A) of Section 17 (1-A). So in case of further authorization as permitted by Section 17 (1) (iv), in favour of any subordinate officer to carry out the acts under sub-clauses (a) to (f) such authorized officer, if in the course of search and seizure, finds that it is not practicable to seize record or property, he may make an order to freeze such property with due compliance of Section 17(1-A). However, as consideration of this submission is not necessary for the decision of the writ petition, the Court is not expressing any final view.

34. In ***OPTO Circuit India Limited (supra)***, the Hon'ble Apex Court held that the scheme of the PMLA is well intended, while it seeks to achieve the object of prevention of money-laundering and bring to book the offenders, it also safeguards the rights of the persons who would be proceeded against under the Act by ensuring fairness in procedure. Hence a procedure, including

timeline is provided, so as to ensure that power is exercised for the purpose to which the Officer is entrusted with such power.

35. Considering the aforesaid object of the PMLA which is to achieve preventing money laundering and bring the offenders to book as also at the same time to safeguard the rights of the persons who would be proceeded against under the PMLA by ensuring fairness in procedure, in the light of the facts of the present case, as brought on record from both the sides, but without making any observation on the merit of the correctness thereof or otherwise, that the amount in accounts of the petitioners with the respondent Banks is alleged to be 'proceeds of crime', while setting aside the impugned e-mails it would be in the interest of justice to prevent the alleged money laundering, to keep it open to the authorized officer of E.D under Section 17 of the PMLA to take necessary action, by proceeding in accordance with law and further, for a period of 15 days from today to restrain the petitioners with direction to the respondent Nos.3 to 4 Bank, that there shall be no debit transaction from the aforesaid accounts. The direction for 15 days as aforesaid, shall however abide by any order of the Authorized officer of the respondent No.1, if passed under Section 17.

36. In the result, the writ petition is partly allowed in the following terms:-

i) The impugned Emails annexed as Exs.P1 and P3 are hereby quashed.

ii) It shall be open to the authorized officer of E.D under Section 17 of the PMLA to take necessary action, by proceeding in accordance with law.

iii) For a period of 15 days from today, there shall be no debit transaction from the accounts of the petitioners in question with the respondent Nos.3 to 4 Bank.

iv) The above direction of no debit transaction from the petitioners' accounts in question for a period of 15 days, shall abide by the orders passed by the authorized officer under Section 17, if any.

37. It is clarified that the impugned E-mails have been quashed for the reason only that there is no order passed under Section 17 (1-A) of PMLA. This shall not be construed as an opinion of this Court on the merits of the allegations or on any other aspect relating to the matter in issue.

38. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI,J

Date: 07.03.2023

Note:-

L.R Copy to be marked

Issue C.C today

B/o:- SCS

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

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Date: 07.03.2023

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