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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 12276/2022 & CM APPL. 36834/2022(Interim Relief)

CM APPL. 37309/2022(Stay)

CHANDRA PRAKASH KHANDELWAL Petitioner

Through: Dr. A. M. Singhvi and Mr. Dayan
Krishnan, Sr. Advs. with Mr. Manu
Sharma, Mr. Nitesh Jain, Mr. Anuj
Berry, Mr. Adrish Majumder, Mr. Shiv
Bhandari, Mr. Abhuday Sharma,
Mr. Sreedhar Kale and Mr. Sukrit Seth,
Advs.

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. Zoheb Hossain, Adv. for ED with
Mr. Vivek Gurnani and Mr. Mishui Lal
Meena, IO, ED.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

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26.08.2022

1. Notice. Since the respondents are represented by learned counsels, let replies be filed on their behalf on or before the next date fixed.
2. Dr. Singhvi and Mr. Krishnan, learned Senior Counsels appearing in support of the writ petition, on instructions, state that prayer 'a' as well as other reliefs which are claimed in the writ petition and which pertain to proceedings relating to the concerned Enforcement Case Information Report ["ECIR"] other than those relating to the Provisional Attachment Order ["PAO"] and steps that may be possibly taken by the Directorate under Section 8 of the Prevention of Money Laundering Act, 2002 ["the Act"] are



not pressed subject to liberty being reserved to the petitioner to pursue other remedies as permissible in law. Learned Senior Counsels contends that, in essence, the challenge here stands restricted to the PAO which has come to be made by the Enforcement Directorate.

3. The Court notes that a challenge raised on identical lines has been entertained by the Court in W.P.(C) 8406/2022. While issuing notice and passing interim orders in that petition on 26 May 2022, the Court observed as under: -

“2. Prima facie and for reasons recorded hereinafter, the petitioners are held entitled to interim relief.

3. The Supreme Court in C.A. No. 13301 of 2015 vide its order of 02 February 2016, had constituted the Justice Lodha Committee [“Committee”] to identify the land purchased by PACL so that the same may be sold and proceeds thereof distributed amongst the investors of that company. It further transpires from the record that the Enforcement Directorate in its filings before that Committee asserted that 25 associate entities of PACL had transferred funds to Systematix Venture Capital Trust [“SVCT”]. SVCT in turn is stated to have invested Rs. 111.03 crores in the petitioner companies. By various orders passed in the aforementioned appeal, the Supreme Court exercising its powers conferred by Article 142 of the Constitution, put in place a machinery to enable all third parties challenging orders of attachment or restraint to place the same before R.S. Virk, a retired District Judge and an officer appointed by the Court to deal with all such claims. In the order of 06 October 2021, the Supreme Court noted that PACL had transferred Rs. 110.95 crores to the 25 associate companies. It also took note of the attachment action initiated by SEBI against the present petitioners who were accordingly directed to deposit Rs. 49.67 crores in an escrow account with SEBI. It further permitted the petitioners to raise their objection to the attachment before R.S. Virk. It was further observed that he said Court appointed officer would be entitled to obtain the views of the Enforcement Directorate in the course of hearing the objections that may be preferred by the petitioners. SEBI by a subsequent order of 10 February 2022 has lifted the attachment of bank accounts of the petitioners and has directed the financial creditors of the petitioners to merely maintain a lien to the extent of Rs. 49.67 crores only.

4. From the aforesaid recital of facts it is manifest that the moneys of investors diverted by PACL to third parties is to be determined by the



Lodha Committee and all objections to attachment and other processes liable to be laid before R.S. Virk for consideration. In terms of the procedure so evolved, the objections of the petitioners to the original order of attachment have been duly heard on 24 March 2022 by R.S. Virk and the said court appointed officer is in the process of drawing up its report. Therefore, the recovery of "*proceeds of crime*" connected with the affairs of PACL is to be considered by the Lodha Committee and all claims pertaining to the moneys gathered by PACL to be considered as per the special procedure evolved and put in place by the Supreme Court. Viewed in that sense, the provisional order of attachment which is intrinsically connected with the above would, prima facie, not sustain. This since it would, prima facie, have the potential to short circuit the special procedure laid in place.

5. Consequently, and till the next date of listing, there shall be stay of the impugned provisional attachment order dated 19 May 2022. The present interim order, however, shall not preclude or detract from the right of the Enforcement Directorate to approach the Lodha Committee or the court appointed officer and bring to their attention any further information which may have been gathered during the course of investigation or from seeking such further protective orders as may be warranted."

4. Consequently, let this petition stand tagged with the aforesaid petition to be called on the date fixed. For reasons recorded in the order of 26 May 2022 passed in the aforementioned writ petition, the Court holds that the petitioner has made out a prima facie case and would therefore be entitled to interim relief in the following terms. Pending further orders being passed on the instant writ petition, the respondent Directorate shall stand restrained from taking any further steps under Section 8 of the Act pursuant to the PAO No. 11/2022 dated 19 August 2022. The petitioner shall, in addition to the above, be entitled to operate the bank accounts which form subject matter of the impugned PAO subject to them providing statement of accounts weekly to the Enforcement Directorate.

5. The Court further directs that the immovable properties which form subject matter of the impugned PAO shall not be encumbered nor shall any



third-party rights be created thereon by the petitioner till further orders of the Court.

4. List again on 02.12.2022.

YASHWANT VARMA, J.

AUGUST 26, 2022/bh