

**HIGH COURT FOR THE STATE OF TELANGANA: AT HYDERABAD**

**FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY  
TWO THOUSAND AND TWENTY TWO**

**PRESENT**

**THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA  
AND  
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT APPEAL NO: 87 OF 2022**

Writ Appeal under clause 15 of the Letters Patent Appeal preferred against the order dated 11/02/2022 passed in W.P.No.36212 of 2021, on the file of the High Court.

**Between:**

Directorate of Enforcement, Represented by Joint Director, Hyderabad Zonal Office 3 Floor Shakar Bhawan, Basheerbagh Hyderabad 500004

**...Appellant/Respondent No.2**

**AND**

1. P C Financial Services Private Limited, having its registered office at Building RZ2 Pole No 3 G/F Kapashera Near HDFC Bank New Delhi 110 037  
Represented by its Authorised Signatory Ms Anjali Agarwal also at Plot No 177, Udyog Vihar-1 Gurugram Haryana 122016

**...Respondent No.1/Petitioner**

2. Union of India, Ministry of Finance Department of Financial Services Road No.46 North Block, New Delhi 11001

**...Respondent No.2/Respondent No.1**

3. Commissioner of Customs, through Commissioner of Customs Appeals I Chennai VII Commissionerate Air Cargo Complex Meenambakkam Chennai 600027

**...Respondent No.3/Respondent No.3**

4. Mr.Raghuvir Gakhar, S/o.Surinder Kumar Gakhar, Resident of Flat No.B103 Plot No.17, Sector 7, Dwarka Siddhartha Apartments, South West Delhi, Delhi

**...Respondent No.4/Proforma Respondent No.4**

**IA NO: 1 OF 2022**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dated 11/02/2022 in WP No.36212 of 2021

passed by the learned single Judge of this Hon'ble Court pending disposal of WA.

**Counsel for the Appellant: M/s. ANJALI AGARWAL, SC FOR ENFORCEMENT DIRECTORATE**

**Counsel for the Respondent No.1: SRI SHIREEN SETHNA BARIA**

**Counsel for the Respondent No.2: SRI N.RAJESWAR RAO, Asst.Sol.General**

**Counsel for the Respondent No.3: SRI GANDI PRAVEEN KUMAR, SC for CG**

The Court delivered the following:

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

**WRIT APPEAL No.87 of 2022**

**JUDGMENT:** *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The present writ appeal is arising out of an order dated 11.02.2022 passed by the learned Single Judge in W.P.No.36212 of 2021.

The respondent No.1 before this Court (writ petitioner), being aggrieved by the action initiated by the appellant herein under the Foreign Exchange Management Act, 1999 (for short, "the Act"), has preferred the writ petition challenging the legality and validity of the seizure orders dated 26.08.2021, 30.09.2021 and 15.12.2021, by which a sum of Rs.270.00 crores has been seized. The prayer made in the writ petition reads as under:-

"For the reasons stated in the accompanying affidavit prayed that this Hon'ble Court may pleased to issue a Writ of certiorari, or any other appropriate writ, order or direction for quashing the Impugned Seizure Order No.01/2021 bearing No.F.No.T-3/HYZO/75/2021

dated 26 August 2021 read with Order bearing No.F.No.T-3/HYZO/75/2021 dated 12 October 2021, Seizure Order No.02/2021 bearing no.T-3/HYZO/75/2021 dated 30 September, 2021; and Seizure Order No.03/2021 bearing no.T-3/HYZO/75/2021 dated 15 December, 2021 passed by the Respondent No.2 as being illegal arbitrary, unconstitutional and destructive of the Petitioner's fundamental rights; and restrain the Respondents, their servants and agents and all persons acting on their behalf from taking any coercive action in furtherance of the Impugned Seizure Order no.01/2021 bearing no.F.No.T-3/HYZO/75/2021 dated 26 August 2021 as amended by letter bearing no.T-3/HYZO/75/2021 dated 12 October 2021; Seizure Order No.02/2021 bearing no.T-3/HYZO/75/2021 dated 30 September 2021 and Seizure order No.03/2021 bearing no.T-3/HYZO/75/2021 dated 15 December, 2021 against the Petitioner, its Directors, employees etc., during the pendency of the present Writ Petition; and/or pass any such further Order(s) that this Hon'ble Court deems fit in the facts and circumstances of this case."

During the pendency of the writ petition, an order was passed on 04.02.2022 by the competent authority under Section 37A(2) of the Act affirming the orders of seizure and the order dated 04.02.2022 has not been challenged by amending the writ petition. The learned Single Judge has taken a humanitarian view in the matter

by directing release of Rs.15,35,45,317/- while disposing of the writ petition.

It has been argued by the learned counsel appearing for respondent No.1/writ petitioner that earlier also a sum of Rs.9.68 crores was released for payment of salary and other dues and a utilization certificate was also filed. He has stated that the order of release of Rs.15,35,45,317/- has been passed to ensure that salary is paid to the employees of the company.

The Officer present in the Court, Sri Ahbishek Goyal, IPS, appearing for the appellant has informed this Court that at no point of time such an amount was released by the Enforcement Directorate (ED) and, in fact, the aforesaid amount of Rs.9.68 crores was never seized by the ED. Therefore, the question of releasing the same does not arise. He has categorically stated that not a single rupee has been released in the matter so far out of Rs.270.00 crores attached by the ED. It has been further clarified that the amount of Rs.9.68 crores was lying in the bank account of the respondent No.1/writ petitioner and the

bank was permitted by the ED to disburse the aforesaid amount. He has further stated that it is not a case where the amount was seized and later on released by the ED.

The facts of the case reveal that before the learned Single Judge, though a prayer for quashment of seizure orders dated 26.08.2021, 30.09.2021 and 15.12.2021 was made, an interlocutory application was preferred for release of Rs.15,35,45,317/- and the learned Single Judge has allowed the application. The writ petition itself has been disposed of by the impugned order dated 11.02.2022.

In the considered opinion of this Court, once the seizure orders were not set aside and no statutory provision was brought to the notice of the learned Single Judge for release of such amount and the seizure orders have been affirmed by the competent authority under Section 37A(2) of the Act, no such provisional release could have been ordered by disposing of the writ petition itself.

Learned counsel for the Union of India has also brought to the notice of this Court the press release issued by the Reserve Bank of India dated 24.02.2022 and the

same reflects that even the banking licence of the respondent No.1/writ petitioner has been cancelled. However, as this Court is not dealing with the cancellation of licence, no comment has been offered in respect of such cancellation. Learned counsel for the respondent No.1/writ petitioner has stated that he does not have a copy of the aforesaid order and he is not aware of the same.

In the present case, as already stated, now an order has been passed on 04.02.2022 by the competent authority under Section 37A(2) of the Act.

Section 37A of the Act reads as under:-

**"37A. Special provisions relating to assets held outside India in contravention of section 4.—(1)**

Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

(2) The order of seizure along with relevant material shall be placed before the Competent Authority, appointed by the Central Government, who shall be an officer not below the rank of Joint Secretary to the Government of India by the Authorised Officer within a period of thirty days from the date of such seizure.

(3) The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

*Explanation.*--While computing the period of one hundred eighty days, the period of stay granted by court shall be excluded and a further period of at least thirty days shall be granted from the date of communication of vacation of such stay order.

(4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under subsection (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable

property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under sub-section (1).

(5) Any person aggrieved by any order passed by the Competent Authority may prefer an appeal to the Appellate Tribunal.

(6) Nothing contained in section 15 shall apply to this section."

The aforesaid statutory provision provides for a remedy of appeal and therefore, as now an order dated 04.02.2022 is in existence, the respondent No.1/writ petitioner shall certainly be free to prefer an appeal or to avail the other remedies available under the law.

Resultantly, the order passed by the learned Single Judge is set aside and the writ appeal stands allowed.

It is needless to mention that this Court has not expressed any opinion on the merits of the case and all the rights and contentions of the parties are left open.

The miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

SD/-K.SRINIVASA RAO  
JOINT REGISTRAR

//TRUE COPY//

  
SECTION OFFICER

To,

1. The Secretary, Union of India, Ministry of Finance Department of Financial Services, Road No.46, North Block, New Delhi 11001
2. The Commissioner of Customs, Appeals I Chennai VII Commissionerate AIR Cargo Complex, Meenambakkam, Chennai 600027
3. One CC to M/s ANJALI AGARWAL, SC for ED [OPUC]
4. One CC to SRI SHIREEN SETHNA BARIA, Advocate [OPUC]
5. One CC to SRI N.RAJESWAR RAO, Asst.Sol.General [OPUC]
6. One CC to SRI GANDI PRAVEEN KUMAR, SC for Central Govt. [OPUC]
7. Two C.D. Copies.
8. One Spare Copy.

 MRC

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HIGH COURT

DATED: 25/02/2022

JUDGMENT

WA.No.87 of 2022



ALLOWING THE WRIT APPEAL  
WITHOUT COSTS.

PKK  
15/03