

**APPELLATE TRIBUNAL, PROHIBITION FOR BENAMI PROPERTY  
TRANSACTIONS ACT AT NEW DELHI**

**Date of decision :23.01.2019**

**FPA-PBPT-131/KOL/2018**

M/s. Johnson Watch Co. Pvt. Ltd.                      ...      Appellant

Versus

The Initiating Officer,  
Circle 1(1), Kolkata    ...      Respondent

**Advocates/Authorized Representatives who appeared**

For the Appellant    :      Mr. Ashwani Taneja, Advocate

For the Respondent    :      Mr. Manmeet S. Arora, S.P.P.

**CORAM**

**JUSTICE MANMOHAN SINGH                                      :      CHAIRMAN**  
**SHRI G. C. MISHRA    :      MEMBER**

**JUDGMENT**

**FPA-PBPT-131/KOL/2018**

1.      The above-named Appellant has filed this appeal under Section 46 of the Prohibition of Benami Property Transactions (PBPT) Act, 1988 against the Order dated 18.05.2018 in reference number R-7/2017 passed by the Ld. Adjudicating Authority, PBPT.

2.      The respondent had filed a reference before the Ld. Adjudicating Authority under Section 24(5) of the PBPT Act, 1988 for the confirmation of Provisional Attachment Order dated 25.01.2017 passed under Section 24(3) prohibiting and restricting the SBI, NS Road, Kolkata from delivering the movable property of Rs. 28,10,625/- lying in the account number 35495116852. In the said Bank which was subsequently vide order dated 25.04.2017 continued under Section 24(4)(a)(i) of the said Act until such term

as the order under Section 26(3) of the Act is passed by the Adjudicating Authority.

3. In the proceeding before the learned Adjudicating Authority the present appellant was arrayed as defendant no. 11.

4. In the said reference it is alleged that the present appellant is one of the 11 beneficiaries to whom a cash trail has been identified. It is further alleged that, from the cash trail of M/s. ApsaraMerchantisePvt. Ltd., allegedly non-traceable company, unaccounted cash from the aforesaid company was transferred to several persons/entities including the present appellant. The present appellant, according to the respondent, is a beneficiary/recipient of funds routed through the bank accounts of M/s. ApsaraMerchantisePvt. Ltd. It is further alleged that the appellant has received the funds through that of M/s. Daintree Metals Pvt. Ltd.

5. The appellant contested the matter before the Ld. Adjudicating Authority. It is the consistent stand of the appellant that the appellant is not the beneficial owner much less in any alleged benami property. It does not have any connection or dealing with the any M/s.ApsaraMerchantisePvt. Ltd. or Mr.AbhaySultania or Mr.Mahendra Kumar Jain or other names referred in the materials supplied and that there is no relation or connection of the appellant herein with the referred bank account or money lying in the said account of M/s. ApsaraMerchantisePvt. Ltd.and that the appellant merely sold the watches to M/s. Daintree Metals Pvt. Ltd. supported by documents since the transactions were made in the ordinary course of the business and that payments have been received through banking channel. The appellant also denied the allegations on the grounds that the same is without any basis, material or evidence.

6. It is seen from the reply of the appellant before the Ld. Adjudicating Authority that the appellant have sold watches amounting to Rs. 1.5 Crores to M/s. Daintree Metals Pvt. Ltd. and received payments through proper banking channel. The appellant filed copies of sales bills, purchase invoices, ledger account, VAT returns, stock register and bank statement in support of their contention. It is also contended by the appellant before the Adjudicating Authority that there is no reasons to believe recorded by I.O. and that mandatory prior approval under Section 23 of the PBPT Act, 1988 has not been taken and the same has not been supplied.

7. The learned Adjudicating Authority vide the impugned order has confirm the PAO. The relevant portion of the impugned order is reproduced below:-

*“ 4. In view of this, statements made by the Initiating Officer in the reference, rejoinder and in oral arguments and submissions made by various defendants (beneficial owner), it is clear that impugned property was found in the account of benamidar in SBI and the company was not traceable at the given address. Company according to the former Director, Mr. Abhay Sultania was involved in depositing the money of various persons and subsequently transferred it to their account. It appears to be the case of un-accounted or illegal money being routed through this company for converting it to untainted money. D-12 have tried to claim that money by resorting to declare under Pradhan Mantri Garib Kalyan Yojna but relief cannot be granted in the matter. So far as other defendants are concerned they are broadly in agreement that they have nothing to do with the company or the amount lying in the bank account of benamidar which is not being claimed legally by any one. Therefore the above property is being declared benami property and PAO issued by Initiating Officer is confirmed.*

*5. PAO is confirmed accordingly.”*

8. In the appeal before us, the appellant has assailed the impugned order under the same grounds as pleaded before the Adjudicating Authority except the ground of “reasons to believe” and “non-following of the mandatory provisions of prior approval from the approving authority under Section 23 of the PBPT Act, 1988.” In addition to above, it is also contended that “the impugned order of the authority may be modified to the extent by excluding the name of the appellant from the list of beneficial owners” amongst others and

the prayer before this Tribunal is made mainly to that extent on the grounds more explicitly mentioned in the appeal memo.

9. On the other hand the respondent has filed the rejoinder on behalf of the Initiating Officer to the appeal filed by the appellant. In the said rejoinder, the respondent has repeated their stands which have been taken by the Initiating Officer before the Learned Adjudicating Authority. However, in the rejoinder it is admitted by the respondent that the notice under Section 24(2) has not been served upon the appellant on the ground that the fact was established at the last moment of the proceeding. The respondent has supported the impugned order and prayed for confirmation of the impugned order passed by the Adjudicating Authority.

10. We have heard the oral submissions made by the learned counsels for both the sides and gone through the relevant documents made available. During the course of argument the learned counsel for the appellant brought our notice to the relevant portion of the findings of the learned Adjudicating Authority particularly Para 3 & 4 at page 42 & 43 respectively of the impugned order. It is seen from Para 3 of the impugned order that the Adjudicating Authority has come to the conclusion that **“Therefore in respect of these defendants D-2 to D-11 the Initiating Officer has not said anything substantial.”** Similarly in Para 4 it is held by the Adjudicating Authority that **“D-12 have tried to claim that money by resorting to declare under PradhanMantriGaribKalyanYojna but relief cannot be granted in the matter. So far as other defendants are concerned they are broadly in agreement that they have nothing to do with the company or the amount lying in the bank account of benamidar which is not being claimed legally by any one.”**

11. In the light of aforesaid findings of the learned Adjudicating Authority, it is the limited grievance of the appellant before this Tribunal is that when the Authority has come to the findings that the Initiating Officer has not said anything substantial against the present appellant and that the appellant has nothing to do with the M/s. ApsaraMerchantisePvt. Ltd. or the amount lying in the bank account of benamidar which is not legally claimed by the appellant, the Adjudicating Authority ought to have held that the appellant is not a Benamidar with regards to the amount of Rs. 28,10,625/- lying in the aforesaid account of SBI and attached by the Initiating Officer and that the appellant's name ought to have been removed as a Benamidar.

12. It is clear from the impugned order that the learned Adjudicating Authority, on the basis of material, fact and circumstances has held that the Initiating Officer has not said anything substantial against the appellant and also has considered the plea of the appellant that it is not claiming the amount lying in the bank account of benamidar. There is no rebuttal by the respondent that the appellant had supplied watches to M/s. Daintree Metals Pvt. Ltd. and received payments through banking channel in the ordinary course of its business. The appellant had also filed all the supporting documents with respect to the said transactions with M/s. Daintree Metals Pvt. Ltd. The most important aspect is also that the Initiating Officer has not challenged the aforesaid findings of the learned Adjudicating Authority.

13. Considering the aforesaid facts and circumstances of the case, the pleadings of the parties and the documents relied upon by the parties, the learned Adjudicating Authority ought to have held that the appellant is not a Benamidar. Consequently, having regards to the aforesaid facts, circumstances, pleadings of the parties and the documents relied upon by the parties, we are of the considered view that the appellant is neither a Benamidar nor a Beneficial owner within the meaning of the definitions defined under

Sections 2(10) and 2(12) of PBPT Act, 1988. So, the impugned order is varied/modified to the extent that the appellant is not a Benamidar/Beneficial Owner and hence its name is removed as Beneficial Owner/Benamidar from the list.

14. The appeal is allowed in terms of our findings as above.

15. No cost.

**(Justice Manmohan Singh)**  
**Chairman**

**(G. C. Mishra)**  
**Member**

**New Delhi,**  
**23<sup>rd</sup> January, 2019**  
'AS'