

Continuation of adjudication by the Directorate of Enforcement despite a reasoned refusal to confirm seizure under the Foreign Exchange Management Act, 1999, is contrary to law

The **Supreme Court** in the case of **J. Sri Nisha vs The Special Director, Directorate of Enforcement [2026 INSC 309] dated April 01, 2026**, has held that continuation of adjudication by the Directorate of Enforcement despite a reasoned refusal to confirm seizure under the Foreign Exchange Management Act, 1999 (FEMA) is contrary to law. It clarified that the Adjudicating Authority, by undoing the order of the Competent Authority even while the appeal against the said order is pending, tantamount to abdicating the powers of the Appellate Authority.

The Court directed that the Appellate Authority shall first decide the appeal preferred by the Department against the order of the Competent Authority under Section 37A(5) of FEMA, and pursuant to the disposal of the appeal, the proceedings arising out of the SCN may be commenced and taken to their logical conclusion.

The Court observed that although ordinarily a writ petition against an SCN may not be entertained, the said proposition is not an inviolable rule. Interference at the stage of SCN is permissible in exceptional circumstances, such as where the notice suffers from patent lack of jurisdiction, reflects non-application of mind, is issued with a pre-determined or premeditated approach, amounts to an abuse of the process of law, or results in a violation of the principles of natural justice. The Court noted that the rejection of the challenge laid by the appellants to the SCN on the ground of non-maintainability was not justified in the peculiar facts of the case at hand.

The Court observed that Section 37A(4) of FEMA is restricted to an order of the Competent Authority confirming seizure of equivalent assets and the continuance thereof till the disposal of the adjudication proceedings. The said provision literally does not deal with a situation where the seizure has not been confirmed. The refusal to confirm the seizure reflects a considered finding that the foundational requirement of a 'reason to believe' was not satisfied on the material available.

Further, the Court noted that the High Court repeatedly referred to the effect of the seizure order and impliedly effaced the findings recorded by the Competent Authority while refusing to confirm the seizure, thereby foreclosing the outcome of the appeal pending before the appellate authority. Hence, the Court observed that in case the finding of the Competent Authority refusing to confirm the seizure for substantive reasons stands affirmed in appeal, manifestly, the same would have a bearing on the outcome of the adjudication proceedings.