

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 4171 of 2012****With****SPECIAL CIVIL APPLICATION NO. 1059 of 2012****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE ANANT S. DAVE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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ALIVE HOSPITALITY AND FOOD PRIVATE LIMITED....Petitioner(s)

Versus

UNION OF INDIA & 6....Respondent(s)

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Appearance:

Special Civil Application No.4171 of 2012

MR MIHIR THAKORE Sr. Advocate WITH MS AMRITA M THAKORE,
ADVOCATE for the Petitioner(s) No. 1

MR JK SHAH AGP for the Respondent(s) No. 4

MR AJ YAGNIK, ADVOCATE for the Respondent(s) No. 5

MR PS CHAMPANERI, ASG for the Respondent(s) No. 1

Special Civil Application No.1059 of 2012

MR MIHIR JOSHI Sr. Advocate with MR UDAY JOSHI & MR PRANAV TRIVEDI for M/S. TRIVEDI & GUPTA for the Petitioner(s) No. 1-3
MR PS CHAMPANERI, ASG for the Respondent(s) No. 1-2
MR JK SHAH AGP for the Respondent(s) No. 3
MR ASHISH DEASI for the Respondent(s) No. 4

CORAM: HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 31/07/2013

CAV JUDGEMNT

With the consent of learned counsel for the parties, both these petitions are taken up for final disposal and decided by common judgment as the issues involved in these petitions are almost common barring a few contentions.

2. The petitioners in both these petitions challenge provisional attachment order[s] No.2/2012 dated 15.03.2012 passed by the competent authority and order[s] dated 10.07.2012 of adjudicating authority confirming provisional attachment ordered by the competent authority. Further, original complaint No.133/2012 is also common in both these petitions, broadly, issue is with regard to subject properties in the context of definition of “proceeds of crime” vis-a-vis jurisdiction of the competent and adjudicating authorities under provisions of Sections 5 and 8 of the Prevention of Money Laundering Act, 2002 as amended in 2009 [for short, ‘the PML Act’].

3. The petitioner of Special Civil Application No.4171 of 2012 has filed this petition under Article 226 of the Constitution of India with the following prayers:

“[A] This Hon'ble Court be pleased to issue a writ of or in the nature of mandamus or a writ of or in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the Provisional Attachment Order No.02/2012 dated 15.03.2012 passed by the respondent no.2 herein at Annexure H hereto insofar as it relates to the subject property being the freehold non agricultural land admeasuring 732 sq. mt. together with superstructure standing thereon known as “Jay Bungalow” situated at Survey No.303 [paiki][formerly, Survey No.398 [paiki] of Final Plot No.213 sub-plot No.4A [paiki] 4B [paiki] and 4-C, Ishavashyam Society, Vejalpur, Ahmedabad-380015.

[B] This Hon'ble Court be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the directions/instructions issued by the respondent no.3 herein vide letter dated 21.7.2011 at Annexure F hereto insofar as it relates to the subject property being the freehold non agricultural land admeasuring 732 sq. mt. Together with superstructure standing thereon known as “Jay Bungalow” situated at Survey No.303 [paiki][formerly, Survey No.398 [paiki] of Final Plot No.213 sub-plot No.4A [paiki] 4B [paiki] and 4-C, Ishavashyam Society, Vejalpur, Ahmedabad-380015.

[C] This Hon'ble Court be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no.4 not to refuse registration of an instrument of transfer pertaining to the subject property, being the freehold non agricultural land admeasuring 732 sq. mt. Together with superstructure standing thereon known as “Jay Bungalow” situated at Survey No.303 [paiki][formerly, Survey No.398 [paiki] of Final Plot No.213 sub-plot No.4A [paiki] 4B [paiki] and 4-C, Ishavashyam Society, Vejalpur, Ahmedabad-380015, solely on the ground that the property sought to be conveyed is mentioned in the letter dated 21.7.2011 addressed by the respondent no.3 at Annexure F hereto.

[C1] This Hon'ble Court be pleased to issue a writ of or in the nature of mandamus or a writ of or in the nature of certiorari or any other writ, order or direction quashing and setting aside the Original Complaint No.133 of 2012 dated 11.4.2012 at Annexure K hereto, the order dated 10.7.2012 passed by the Adjudicating Authority at Annexure L hereto and the letter dated 9.10.2012 at Annexure M hereto.

[D] Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay and suspend the operation and implementation of;

[i] The the Provisional Attachment Order No.02/2012 dated 15.02.2012 passed by the respondent no.2 herein at Annexure H hereto insofar as it relates to the subject property being the freehold

non agricultural land admeasuring 732 sq. mt. together with superstructure standing thereon known as “Jay Bungalow” situated at Survey No.303 [paiki][formerly, Survey No.398 [paiki] of Final Plot No.213 sub-plot No.4A [paiki] 4B [paiki] and 4-C, Ishavashyam Society, Vejalpur, Ahmedabad-380015, and,

[ii] The directions / instructions issued by the respondent no.3 herein vide letter dated 21.7.2011 at Annexure F hereto insofar as it relates to the subject property being the freehold non agricultural land admeasuring 732 sq. mt. Together with superstructure standing thereon known as “Jay Bungalow” situated at Survey No.303 [paiki][formerly, Survey No.398 [paiki] of Final Plot No.213 sub-plot No.4A [paiki] 4B [paiki] and 4-C, Ishavashyam Society, Vejalpur, Ahmedabad-380015,

[E] Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court be pleased to direct the respondent no.4 not to refuse registration of an instrument of transfer pertaining to the subject property, being the freehold non agricultural land admeasuring 732 sq. mt. together with superstructure standing thereon known as “Jay Bungalow” situated at Survey No.303 [paiki][formerly, Survey No.398 [paiki] of Final Plot No.213 sub-plot No.4A [paiki] 4B [paiki] and 4-C, Ishavashyam Society, Vejalpur, Ahmedabad-380015, solely on the ground that the property sought to be conveyed is mentioned in the letter dated 21.07.2011 addressed by the respondent no.3 at Annexure F hereto.

[E1] Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay and suspend the operation and implementation of the order dated 10.7.2012 passed by the Adjudicating Authority at Annexure L hereto.

[F] Ex parte ad interim relief in terms of prayers D and E herein above be granted.

[G] Such other and further reliefs as deemed just and expedient be granted”

3.1 The facts of the case, as per the petitioners of Special Civil Application No.4171 of 2012, are as under.

3.2 In the year 1990 the respondent Nos.6 and 7 purchased the subject plot of land from its erstwhile owners and thereafter constructed a bungalow on it. The respondent Nos.6 and 7 were therefore joint-

owners of the subject property known as 'Jay Bungalow'. That from 1997, the respondent No.5 availed of financial assistance from a consortium of banks led by State Bank of India. The respondent Nos.6 and 7 mortgaged the subject property for securing the same. That in the year 1998 Punjab National Bank joined this consortium by sanctioning facilities of Rs.26.50 crore to respondent no.5 and subsequently, during 2005-06 Punjab National Bank sanctioned additional funds. The respondent No.5 defaulted in payment of its dues in the year 2006. The State Bank of India and other banks filed recovery proceedings before the DRT, Ahmedabad and Punjab National Bank also filed recovery proceedings, separately. Further, Punjab National Bank filed FIR against respondent No.5 and others alleging that during 2005-06, respondent No.5 availed of certain loans by conspiring with officials of Punjab National Bank without following proper procedure and that the loans were not utilized for their stated purpose. The State Bank of India took over possession of the subject property under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, SARFAESI Act]. Thereafter, the State Bank of India put up the subject property for sale through bidding in January, 2009 and 3 bids were received by the Bank. The petitioner, apprehending that the full value of the subject property may not be fetched, at the suggestion of the respondent No.5, submitted its quotation for purchase of the subject property for an amount of Rs.2,05,00,000/- and deposited Rs.15,50,000/- as EMD. Pursuant to the same, State Bank of India negotiated with the bidders and the petitioners, having increased its offer to Rs.2,15,00,000/- and being highest bidder, its bid was accepted. The petitioner deposited the balance sale consideration and in order to facilitate, the petitioner had taken a loan of Rs.1.82 crores from one Vikalp Rasayan Private Limited and has also raised equity capital of Rs.40 lakhs. Thereafter, on

19.02.2009 State Bank of India confirmed the sale in the petitioner's favour and issued a Sale Certificate and on 12.06.2009 conveyance deed was executed between State Bank of India and the petitioner in respect of the subject property and consequently the name of the petitioner was entered in the revenue records pertaining to the subject property.

3.3 Charge sheet was filed in the case pertaining to the FIR filed by the Punjab National Bank on 26.11.2009 alleging that during 2005-06 a conspiracy to cheat the bank was hatched to avail loans by misrepresenting the financial position of respondent no.5 and allowing the funds to be diverted. On 21.07.2011, the respondent No.3 addressed a letter to the Joint Sub-Registrar, SRO, Ahmedabad-3 stating that investigations were being carried out against respondent No.5 and its Director Pradipbhai under the PML Act and that the subject property and other properties were the subject matter of further investigation and asking the Joint Sub-Registrar not to allow transfer / sale of any of the properties without prior approval of the Directorate of Enforcement. It is the case of the petitioner that unaware of the aforesaid letter, the petitioner entered into an Agreement to Sale on 24.10.2011 with one Smt. Khushaliben G. Khatri in respect of the subject property which was registered. Subsequently, the petitioner came to know that, in the case of another property known as 'Vishal House' belonging to the respondent No.5, which was put up for sale through public auction, when the auction purchaser of Vishal House tried to subsequently sell the property, the Joint Sub-Registrar, SRO, Ahmedabad-3 refused to register the Sale Deed on the pretext that he was restrained in view of letter dated 21.7.2011 of the respondent No.3 and that a petition is filed by the purchasers of Vishal House seeking a direction to the Joint Sub-Registrar to register the Sale Deed of Vishal House. In the circumstances, the proposed purchaser informed the petitioner that she

did not want to purchase the subject property.

3.4 It is further the case of the petitioner that before the petitioner could take steps for challenging the said actions, the respondent No.2 passed a Provisional Attachment Order attaching the subject property under Section 5(1) of the PML Act. The said order is based upon the charge sheet dated 26.11.2009 and proceeds on the basis that the respondent No.5, instead of repaying dues of Punjab National Bank, gave money to other companies which money ultimately reached the petitioner for the purchase of the subject property and hence the Directors of the respondent No.5 acted in a *malafide* manner and again cheated Punjab National Bank and therefore, the funds provided by the respondent No.5 are proceeds of crime derived from the criminal acts as described in the charge sheet.

3.5 By way of draft amendment, the petitioners have brought on record certain subsequent facts that on 11.04.2012 the respondent No.2 has filed Original Complaint No.133 of 2012 under Section 5(5) of PML Act before the adjudicating authority. The petitioner filed its reply pointing out, inter alia, that the authorities had no jurisdiction and despite of this the adjudicating authority has passed order dated 10.07.2012 confirming the provisional attachment order. Thereafter the petitioner has filed appeal along with stay application before the Appellate Tribunal, New Delhi challenging the said order dated 10.07.2012 and as on the date the same has not been heard since there is no Chairman appointed to the Appellate Tribunal. Thereafter, the petitioner has received a notice dated 09.10.2012 from the authorities stating that the authorities would be taking over possession of the subject property and directing the petitioner to vacate the subject property within 10 days from the date of receipt of the letter.

4. Mr. Mihir Thakore, learned Senior Advocate, appearing for the petitioner, placed reliance on schedule of the offences included in PML Act, 2002 and offences after amendment in the year 2009 and so on. Therefore, according to learned Senior Advocate, those offences, which were not scheduled offences prior to 2009 for which the petitioner could not have been prosecuted and penal statute has no retrospective effect. Upon placing reliance on the facts narrated herein above, viz. purchase of the property in the year 1990 by taking loans from Punjab National Bank and other such transactions for which no offences were registered and in a complaint certain sections of Indian Penal Code were added were not scheduled offences prior to 2009, it is submitted that the petitioner is also a bonafide purchaser pursuant to proceedings undertaken by State Bank of India and consortium under SARFAESI Act, 2002 and has no nexus with the alleged property out of proceeds of crime.

4.1 Learned Senior Advocate relying on the decision of the Apex Court in the case of **Janardhan Reddy & Ors. v. The State [AIR 1951 SC 124]** submits that, prima facie, every legislation is prospective and there is no reason to depart from this rule of interpretation in the present case, more particularly, when certain offences were not scheduled offences prior to Amending the Act of 2009 and also when the transactions in respect of property in question were undertaken prior to enactment of even Act of 2002 the penal provisions could not be made applicable to the petitioner under any circumstances.

4.2 Learned Senior Advocate for the petitioner relying on the decision of the Apex Court in the case of **Calcutta Discount Co. Ltd. v. Income tax Officer, Companies District I, Calcutta & Anr. [AIR 1961**

SC 372] submits that while exercising powers under Article 226 of the Constitution of India a writ can be issued by this Court against the executive authority or to issue such appropriate orders or directions as are necessary in order to prevent persons from being subjected to lengthy proceedings and unnecessary harassments by an executive authority acting without jurisdiction and alternative remedies available under the statute cannot always be a sufficient reason for refusing quick relief in a fit and proper case. When the property in question was purchased initially in the year 1990 and other transactions were admittedly prior to amendment Act of 2009 and various offences which are now part of the complaint and charges were not scheduled offences, as per the then existing provisions, the competent authority and adjudicating authority under the PML Act have no jurisdiction to exercise powers and therefore writ petition be considered accordingly.

4.3 Learned Senior Advocate further relied on the following decisions of the Apex Court in continuation of his submissions about deciding writ petitions on merit, though remedy may be available, in case of challenge to the jurisdiction and powers of the authority under statute:

- [i] M/s.Onkarlal Nandlal v. State of Rajasthan [1985]4 SCC 404
- [ii] M/s. Filterco & Anr. v. Commissioner of Sales Tax, Madhya Pradesh [1986] 2 SCC 103

5. The petitioners of Special Civil Application No.1059 of 2012 have filed the petition under Article 226 of the Constitution of India with the following prayers:

“[A] Your Lordships may be pleased to issue a writ of mandamus or a

writ in the nature of mandamus or any other appropriate writ, order or direction, quashing communication dated 21.07.2011 [attachment to Annexure-G hereto] issued by respondent No.2 to respondent No.3;

[B] your Lordships may be pleased to issue an appropriate writ, order or direction, directing and commanding respondent No.3 to register sale deed dated 10.12.2011 [Annexure-E hereto] pertaining to property called 'Vishal House', situated Opp. Sales India, Ashram Road, Ahmedabad in the limits of Mouje, Shaikhpur-Khanpur, Sub-Plot No.14 of Final Plot No.169 of Town Planning Scheme No.3 which was included in Ward No.TP 3/3-4, Shaikhpur-Khanpur, City Survey No.1973 in favour of the petitioners;

[BB] Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing provisional attachment order No.2/2012 dated 15.3.2012 issued under provisions of section 5(1) of the Prevention of Money Laundering Act, 2002;

[BBB] Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other or any other appropriate writ order or direction quashing order dated 10.7.2012 [Annexure I] made in original complaint No.133 of 2012 by the adjudicating authority under PML Act, 2002.

[BBBB] Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction quashing notice dated 9.10.2012 [Annexure II].

[C] Pending hearing and final disposal of this petition, Your Lordships may be pleased to direct and command respondent No.3 to register sale deed dated 10.12.2011 [Annexure-E hereto] pertaining to property called 'Vishal House', situated Opp. Sales India, Ashram Road, Ahmedabad in the limits of Mouje. Shaikhpur-Khanpur, Sub-plot No.14 of Final Plot No.169 of Town Planning Scheme No.3 which was included in Ward No. TP 3/3-4, Shaikhpur-Khanpur, City Survey No.1973 in favour of the petitioners, on such terms and conditions as this Hon'ble Court thinks fit;

[CC] Pending hearing and final disposal of this petition, Your Lordships may be pleased to stay the operation, implementation and execution of provisional Attachment Order No.2/2012 dated 15.3.2012 issued under provisions of section 5(1) of the Prevention of Money-Laundering Act, 2002 [Annexure-H];

[CCC] Pending hearing and final disposal of this petition, Your Lordships may be pleased to restrain respondent No.2 and 8 from taking any further steps in pursuance of provisional attachment order No.2/2012 dated

15.03.2012 issued under provisions of section 5(1) of the Prevention of Money Laundering Act, 2012 [Annexure-H];

[CCCC] Pending hearing and final disposal of this petition Your Lordships may be pleased to stay the operation and implementation of impugned order dated 10.07.2012 passed by the adjudicating authority [PML Act, 2001] in original complaint No.133 of 2012.

[D] Any other further relief as may deem fit in the facts of the case be granted;

5.1 The facts of the case, as per the petitioners of Special Civil Application No.1059 of 2012, are as under.

5.2 A property situated in the limits of Mouje : Shaikhpur – Khanpur, Sub-Plot No.14 of Final Plot No.169 of Town Planning Scheme No.3 which was included in Ward No.TP 3/3-4, Shaikhpur-Khanpur, City Survey No.1973 [16 units] was acquired by State Bank of India in its consortium under provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. On 27.08.2009 the said property was put to auction / sale under SARFAESI Act which was purchased by one M/s. JMD Media Pvt. Ltd. and on 05.09.2009 sale certificate and original title deeds as well as peaceful possession were handed over to JMD Media Pvt. Ltd. Thereafter in October, 2010 petitioners came to know of inclination of M/s. JMD Media Pvt. Ltd. and owners of other three units of the said properties to sell the same. A sum of Rs.6 lakhs was initially paid to M/s. JMD Media Pvt. Ltd. on 31.12.2010 and on 28.03.2011 sale deed pertaining to aforesaid 16 units was done and registered at the Sub-Registrar's office. On 08.04.2011 the petitioners, by way of advertisement in the newspapers invited objections to the sale of the said property and the petitioners also got a title search of the aforesaid property from Solicitors who gave a Title Clearance Certificate. On 24.10.2011 the

petitioners proceeded to make payment and entered into an agreement to sale which was registered by the Sub-Registrar. The petitioners were given possession note pertaining to the entire property and possession was also given. On 10.12.2011 sale deed pertaining to the said property was prepared and on 12.12.2011 the petitioners approached Sub-Registrar for registration of aforesaid sale deed, but the Sub-Registrar informed that the sale deed cannot be registered as the respondent No.2- Assistant Director, Directorate of Enforcement issued notice dated 21.07.2011 restraining registration of sale deed as investigation is carried out against M/s. Vishal Exports, etc.

5.3 It is say of the petitioner that the petitioners are in no way connected with M/s. Vishal Exports. It is further say of the petitioners that they are *bonafide* buyers of the said properties, which have been acquired by the State Bank of India and its consortium under the provisions of SARFAESI Act which have been sold to M/s. JMD Media Services Pvt. Ltd. which in turn has sold the same to the petitioners.

5.4 That by draft amendment dated 26.03.2012, the petitioner has brought on record the fact that the property in question came to be attached vide Provisional Attachment Order No.02/2012 dated 15.03.2012 issued under provisions of section 5(1) of the PML Act, a copy of which has been sent to the petitioner No.1.

5.5 Thereafter, by way of further draft amendment the petitioner has brought on record that after passing the aforesaid provisional attachment order No.2/2012, the respondent No.8 filed a complaint under Section 5(1) of the PML Act wherein the petitioners were also made party. The petitioner filed their replies to the said complaint before the adjudicating authority and explained that they

were bonafide purchasers of the property as well as disclosed the details of payments made to the concerned respondent from whom the property they purchased. The petitioners also raised other contentions and in spite of that order dated 10.07.2012 came to be passed by the adjudicating authority confirming provisional attachment order. The petitioners have therefore filed appeals challenging the order dated 10.07.2012 in the Appellate Tribunal along with stay applications prying for appropriate interim relief on 22.08.2012. The said appeals and stay applications are pending as on date in the Tribunal. However, the said appeals and stay application are not likely to be heard in the near future as there are no Chairperson and /or members in the said forum. Further, during the pendency of the captioned petition as well as the appeal and stay application in the Appellate Tribunal, the concerned authorities have issued a notice dated 09.10.2012 which has been received by the petitioner on 11.10.2012 for taking over possession of the aforesaid property.

6. Mr. Mihir Joshi, learned Senior Advocate, would contend that respondent No.2 has no authority to address a communication to respondent No.3 directing him not to register sale deeds. That only because of directions are issued by respondent No.2 not to register sale deed of the subject property, respondent No.3, the Joint Sub-Registrar of State of Gujarat, though empowered to register sale deeds, has refused to do so. By pointing out consequences of transactions about the subject property, it is submitted that it was owned by one Anand Owners Association, a non-trading corporation registered under the provisions of the Bombay Non-trading Corporation Act, 1959, and one M/s. Vishal Exports Overseas Ltd [VEOL], which was occupant of the aforesaid unit and which had obtained finance from the State Bank of India by mortgaging the units. Upon its failure to make repayment of loan

amount, the mortgaged property was acquired by State Bank of India and its consortium under the provisions of the SARFAESI Act, 2002 and it was put to public auction, whereby a procedure in accordance with law was followed, including verification of title deeds and issuance of sale certificate on 05.09.2009 and it was purchased by respondent No.4- JMD Media Pvt. Ltd. Thereafter the petitioner advertised in the month of April, 2011 in a newspaper about any objections to the sale of property for which an agreement to sale was entered into between the petitioner and respondent No.4 upon payment as no objections were received pursuant to advertisement and even title clearance certificate was also given to the effect that no encumbrances did exist over such property. Therefore, the action taken by the respondent No.2 is not only contrary to provisions of PML Act, but also violative of Articles 14, 19 and 21 of the Constitution of India.

6.1 Learned Senior Advocate would further contend that the State Bank of India and its consortium having undertaken lawful recourse under SARFAESI Act, 2002 and the petitioner being a *bonafide* purchaser from the auction purchaser and who has no nexus or connection with the alleged proceeds of crime and the transaction of property in question could not have been proceeded by exercising power under section 5 of the PML Act of provisional attachment, confirmation thereof and subjecting the property to a drastic action of depriving the petitioner of the property, who is its lawful owner. The direction issued by respondent No.2 to respondent No.3, who is an authority under the Registration Act and also to perform duties under the Bombay Stamp Act, not to register the sale deed, has no basis either under PML Act or Registration Act and in absence of any statutory provisions, no such direction could have been given by respondent No.2 to respondent No.3. Learned Senior Advocate would contend that there are no charges

against the petitioner of having committed any scheduled offence and therefore there is no likelihood of confiscation of property in question or even frustrating of any proceedings relating to confiscation and therefore, even provisional attachment and conformation thereof deserve to be quashed and set aside.

6.2 It is also submitted that if the definition of 'proceeds of crime' is seen, the property was with State Bank of India and its consortium and it was purchased by respondent No.4 pursuant to auction sale. For other contentions, arguments canvassed by Mr. Mihir Thakore, learned Senior Counsel in the cognate matter are adopted.

7. Shri Pankaj Champaneri, learned Assistant Solicitor General appearing for the respondent authorities state that the Tribunal at New Delhi is now functional and learned Chairman is also available. Not only that, but hearing is also fixed in near future.

7.1 That 'Money Laundering' is a modern crime. It has social, political and economic implications. The global crimes such as drug trafficking, organized crime and terrorism thrive on money laundering. Large scale laundering of money may cause economic and even political instability in a country. Having felt the need for effectively curbing the menace of money laundering, the global community has initiated several steps including criminalization of money laundering. Money laundering outwardly appears to be straight forward simple financial transactions. Normally, it has as three stage transactions.

First Stage – Placement:

The criminals place the crime money into the normal financial system.

Second Stage – Layering:

The money which has been inducted into the financial system is layered or spread out into several transactions within the financial system with a view to getting the origin or original identity of the money lost or disappeared.

Third Stage – Integration:

The money gets integrated into the financial system in such a way that the original association with the crime is totally lost and the money could be used by the criminal and his accomplices who gets it as untainted money/clean money.

7.2 Mr. Champaneri, basically relied on the orders passed by the authorities under section 5 as well as under Section 8 of the Act and affidavit in reply filed by the respondent No.2. It is contended that in view of availability of alternative remedy, which is in fact availed by the petitioner and such appellate authority is seized with the subject matter and there being no issue for this Court to exercise powers under Article 226 of the Constitution of India in favour of the petitioners. Mr. Champaneri, learned ASG has also placed reliance on directions of the Division Bench of the High Court in the case of **B.Rama Raju v. Union of India vide order dated 04.03.2011 in Writ Petition Nos.10765; 10769 & 23166 of 2010** and submitted that issues raised by learned counsels for the parties stand concluded by the above judgment and reliance was placed accordingly.

8. Upon overall perusal and record and submissions made by learned counsels for the parties in both these petitions in the context of Scheme of the PML Act, following cases, transactions, instances taken

into consideration by competent and adjudicating authority while exercising jurisdiction and powers under sections 5 and 8 of the PML Act:

8.1 Following cases are booked against the persons by various agencies:

[A] Cases booked by the Directorate of Revenue Intelligence [DRI]:

Sr. No.	Name of the Firm	Issue involved	Benefit availed	Case No.	Present Status
1	M/s. Vishal Exports Overseas Ltd., Ahmedabad	Fraudulent exports to Russia under the repayment to state credits Agreement between the Govt. of India and the erstwhile Soviet Union. Goods never reached Russia and were diverted and sold at other destinations like Dubai, Finland, Africa, etc. They had also exported garments to Dubai at highly overvalued prices	1] VEOL had fraudulently claimed & obtained reimbursement of Rs.134 Crores from the RBI. 2] Wrong availment of drawback of Rs.15.23 Crores and DEPB credit of Rs.11.23 Crores	DRI/AZU/INV-01/2004 dated 29.06.2005	Pending for adjudication

2	M/s. Vishal Exports Overseas Ltd., Ahmedabad	Illicit diversion of goods imported under advance license	Rs.28,84,091	DRI/AZU/INT-29/99-Mumbai Port dated 26.11.2002	Paid customs duty with interest & obtained immunity from prosecution under the Customs Act after the case was settled by Settlement Commission, Mumbai vide order No.17/2004-Cus dated 29.3.2004
3	M/s. Vishal Exports Overseas Ltd., Ahmedabad	Illicit diversion of goods imported under advance license	Rs.2,96,832	DRI/AZU/INT-29/99-Mumbai Port SCN-II dated 26.11.2002	-do-
4	M/s. Vishal Exports Overseas Ltd., Ahmedabad	Illicit diversion of goods imported under advance license	Rs.46,46,164	DRI/AZU/INT-29/99-Mumbai Port SCN-II dated 25.9.2002	-do-
5	M/s. Vishal Plastomers Pvt. Ltd., Ahmedabad	Fraudulent exports to Russia under the repayment to state credits Agreement between the Govt. of India and the erstwhile Soviet Union. Goods never reached Russia and were diverted and sold at other destinations like Dubai, Finland, Africa, etc. They had also exported garments to Dubai at highly overvalued prices	1] VEOL had fraudulently claimed reimbursement of Rs.9.2 Crores from the RBI. 2] Wrong availment of drawback of Rs.1.12 Crores and DEPB credit of Rs.2.17 Crores	DRI/AZU/INV-01/2004 dated 19.07.2005	Pending for adjudication
6	M/s. Vishal Plastomers Pvt. Ltd., Ahmedabad	Export of readymade garments at highly overvalued prices so as to fraudulently claim higher DEPB benefits	Goods seized and hence no export took place	DRI/AZU/INV-01/2004 dated 23.-7.2004	Pending for adjudication

[B] Cases booked by the Central Bureau of Investigation [CBI]:

Sr. No.	CBI [BS & FC] FIR No. & date	Chargesheet / Case No. & date	Bank / Institution involved	Amount involved
1	RC 1[E]/2010/CBI/BS &FC/MUMBAI dated 29.1.2010	Chargesheet No.3/2010 dated 10.6.2010	Andhra Bank, C.G.Road Branch, Ahmedabad	Rs.21.01 Crores
2	RC 1[E]/2008/CBI/BS & FC/MUMBAI dated 31.1.2008	Chargesheet No.1 dated 26.11.2009	Punjab National Bank, International Banking Branch, Ahmedabad	Rs.106 Crores
3	RC 1/2009/EOU-VII/NEW DELHI dated 25.2.2009	Chargesheet No.4/2010 dated 25.6.2010	National Agricultural Co-op. Marketing Federation of India Ltd. [NAFED], Ahmedabad	Rs.73.59 Crores
4	RC 11[E]/2008/CBI/BS &FC/MUMBAI dated 17.10.2008	Case No.4/2010 filed on 29.6.2010	Vijaya Bank, Industrial Finance Branch, Ahmedabad	Rs.19.40 Crores
5	RC 12/E/2009/BS&FC/MUM dated 10.6.2009	Chargesheet dated 16.22.2010	Uco Bank, Ashram Road Branch, Ahmedabad	Rs.18.42 Crores

[C] Cases booked by the Directorate of Enforcement, Ahmedabad under FERA / FEMA:

Sr. No.	Name of the Firm	Issue involved	Benefit availed	Case No.	Present Status
1	M/s. Vishal Exports Overseas Ltd., Ahmedabad Shri Pradeep Mehta & Ors.	Violation of RBI Circular governing the Scheme of `Repayment of State Rupee Credits with erstwhile USSR"	Rs.70 lakhs	T-4/185/DD/SL H/A/2002	Penalties of Rs.25 lakhs imposed on VEOL & Rs.10 lakhs imposed on Shri Pradeep S. Mehta
2	M/s. FFR Software Pvt. Ltd., Ahmedabad	Over Valuation of goods with the intention to claim higher draw back benefits. Diversion of advanced remittances of Rs.6,50,40,409/- for purchasing immovable properties and repayment of bank loan	Rs.6,50,40,409 /-	T-3/09/A-201-	Investigation in this case has been complied and Directorate of Enforcement is in process of issuing Show Cause Notice.

3	M/s. Vishal Exports Overseas Ltd., Ahmedabad Shri Pradeep Mehta & Ors.	Exports to Russia under the Repayment of State Credits Agreement during 2000 to 2004, for which 84 Lcs were opened for Rs.134,63,93,319/-. During the course of investigation by DRI, it was revealed that the overseas buyers shown by M/s. VEOL were dubious in nature and non-existent. The goods which were meant to be exported to Russian buyers were offloaded at Dubai.	Rs.1,34,63,93,319	T-3/13/A/2005	Investigation is in progress
4	M/s. Vishal Exports Overseas Ltd., Ahmedabad Shri Pradeep Mehta & Ors.	Investigation were taken up on a reference from Reserve Bank of India regarding non-submission of Bill of Entry in respect of imports [garments] by VEOL.	Rs.2,00,37,334	T-3/59/Imp/A/2003	Show cause notice has been issued by Special Director, Directorate of Enforcement, Mumbai

[D] Caution listing orders dated 10.10.2008 issued by RBI under Regulation 17(1) of the Foreign Exchange Management [Export of Goods & Services] Regulation, 2000.

Sr. No.	Name & address of the exporter	IE Code No.	Consultation of the Firm	Name of the Director / partner / proprietor
1	Vishal Imports Overseas Ltd., Vishal House, B/h. Oriental Bank of Commerce, Opp. Sales India, Off Ashram Road, Ahmedabad-380009	0897001931	Public Ltd. Co.	1] Shri Subhashchandra C. Mehta 2] Shri Pradeep S. Mehta 3] Shri Deepak S. Mehta & Ors.
2	Vishal Plastomers Pvt. Ltd., Vishal House, B/h. Oriental Bank of Commerce, Opp. Sales India, Off Ashram Road, Ahmedabad-380009	0888036396	Pvt. Ltd. Co.	1] Shri Subhashchandra C. Mehta 2] Shri Pradeep S. Mehta 3] Shri Deepak S. Mehta .

3	Vishal Exports Overseas Ltd., Vishal House, B/h. Oriental Bank of Commerce, Opp. Sales India, Off Ashram Road, Ahmedabad-380009	0889004251	Public Ltd. Co.	1] Shri Subhashchandra C. Mehta 2] Shri Pradeep S. Mehta 3] Shri Deepak S. Mehta
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8.2 The Deputy Director, Directorate of Enforcement, Department of Revenue, Ministry of Finance, Ahmedabad had filed affidavit in reply to Special Civil Application No.1059 of 2012. In the said reply affidavit, from para 5 onwards, it is stated as under:

“5. The brief facts of the case revealed during the investigation by this Directorate in the instant case and the submissions are as under:-

a) M/s. Vishal Exports Overseas Ltd. (VEOL) and its Director including Shri Pradip Mehta had defrauded a consortium of 23 Banks led by State Bank of India to the tune of more than Rs 100 Crores by their acts of cheating and forgery. Accordingly bank Security and Fraud Cell of CBI, Mumbai upon their investigation have filed 3 chargesheets against M/s. VEOL & others before the competent court. Besides, in another fraud and cheating case CBI, New Delhi has also filed charge sheet against M/s. VEOL and others.

b) Since the sections 420, 467, 120(B) IPC invoked by CBI in their charge sheets are also scheduled offences in terms of Sec. 2(y) of PMLA, the Ahmedabad Zonal Office of the Directorate of Enforcement has registered 5 cases against VEOL and other under PMLA.

c) In their course of ongoing investigation under PMLA, the Directorate had identified and attached the following immovable properties vide Provisional Attachment Order No.07/2011 dated 23.06.2011.

Details of Immovable Properties

Sr. No.	(a) Particulars of the Property, (b) Date of Acquisition & (c) name of initial holder	Name of the Present Owner of the Property	Value as per Sale Deed
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1	(a) Wind Turbines and rights of PPAs of the said Wind Turbines at location J-50 (Capacity 0.35 MW) & location J-80 (Capacity 1.25 MW) at Jaisalmer, Rajasthan commissioned by Rajasthan Renewable Energy Corporation Ltd., Jaipur. (b) 27/07/2009. (c) M/s. Vishal Plastomers pvt. Ltd., Ahmedabad	M/s FFR Software Pvt Ltd, Ahmedabad	Rs.2,75,00,000/-
2	(a) The property earlier described as "Land measuring 792 Sq yards with building therein located at Surya Prakash Co-operative Housing Society Ltd. S.No.114/1 and 114/2 Vastrapur, Ahmedabad now known as "Bungalow no.18, Vasuma Hill Society, Near L.J. College, Opp. Saket Bungalows, Vastrapur, Ahmedabad-380015". (b) 01/07/2009 (c) Shri Pradip S. Mehta	M/s FFR Software Pvt. Ltd. Ahmedabad	Rs.2,45,00,000/-

d) The said order has been confirmed by the Adjudicating Authority vide its Order in Original Complaint No.109/2011 dated 16.11.2011.

e) It is submitted that M/s.FFR Software Pvt., Ltd., which had purchased the properties in auction of SBI namely at Sr. No.1 and settled the loan in respect of property No.2 above is controlled by Shri Pradip Mehta himself. It is submitted that in the course of investigation it has also been found that many of the properties including Vishal House which were auctioned by State Bank of India, have been purchased by the entities controlled/known to Pradip Mehta.

f) Funds have come from M/s. Vishal Exports Overseas Ltd., which is the company controlled by Shri Pradip Mehta (and of which he is the CMD), to M/s.Vikalp Rasayan Pvt. Ltd., Ahmedabad and M/s. Global Nutrition and Foods pvt. Ltd., Ahmedabad and then further diverted to M/s.JMD Media pvt Ltd and M/s.Alive Hospitalities and Foods pvt Ltd for purchase certain properties in Auction sale of State Bank of India in 2009. It shows that VEOL was in possession of funds to pay to banks to repay its outstanding dues & thereby reduce/compensate the losses of the Banks. However, VEOL controlled by Pradip Mehta used those funds to purchase properties in the names of abovementioned Companies [M/s.JMD Media Pvt. Ltd., M/s. Alive Hospitalities and Foods Pvt Ltd. And M/s.FFR

Software Pvt Ltd]. These properties earlier belonged to VEOL/Sh Pradip Mehta did with Banks, therefore, this money which Pradip Mehta used for purchasing the properties can be considered as money originated from Crime and the property purchased from such type of money appear liable for attachment under Prevention of Money Laundering Act, 2002 as mentioned above.

g) The period of formation of M/s.JMD Media Pvt. Ltd, M/s.Alive Hospitality and Foods Pvt. Ltd. And M/s.FFR Software Pvt Ltd is June, 2008, which is just before the auction of SBI. It is revealed in the course of investigation that all these companies were formed on the directions of Shri Pradip Mehta and the source of fund was also arranged by Shri Pradip Mehta and all the companies have practically no business activities as revealed by their Director, Rakesh Y. Bhatt and Sh. Pravin T. Halvadia all the companies were used to route funds for purchasing properties. Thus it appears that all these companies directly or indirectly belong to/controlled by Shri Pradip Mehta. All these companies are controlled by Pradip Mehta, though to hide this fact, Pradip Mehta preferred not to become Director of these companies and arranged his trusted associates for the posts of Directors, or his relatives like Rakesh Bhatt and Falguni Bhatt.

h) If Pradip Mehta wanted to give loan to M/s.JMD Media and M/s.Alive Hospitalities and Foods Pvt Ltd., then VEOL could have given it directly, but to hide the direct connection of said companies to Shri Pradip Mehta, Shri Pradip Mehta decided to give it through M/s.Vikalp Rasayan and M/s.Global Nutrition. This is Money Laundering operation masterminded by Shri Pradip S. Mehta.

i) When Directorate of Enforcement attached the properties acquired in the name of M/s. FFR Software Pvt. Ltd., vide Provisional Attachment Order No.07/2011 dated 23.06.2011, Shri Pradip Mehta started selling the properties including "Vishal House", which was then owned by M/s.JMD Media Pvt Ltd., which is controlled by him. The said Provisional Attachment Order No.07/2011 dated 23rd November 2011 has been confirmed vide order dated 16.11.2011 in O.C. No.109/2011 by Adjudicating Authority, PMLA, New Delhi.

j) As prima-facie, the said property "Vishal House, Opposite Sales India, Ashram Road, Ahmedabad" had appeared to be involved in money laundering, for stopping the sale/transfer of this property as a precautionary measure the prohibiting letter dated 21.07.2011 was served to Sub-Registrar, Memnagar and till date this property is owned by M/s.JMD Media Pvt Ltd, as the title has not yet been transferred. But Pradip Mehta has knowingly attempted sale of this

property, which was acquired from Proceeds of Crime, which is itself a fraud committed with the Applicant. Thus, the liability of Pradip Mehta is towards the Applicant. It is therefore prayed that the seller as named in the unregistered Sale Deed, may be directed by this Hon'ble Court to return the money to the applicant.

k) Apart from above, the Directorate of Enforcement is investigating the connection of the applicant with Pradip Mehta and in this process statements of Shri Jagdish Ishwarbhai Patel was recorded on 24.01.2012 and statement of his son Shri Ankit Jagdishbhai Patel also have been recorded on 07.02.2012 and 13.02.2012. The investigation under PMLA is in progress and the Directorate is verifying the source of funds of the applicant, which are used by him for making payments to JMD Media Private Ltd., Ahmedabad. The chronological details of efforts made by this office are as under:-

[emphasis supplied]

Sr. No.	Date	Event
1	20.12.2011	A letter dated 16.12.2011 received from Sub Registrar, Memnagar regarding the sale of (Vishal House, Opp. Sales India, Ashram Road, Ahmedabad) by M/s.JMD Media, Pathar Kuva, Ahmedabad to Shri Jagdishbhai Patel.
2	21.12.2011	Summons dated 21.12.2011 was issued to Shri Rakesh Y. Bhatt for appearance on 21.12.2011, Summons to Shri Pradip Mehta for appearance on 22.12.2011 and Summons to Shri Praveen Halvadiya for appearance on 22.12.2011.
3	21.12.2011	On 21.12.2011, statement of Shri Rakesh Y. Bhatt recorded.
4	21.12.2011	On 21.12.2011 directives were issued to Sub-Registrar, Memnagar & Sub-Registrar, Paldi for not allowing transfer/registration of property which were already directed under past references of this Directorate.
5	21.12.2011	In compliance to Summons to Shri Pradip Mehta dated 21.12.2011, Shri Pradip Mehta sought adjournment for provided information as mentioned in schedule of said summons vide its letter dated 21.12.2011.
6	22.12.2011	Statement of Shri Praveen T. Halvadiya recorded on 22.12.2011.

7	23.12.2011	Letter issued to Shri Pradip Mehta regarding his adjournment letter dated 21.12.2011, enclosing the fresh summons requiring his presence on 27.12.2011. Directive issued to Kalupur Commercial Cooperative Bank, Swastik Char Rasta Branch, Ahmedabad for providing details of Bank accounts of M/s. Global Nutrition and M/s.Vikalp Rasayan Pvt Ltd.
8	26.12.2011	A letter received from Shri Pradip Mehta including some clarification. In response to said letter, letter was issued to Shri Pradip Mehta enclosing a fresh summons dated 26.12.2011 for his appearance on 27.12.2011 declaring his letter as mischievous attempt to avoid presence.
9	27.12.2011	Shri Pradip Mehta appeared in office and his statement was recorded.
10	30.12.2011	Shri Pradip Mehta vide its letter dated 30.12.2011 submitted to details of IT Returns for A.Y. 2006-07, 2007-08, 2008-09 & 2009-10. However, incomplete Returns were submitted by him.
11	02/01/12	Summons issued to Shri Pradip Mehta for appearance on 03.01.2012.
12	03/01/12	Statement of Shri Pradip Mehta recorded. Directives issued to Kalupur Commercial Cooperative Bank, Swastik Char Rasta for providing details of bank accounts of M/s. JMD Media 7 M/s. Alive Hospitalities. Letter dated 03.01.2012 received from Shri Pradip Mehta enclosing the annual report of VEOL for year 2005-06, 2006-07, 2007-08, 2008-09.
13	04/01/12	Summons issued to Smt. Falguni R. Bhatt for appearance on 04.01.2012. Statements of Shri Smt. Falguni R. Bhatt recorded on 04.01.2012.
14	04/01/12	Summons was issued to Shri Rakesh Y. Bhatt for appearance on 10.01.2012.
15	10/01/12	Letter of Shri Pradip Mehta dated 30.12.2011 enclosed I-T returns of M/s.VEOL were found incomplete except for A.Y. 2009-10, therefore a letter was issued to him on 10.01.2012 directing him to submit complete sets of details. It also enclosed the summons for appearance on 20.01.2012.

16	12/01/12	<p>In regard to this office letter dated 10.01.2012, for submitting IT Returns of M/s.VEOL for A.Y. 2006-07, 07-08, 08-09, Shri Pradip Mehta wrote a letter dated 12.01.2012 to give precise details of documents required to be submitted by him with the request for adjournment till 23.01.2012 due to pre-occupation in other engagements.</p> <p>In regard to his letter, this office also issued him letter giving details of documents submitted by him with the directions to submit the balance documents.</p> <p>On 12.01.2012 a letter received from S.B.I. containing the details of auction of Properties mortgaged by M/s.VEOL purchased by different parties including detail of payments.</p>
17	13.01.2012	Summons was issued on 13.01.2012 to Shri Jagdish Patel for appearance on 16.01.2012 and also to Shri Pravin T. Halvadia on 13.01.2012.
18	16.01.2012	<p>Statement of Shri Parvin T. Halvaldia recorded.</p> <p>Fresh Summons issued to Shri Jagdish I. Patel Prop. Liberty Career Academy for appearance on 19.01.2012. On 16.01.2012.</p> <p>A copy of letter dated 04.01.2012 to Joint Sub-Registrar, Memnagar by Shri Jagdish Patel was endorsed to this office which is regarding the allowance of property "Vishal House" to get registered in the name of Jagdish Patel and family including the details of payments etc.</p>
19	18.01.2012	On 18.01.2012, letter received from VEOL regarding submission of I-T Returns for A.Y. 2007-08 with the promise to submit the other I-T Returns.
20	19.01.2012	<p>Letter dated 19.01.2012 received from Shri Jagdish Patel requesting for adjournment on ground of sickness, then</p> <p>Summons dated 19.01.2012 issued to Shri Jagdish Patel for appearance on 24.01.2012 and also to Shri Pradip Mehta for appearance on 23.01.2012.</p> <p>Letter received from Sub-Registrar, Memnagar enclosing the copy of letter dated 4.01.2012 and seeking for further directions regarding the property "Vishal House".</p>

21	23.01.2012	Statement of Shri Pradip Mehta recorded. On 23.01.2012, he also submitted an excel sheet vide his letter dated 23.01.2012 regarding the utilization of funds of Packing Credit Limit taken from Andhra Bank from 01.04.2005 to 31.03.2006.
22	24.01.2012	Statement of Shri Jagdish Ishwarbhai Patel recorded on 24.01.2012 Shri Pradip S. Mehta's letter dated 24.01.2012 received in which he made request to amend his statement dated 23.01.2012.
23	25.01.2012	Directive issued to Axis bank, Ankur branch for providing bank account details of M/s.JMD and Alive Hospitality and Foods Pvt Ltd.
24	27.01.2012	A reference was made to Joint Sub-Registrar, Memnagar directing him not to allow registration of "Vishal House" as the matter is still under investigation.
25	01/02/2012	Directive issued to Bank of Baroda for getting details of A/c's of Jagdish Ishwarbhai Patel and his family members as he stated to having made payments from these accounts during his statement dated 24.01.2012.
26	06/02/2012	Summons issued to Shri Ankit Jagdish Patel for appearance on 07.02.2012 and his statement was recorded on 07.02.2012.
27	10/02/2012	Summons issued to Shri Ankit Jagdish Patel for appearance on 13.02.2012.
28	13.02.2012	Statement was recorded on 13.02.2012

6. In view of the facts mentioned above, this is humbly prayed that Shri Pradip Mehta, who is the habitual offender and a number of cases have been booked against by the C.B.I., DRI, R.B.I. And Directorate of Enforcement, may be directed to return the money received against Sale of Property "Vishal House, Opposite Sales India, Ashram Road, Ahmedabad" to the applicant and the lien of this office may be continued as the said property "Vishal House" is still under investigation as it is suspected to have been purchased from the money acquired from Crime and hence may be found liable for attachment under Prevention of Money Laundering Act, 2002."

[emphasis supplied]

Thus, it is clear that the decision taken by the authorized officer on provisional attachment under Section 5(1) and confirmation of such

provisional attachment under Section 8(3) later on by adjudicatory authority upon receiving complaint under Section 5(5) of the Act, it cannot be said that the authority had no reason to believe on the basis of possession of material on record and presumption is about interconnectivity of transaction as laid under section 23 of the Act and admittedly petitioner has approached the appellate authority.

9. The Prevention of Money Laundering Act, 2002 is enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. That illegal activities of money laundering posed a serious threat not only to the financial systems of the country, but also to their integrity and sovereignty, and therefore, international communities, including the United Nations on different conventions recognized concerted efforts of all member countries to strictly deal with the evil of money-laundering. The details about the initiative taken by the international community to obviate such threat are outlined in statement of objects and reasons. The Indian Parliament taking into consideration all the above, enacted this Act.

9.1 Section 2 of the act defines about definitions. The relevant definitions of Section 2 are reproduced as under:

[a] "Adjudicating Authority" means an Adjudicating Authority appointed under sub- section (1) of section 6;

[b] "Appellate Tribunal" means the Appellate Tribunal established under section 25;

[c] "Assistant Director" means an Assistant Director appointed under sub- section (1) of section 49;

[d] "**attachment**" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter

III;

[da] "authorised person" means an authorised person as defined in clause [c] of section 2 of the Foreign Exchange Management Act, 1999 [42 of 1999];

[e] "banking company" means a banking company or a co- operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

[na] "**investigation**" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence.

[p] "**money- laundering**" has the meaning assigned to it in section 3;

[s] "**person**" includes-

[i] an individual,

[ii] a Hindu undivided family,

[iii] a company,

[iv] a firm,

[v] an association of persons or a body of individuals, whether incorporated or not,

[vi] every artificial juridical person not falling within any of the preceding sub- clauses, and

[vii] any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub- clauses;

[t] "prescribed" means prescribed by rules made under this Act;

[u] "**proceeds of crime**" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

[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;

[w] "records" include the records maintained in the form of books or

stored in a computer or such other form as may be prescribed;

[x] "Schedule" means the Schedule to this Act;

[y] "**scheduled offence**" means-

[i] the offences specified under Part A of the Schedule; or

[ii] the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more;

[z] "Special Court" means a Court of Session designated as Special Court under sub- section (1) of section 43;

[za] "**transfer**" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

[zb] "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

Section 3. Offence of money- laundering - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money- laundering.

Section 4. Punishment for money- laundering.- Whoever commits the offence of money- laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

Provided that where the proceeds of crime involved in money- laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

Section 5. Attachment of property involved in money- laundering.-

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

- [a] any person is in possession of any proceeds of crime;
- [b] such person has been charged of having committed a scheduled offence; and
- [c] such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income- tax Act, 1961 (43 of 1961) and the Director or the other office so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be;

Provided further that, notwithstanding anything contained in clause [b], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe [the reasons for such belief to be recorded in writing], on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

[2] The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub- section (1), forward a copy of the order, along with the 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 order and material for such period as may be prescribed.

[3] Every order of attachment made under sub- section (1) shall cease to have effect after the expiry of the period specified in that sub- section or on the date of an order made under sub- section (2) of section 8, whichever is earlier.

[4] Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub- section (1) from such enjoyment.

Explanation.- For the purposes of this sub- section," person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

[5] The Director or any other officer who provisionally attaches any property under sub- section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Section 6 deals with adjudicating authorities, composition, powers, etc.

Section 8. Adjudication.- [1] On receipt of a complaint under sub- section (5) of section 5, or applications made under sub- section (4) of section 17 or under sub- section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub- section (1) of section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub- section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

[2] The Adjudicating Authority shall, after-

[a] considering the reply, if any, to the notice issued under sub- section (1);

[b] hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

[c] taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub- section (1) are involved in

money- laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money- laundering.

[3] Where the Adjudicating Authority decides under sub- section (2) that any property is involved in money- laundering, he shall, by an order in writing, confirm the attachment of the property made under sub- section (1) of section 5 or retention of property or record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall-

[a] continue during the pendency of the proceedings relating to any scheduled offence before a court; and

[b] become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

[4] Where the provisional order of attachment made under sub- section (1) of section 5 has been confirmed under sub- section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

[5] Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub- section (3) and net income, if any, shall cease to have effect.

[6] Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub- section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

Section 9 empowers vesting of property in Central Government.

Section 23. Presumption in inter- connected transactions.- Where money- laundering involves two or more inter- connected transactions and one or more such transactions is or are proved to be involved in money- laundering, then for the purposes of adjudication or confiscation under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter- connected transactions.

Section 24. Burden of proof.- When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.

Chapter VI is about the Appellate Tribunal.

Section 25. Establishment of Appellate Tribunal.- The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Section 26. Appeal to Appellate Tribunal.- [1] Save as otherwise provided in sub- section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

[2] Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub- section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

[3] Every appeal preferred under sub- section (1) or sub- section (2) shall be filed within a period of forty- five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and e accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty- five days if it is satisfied that there was sufficient cause for not filing it within that period.

[4] On receipt of an appeal under sub- section (1) or sub- section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

[5] The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

[6] The appeal filed before the Appellate Tribunal under sub- section (1) or sub- section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

Section 35 provides Procedure and powers of Appellate Tribunal and Section 38 provides Decision to be by majority and section 41 is about Civil court not to have jurisdiction.

Section 42. Appeal to High Court.- Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.- For the purposes of this section, " High Court" means-

[i] the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

[ii] where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

9.2 Chapter VII deals with Special Courts. Section 44 classifies the Offences triable by Special Courts and Section 45 distinguishes Offences either cognizable or non-bailable. Section 46 is about Application of the Code of Criminal Procedure, 1973 and Section 47 provides for Appeal and revision.

9.3 Chapter VIII is about authorities. Section 48 provides for classes of authorities and Section 49 provides for appointment and powers of authorities and other officers.

9.4 Chapter X is about Miscellaneous. Section 62 provides safeguard against vexatious search and Section 71 states that the provisions of PML Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for time being in force giving PML Act overriding effect to the above extent and Section 73[h] confers upon Central Government to make rules by issuance of

notification for carrying out provisions of the Act.

9.5 Section 2[u] defines “proceeds of crime” to mean any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property, is proceeds of crime. Section 2[p] defines ‘Money laundering’ to have same meaning assigned to it in Section 3 viz. whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projected it as untainted property shall be guilty of offence of money laundering. Section 4 provides punishment for money-laundering. Therefore, when authority empowered under the Act proceeds for attachment, adjudication and confiscation under Chapter III it has dual purpose as emerges from the sections. For exercising powers under Section 5(1)[a][b][c] for provisional attachment of the property allegedly derived or obtained from proceeds of crime, on the basis of material in his possession, authorized officer should have reason to believe and reasons for such belief to be recorded in the order about [a]any person is in possession of any proceeds of crime; [b] such person has been charged of having committed a scheduled offence; and [c] such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeds relating to confiscation of such proceeds of crime under Chapter III and by passing an order in writing such property can be provisionally attached for a period not exceeding for 150 days from the date of the order in the manner provided in the Second Schedule to the Income-tax Act, 1961. The above exercise does not envisage either issuance of show cause notice or hearing. It also provides necessity of filing a report under Section 173 before concerned Magistrate for the schedule offence before passing an order of

attachment for a complaint by an authorised person to investigate such offences mentioned in the schedule before the Court for taking cognizance of such offence. That second un-numbered proviso also empowers an authorized officer to exercise the power, notwithstanding anything contained in clause [b] of subsection [1] of section 5 upon his satisfaction on the basis of material in his possession and has reason to believe that such property is likely to frustrated any proceedings of the Act, if it is not attached immediately. Under sub-section (5) of Section 5 of the Act a duty is cast upon the authorized officer who provisionally attaches any property in sub-section (1) shall have to file a complaint within a period of 30 days from such an attachment before the adjudicating authority. Thus, a detailed mechanism is provided for exercising powers by an authorized officer to attach such property involving money-laundering after following procedure laid down in Section 5 as stated . That Section 8 provides for adjudication and subsection [1] provides that on receipt of a complaint under sub-section [5] of section 5, or application made under sub-section [4] of section 17 or under sub-section [10] of section 18, if the Adjudicating Authority has committed offence under Section 3 or is in possession of proceeds of crime and to call upon such a person to communicate sources of his income, earning or assets out of which or by means of which he has acquired the property attached under Section 5(1) or, seized under section 17 or section 18, attached in exercise of powers. Sub-section [2] of Section 8 provides that the Adjudicating Authority after issuing notice and affording opportunity of hearing to such person or any other person connected within such property and after considering reply and hearing the aggrieved person and taking into consideration all the relevant material placed on record to pass an order and record a finding that properties referred to in the notice issued under Section [1] of Section 8 is involved in money-laundering as required under section 8(2)(c) of the

Act. However, sub-section (3) of section 8 also empowers the adjudicating authority to pass a further order about confirmation of attached property or record seized shall continue during period of pendency of proceedings relating to any scheduled offence before a court and such order becomes final only after the guilt of such person is proved and such order of the court attains finality. The order of confiscation is to be passed after hearing the person concerned as provided under sub-section [6] of Section 8. Section 23 deals with presumption in inter-connected transactions and unless otherwise proved to the satisfaction of the adjudicating authority, it is to be presumed that remaining transactions from part of such interconnected transactions involving money laundering and section 24 places burden of proof upon the accused on having committed the offences under Section 3 of proving the proceeds of crime are untainted property. Thus, the authorities under the Act have privilege of presumption about obtaining or derived proceeds of crime in the case of interconnected transactions.

9.6 That Chapter VI provides for appellate mechanism and section 25 is about establishment of appellate tribunal and procedure is provided under Section 26 about filing of appeal to appellate tribunal either by an authorised person or any person aggrieved by an order made by the adjudicating authority under the Act. That further provisions is of appeal to move High Court within 60 days against any decision or order passed by the appellate tribunal by any person aggrieved by such order within 60 days from the communication of the order. That Chapter VII is about special courts, their establishment, procedure to be followed and Chapter VIII is about authority mentioned therein and their jurisdiction etc. The above facts reveal procedure to be followed by the authorized officer or provisional attachment under section 5 and confirmation of such attachment by adjudicating authority

including passing of an order of confiscation by adjudicating authority under Section 8.

10. Upon threadbare analysis and consideration of contentions of law viz. jurisdiction and powers under Sections 5 and 8 of the PML Act, violation of rights of the petitioners under Articles 14, 19 and 21 of the Constitution of India, inapplicability of provisions of penal nature with retrospective effect in the facts and circumstances of the case and absence of any ingredients to bring the alleged transaction about subject property within the definition of 'criminal proceeds', 'property' and 'value of the property', etc. a complete answer is given by a Division Bench of the Andhra Pradesh High Court in the case of **B.Rama Raju** [supra] whereby such contentions are negated by holding as under:

“ISSUE-A

The core contention on behalf of the petitioners is that property in ownership, control or possession of a person not charged of having committed a scheduled offence would not constitute proceeds of crime, liable to attachment and confiscation proceedings, under Chapter III of the Act.

[emphasis (1) supplied]

Learned Counsel for the petitioners adverted to the Convention against Illicit Traffic in Narcotic Drugs and Substances, [to which India is a party and a signatory]. Art. 3 in Part-XVII of this Convention sets out provisions pertaining to Offences and Sanctions. Certain provisions, of clauses (b) and (c) of sub-sections 1, and sub-sections 2 and 3 of Art. 3 are adverted to in this behalf. The provisions adverted to by the petitioners read:

ARTICLE 3

OFFENCES AND SANCTIONS

[1] Each party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when

committed intentionally;

[b][i] The convention or transfer of property, knowing that such property is derived from any offence or offences, established in accordance with sub-paragraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

[ii] The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property knowing that such property is derived from an offence or offences established in accordance with sub-paragraph (a) of this paragraph;

[c] Subject to its constitutional principles and the basic concepts of its legal system--

[i] The acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from an offence or offences, established in accordance with sub-paragraph (a) of this paragraph or from an act of participation in such offence or offences;

.....

.....

[iv] Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, finalizing and counseling the commission of any of the offences established in accordance with this article.

2. Subject to its constitution, principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in Paragraph I of this article may be inferred from

objective factual circumstances.

Learned Counsel Sri. Rajeev Awasthi, referred to the General Assembly resolution 55/25, dated 15-11-2000, the United Nations Convention against Transnational Organized Crime. The purport of the Convention is to promote cooperation to prevent and combat Transnational Organised Crime more effectively. The Convention is aimed to integrate international cooperation inter alia for seizure and confiscation of proceeds of crime derived from predicate offences covered by the Convention or property the value of which corresponds to that of such proceeds; and property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention. The scope of application of this Convention is to prevent, investigate and prosecute specified offences and other serious crime, where the offence is transnational in nature and involves an organised criminal group. Suffice it to notice for the purposes of this list that while detailing measures to be adopted by State Parties for seizure and confiscation of proceeds of crime, it is indicated that State may consider the possibility of requiring that an offender demonstrate the lawful origin of the alleged proceeds of crime or other property liable to confiscation, to the extent the requirement is consistent with the principle of their Domestic law and with the nature of judicial and other proceedings. It also provided that provisions for seizure and confiscation should not be construed to prejudice the rights of a bonafide third parties [Art.12- Clauses 7, 8].

Sri.Gopal Chowdury has also contended, by reference to provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 that mens rea or some measure of an informed association with an offence is the sine qua non to constitute “illegally acquired property” under the NDPS Act.

We are required, in the context of the rival contentions in these writ petitions to interpret the Act in accordance with established and applicable principles of statutory interpretation. The unit of interpretation is the Act as a whole and such of those provisions which are considered for interpretation but in the context of the provisions of Act. While the preamble to the Act refers to the U.N.General Assembly resolution S-17/2, dated 23-02-1990; and the political declaration adopted by the Special Session of the U.N. General Assembly held on 8th to 10th June, 1998; these are among the reasons for the

legislation and the contents of those resolutions or declarations are not to be considered while interpreting provisions of a domestic law such as the Act unless there is an ambiguity in any provision necessitating reference to extra textual sources for guidance. The well established principle is that the words of a statute, passed after the date of a treaty and dealing with the same subject matter, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the treaty obligation and not to be inconsistent with it – **Garland Vs. British Rail Engineering Ltd. [1]; A[FC] and others [FC] Vs. Secretary of State for the Home Department [2]**. This principle is reiterated in our jurisdiction as well. In **Visaka Vs. State of Rajasthan [3]** the Supreme Court explained that is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. While International Treaties, Conventions, Protocols or other instruments may catalyze domestic Legislation, these are not to be construed as the authority for Legislation. The Power to Legislate in India is derived from the grant of Legislative Power qua the provisions of the Constitution and the limits upon the legislative powers enumerated in the provisions of the Constitution including the authorised and enumerated fields of legislation in Lists 1, 2 and 3 of the Seventh Schedule of the Constitution. The learned Counsel for the petitioners are not heard to contend that the provisions of the Act are ultra vires international treaties, conventions; the FATF Standards etc. The contours of the powers of Parliament to make any law for the whole or any part of the territory of India for implementation of any treaty, agreement, convention or any decision made at any international conference, association or body is well established to justify the customary parade of familiar scholarship and a catena of precedent – see **Maganbhai Vs. Union of India [4]; S.Jagannath Vs. Union of India [5]; Nilabeti Behera Vs. State of Orissa [6]; and Appeal Export Promotion Council Vs. A.K.Chopra [7]**. We therefore proceed to interpret the provisions of the Act within the within the frame work of its provisions, tested on the anvil of the limits on legislative powers enjoined by the provisions of our Constitution; for we are not persuaded that there is any ambiguity that legitimizes a resort to trans-legislation sources for guidance.

We had benefit of perusing the judgment by a learned Division Bench of the Bombay High Court, dated 05-8-2010 in first appeal Nos.527 to 529 of 2010 [per A.M. Khanwilkar, J] The very question

as to whether the provisions in the Act are applicable for attachment and confiscation of property belonging to persons other than those charged and prosecuted of having committed a scheduled offence fell for consideration in this judgment. The appeals (to the Bombay High Court) were preferred [under Sec.42 of the Act] against the judgment and order of the Appellate Tribunal rejecting a challenge to orders of the Adjudicating Authority confirming orders of provisional attachment. It however requires to be noted that the decision was delivered in the context of the provisions of Sec.5 of the Act prior to its amendment by the 2nd Amendment Act, 2009 i.e., prior to the introduction of the second proviso to Sec.5 (1) of the Act. On an interactive interpretation of the several provisions of the Act including definition of the expressions—"Person"; "Proceeds of Crime"; "Property"; and "Transfer"; and the provisions of Sec.5 and 8, the Bombay judgment concluded that attachment of proceeds of crime in possession of any person [other than the person charged of having committed a scheduled offence] will fall within the sweep of Sec.5 of the Act.

The petitioners contend that the conclusion in the Bombay judgment [that the provisions of Sec.5 of the Act (prior to its Amendment by the 2nd Amendment Act) would equally apply to property belonging to a person other than one charged of an offence under Sec.3 of the Act], is erroneous, inconsistent with the clear phraseology of Sec.5 (1)(b) of the Act and ought not to be followed. It is contended that Clause-b of Sec.5(1) of the Act clearly delineates the legislative intent that attachment, adjudication and confiscation proceedings are to be initiated only against such person who having been charged of having committed a scheduled offence is in possession of proceeds of any crime, which are likely to be concealed, transferred or dealt with etc. Per contra, Sri.Rajeev Awasthi for the respondents contends that the Bombay decision correctly interprets the text and purposes of the provisions of the Act including Sec.5 thereof. In any event Sri.Rajeev contends, a review of the vitality of the Bombay decision in the context of the provisions of Sec.5 (1) (a) to (c) is not called for in view of the legislative dynamics. The contention in this behalf is that the second proviso to Sec.5 (1) of the Act (vide the 2nd Amendment Act, 2009) removes any ambiguity in the trajectory of the provisions of Sec.5 (1) and that the second proviso [fortified by a non obstante provision qua clause (b) of Sec.5(1)] clearly expresses the legislative intent beyond a scintilla of doubt.

While it may perhaps be contended that the provisions of

Sec.5(1) [prior to the second proviso] exclude from the domain of the Act, attachment and confiscation of property in the possession of a person not charged of having committed a scheduled offence, this contention in our considered view is wholly misconceived after enactment of the second proviso. The second proviso enjoins that any property of any person may be attached if the specified authority therein has reason to believe ----- . The non obstante clause in the second proviso clearly excludes clause (b) of Sec 5(1). It is this clause [b] that incorporates the requirement that the proceeds of crime should be in possession of a person who is charged of having committed a scheduled offence, for initiating proceedings for attachment and confiscation. If the provisions of the Sec.5(1)(b) are to be eschewed for ascertaining the meaning of the second proviso [qua the legislative injunct of the non obstante provision], on a true and fair construction of the provisions of Sec.5(1) including the second proviso thereof but ignoring clause (b), the Legislative intent is clear, unambiguous and linear. Provided the other conditions set out in Sec. 5 of the Act are satisfied, any property of any person (the expression “person “, is not restrictively defined in Sec.2 (s) limited to a person charged of having committed a scheduled offence), could be proceeded against for attachment, adjudication and confiscation. We are persuaded to the view that incorporation of the 2nd proviso Sec.5 (1) is intended to clarify the position or remove any ambiguity as to the application of Sec.5 (1) to property of a person not charged of having committed a scheduled offence.

The petitioners further contend (as an aspect of this issue) that if attachment and confiscation proceedings are held to be permissible against property in possession of a person not charged with having committed a scheduled offence, provisions of the Act which enable such proceedings would be invalid as violative of Article 14, 21 and 300-A of the Constitution. In support of this contention Learned Counsel for the petitioner, in particular, Mr.Gopal Chowdury place for our consideration several illustrations of the grave consequences that would follow.

[emphasis 1(a) supplied]

Inter alia it was suggested that attachment and confiscation proceedings could be initiated for instance against a shareholder of a Company who receives higher dividend or higher value on the sale of shares of such company, where the company makes and declares

substantial profits by evading customs duties or the like. Would the higher dividends received by the shareholder or the gains made by selling his shares in the company at higher price relatable to the illegal activity of the Company, of which illegality he was clearly not aware, be liable to attachment and confiscation, query the petitioners. In response, Sri.Rajeev Awasthi for the respondent has stated that as a policy the Enforcement Officials are not proceeding against properties, under the Act, unless satisfied that the property is proceeds of the crime; is in possession of a person who is either accused/charged of a scheduled offence or has knowledge of the property being the proceeds of crime.

In our considered view the petitioners' contention proceeds on a misconception of the relevant provisions of the Act. Against transactions constituting money-laundering, the provisions of the Act contemplate two sets of proceedings; (a) prosecution for the offence of money-laundering defined in Sec.3 with the punishment provided in Sec.4; and (b) attachment, adjudication and confiscation in the sequential steps and subject to the conditions and procedures enumerated in Chapter III of the Act. Sec.2 (p) defines the expression "money-laundering" as ascribed in Sec.3. Sec.3 defines the offence of Money-Laundering in an expansive locus as comprehending direct or indirect attempt to indulge; assist, be a party to or actually involved knowingly in any process or activity connected with the proceeds of the crime and projecting it as untainted property. On proof of guilt and conviction of the offence of Money-Laundering, the punishment provided in Sec.4 of the Act would follow after a due trial by the Special Court; which is conferred exclusive jurisdiction qua Section 44, Chapter VII of the Act. The prosecution, trial and conviction for the offence of Money-laundering are the criminal sanction administered by the Legislation and effectuated by a deprivation of personal liberty as a disincentive to a malfeasant. The second matrix of proceedings targets the "proceeds of crime" defined in Sec.2 (u); as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property, for initial attachment and eventual confiscation.

[emphasis 1(b) supplied]

Chapter III of the Act enables the specified authority, if he has reasons to believe [the reasons to be recorded in writing], on the basis

of material in possession of the authority that any person charged of having committed a scheduled offence [Sec.5(1)(b)] or even if not so charged [second proviso to Sec.5(1)] is in possession of proceeds of crime and such proceeds are likely to be concealed, transferred etc., in a manner as may frustrate any proceedings relating to confiscation of such proceeds of crime under Chapter III, to provisionally attach [Sec5(1)]; confirm an order of provisional attachment after a process of adjudication [Sec.8 (3)]; and eventually pass an order confiscating such property [Sec.8(6)].

On the afore-stated scheme the provisions of the Act, the prosecution under the Act; and attachment and eventual confiscation proceedings are distinct proceedings. **These two sets of proceedings may be initiated against the same person if he is accused of the offence of money-laundering. Even when a person is not so accused, the property in his possession may be proceeded against for attachment and confiscation, on a satisfaction by the appropriate and competent authority that such property constitutes proceeds of crime.**

In our considered view, the provisions of the Act which clearly and unambiguously enable initiation of proceedings for attachment and eventual confiscation of property in possession of a person not accused of having committed an offence under Section 3 as well, do not violate the provisions of the Constitution including Articles 14, 21 and 300-A and are operative proprio vigore.

[emphasis 1(c) supplied]

While the offence of money-laundering comprises various degrees of association and activity with knowledge and information connected with the proceeds of crime and projection of the same as untainted property; for the purposes of attachment and confiscation (imposition of civil and economic and not penal sanctions) neither mens rea nor knowledge that a property has a lineage of criminality is either constitutionally necessary or statutorily enjoined. **Proceeds of crime [as defined in Section 2 (u)] is property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence or the value of any such property. “Property” is defined in Section 2 (v) to include property of every description corporeal, incorporeal, movable,**

immovable, tangible, and intangible and includes deeds and instruments evidencing title to or interest in such property or assets wherever located.

The matrix of the relevant provisions of the Act compel the inference that the legislation subsumes that property which satisfies the definition of “proceeds of crime”, prima facie is considered as property whose transfer [defined in Section 2(za)] is subject to verification to consider whether the transfer is a stratagem of a money laundering operation and is part of a layering transaction. As the provisions of the Act target malfeasants charged of an offence under Section 3 and the proceeds of crime in the possession of a person so charged and any other person as well, the legislative intent is manifest that attachment and confiscation constitute a critical and clearly intended and specifically enacted strategy to combat the evil of money-laundering. A person though not accused/charged of an offence under Section 3, when in possession of any proceeds of crime, from the provisions of the Act it is clear, has but a defeasible and not a clear title thereto. In the context of attachment and confiscation proceedings, knowledge that a property is proceeds of crime is not legislatively prescribed.

[emphasis 1(d) supplied]

Proceeds of crime is defined to include not merely property derived or obtained as a result of criminal activity relating to a scheduled offence but the value of any such property as well. The bogey of apprehensions propounded on behalf of the petitioners is that where proceeds of crime are sequentially transferred through several transactions, in favour of a series of individuals having no knowledge or information as to the criminality antecedent to the property; the authorities may proceed against each and all of such sequential transactions, thus bringing within the vortex of Chapter-III of the Act, all the properties involved in several transactions.

[emphasis 1(e) supplied]

Section 8(1) clearly postulates affording of an opportunity to a person in possession of proceeds of crime to indicate the sources of his income, earnings or assets; out of which or by means of which he has acquired the property attached, under Section 5(1) or seized under Sections 17 or 18 the evidence on which he relies and other relevant

information and particulars. It is therefore clear that where a property is provisionally attached under Section 5, the person in possession of such property may avail the opportunity under Section 8 to indicate/establish that he has acquired the property attached (prima facie the proceeds of crime) out of his lawful earnings or assets, that he has the means to do so, and that his acquisition is therefore legitimate, bona fide and at fair market value of such property; and that the value paid for acquisition of the property and not the property in his possession that constitutes proceeds of crime, if at all. On such showing, to the satisfaction of the adjudicating authority, it would perhaps be not the property in possession of a person but the fair value for which he has acquired the property and paid to the transferor that constitutes proceeds of crime and the authorities may have to proceed against the property or value in the hands of the transferor.

In the illustration proffered on behalf of the petitioners; since the dividend, the higher dividend or the value of the shares sold would be relatable to illegal conduct of a company or its officers (if such illegality is a scheduled offence and the company or a person in management or control of the company is accused of an offence under Section 3) and would be proceeds of crime, so much of the quantum of the dividend received or the value of a share sold as constitutes proceeds of crime could be liable to attachment and confiscation. This in our considered view is the true and fair construction of the provisions of the Act. At this stage of the proceedings we cannot be oblivious of the fact that the petitioners and others, whose assets are being subjected to the processes under Chapter III of the Act, are alleged to be closely related to or employees of the individual(s) who orchestrated the massive scam and that these persons had traded in the shares of SCSL (with a presumptive insider information) when those shares had a peak value, achieved on account of the criminal conduct of Sri Ramalinga Raju, and others.

The contention by the petitioners that attachment and confiscation of proceeds of crime in possession of a person who is not charged of an offence under Section 3 or who has no knowledge or information as to the antecedent criminality are arbitrary and unfair legislative prescriptions is misconceived.

[emphasis 1(f) supplied]

Section 24 inheres on a person accused/charged of having committed an offence under Section 3, the burden of proving that proceeds of crime are untainted property. Section 23 of the Act enjoins a presumption in inter-connected transactions that where money-laundering involves two or more inter-connected transactions and one or more of such transactions is or are proved to be involving in money-laundering, then for the purposes of adjudication or confiscation under Chapter-III, the Act enjoins a rebuttable presumption that the remaining transactions form part of such interconnected transactions.

From the scheme of the provisions of the Act, it is apparent that, a person accused of an offence under Section 3 of the Act whose property is attached and proceeded against for confiscation must advisedly indicate the sources of his income, earnings or assets, out of which or means by which he has acquired the property attached, to discharge the burden (Section 24) that the property does not constitute proceeds of crime. **Where a transaction of acquisition of property is part of inter-connected transactions, the onus of establishing that the property acquired is not connected to the activity of money-laundering, is on the person in ownership, control or possession of the property, though not accused of a Section 3 offence, provided one or more of the interconnected transactions is or are proved to be involved in money-laundering (Section 23).**

[emphasis 1(g) supplied]

It further requires to be noticed that not only from the second proviso to Section 9 of the Act but on general principles of law as well, a person deprived of the property in his ownership, control or possession on account of confiscation proceedings under the Act, has a right of action against the transferor of such property to recover the value of the property.

In the context of the fact that money-laundering is perceived as a serious threat to financial systems of countries across the globe and to their integrity and sovereignty as well; in view of the fact that targeting the proceeds of crime and providing for attachment and confiscation of the proceeds of crime is conceived to be the appropriate legislative strategy; and given the several safeguards procedural and substantive alluded

to hereinbefore, we are not persuaded to the view that attachment and confiscation of property constituting proceeds of crime in the possession of a person not accused/charged of an offence under Section 3 constitutes an arbitrary or unconstitutional legislative prescription.

The contention that the definition of “proceeds of crime” [Section 2(u)] is too broad and is therefore arbitrary and invalid since it subjects even property acquired, derived or in the possession of a person not accused, connected or associated in any manner with a crime and thus places innocent persons in jeopardy, is a contention that also does not merit acceptance. In *Attorney General for India and others Vs. Amratlal Prajivandas and others*, a Constitution Bench of the Supreme Court considered the validity of provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) and answered that clauses [c] and clause [d] of Section 2[2] is time... in the context of object and reasons of SAFEMA.

[emphasis 1(h) supplied]

ISSUE-B

The Bombay High Court in the Judgement dt. 5.8.2010 (in First Appeal Nos. 527 to 529 of 2010) has interpreted the provisions of Section 5 (1) of the Act even prior to incorporation of the Second proviso by the Second Amendment Act, 2009) as enabling initiation of proceedings for attachment and confiscation of property in possession of a person not accused/charged of an offence under Section 3 as well. The Second Amendment Act in so far as it has incorporated the second proviso to Section 5(1), it is contended on behalf of the respondents is by way of clarification and emphasis as to the true import and trajectory of Section 5(1). Be that as it may.

[emphasis (2) supplied]

The process of adjudication under Section 8 of the Act is in respect of property attached under Section 5 (1); proceeds of crime involved in money-laundering in possession of any person searched and seized under Section 17 and in respect of which the appropriate authority has filed an application to the adjudicating authority for retention of such property under Section 17(4); and proceeds of crime seized from the possession, ownership or control of any person under Section

18(1) and in respect of which an application is filed under Sub-section 10 of Section 18 to the adjudicating authority, requesting for retention of such property. The common objective of Sections 5, 8, 17 and 18 is provisional attachment, confirmation of attachment and confiscation of property constituting proceeds of crime. While there was perhaps an ambiguity on the issue whether the process of provisional attachment under Section 5 and confirmation of such provisional attachment under Section 8(3) could lie against property in possession of a person other than one accused/charged of having committed an offence under Section 3 [this ambiguity has since been resolved by the provisions of the Second Amendment Act incorporating appropriate amendments by way of the second Proviso to Section 5(1) and addition of the clause “or is in possession of proceeds of crime” in Section 8(1)], there was no ambiguity that the process of adjudication under Section 8 is available against all proceeds of crime whether in possession of a person accused/charged of an offence under Section 3 or otherwise, in view of the adjudication process applying to property seized under Sections 17 and 18 of the Act. Neither the provisions of Sections 17 nor 18 require for search and seizure operations that the proceeds of crime involved in money-laundering should be in possession only of a person accused/charged of an offence under Section 3. The provisions of Clause (ii) of Section 17(1) clearly (by employing the disjunctive ‘or’) stipulate that search and seizure operations may proceed not only against a person who has committed an act which constitutes money-laundering but also against a person in possession of any proceeds of crime involved in money-laundering or in possession of records relating to money-laundering. On search of any person or seizure of such record or property constituting proceeds of crime in the possession, ownership or control of any person, which may be useful or relevant to any proceedings under the Act, a property, which constitutes proceeds of crime seized under Section 17 or 18, is equally subject to the adjudicatory processes under Section 8.

On analysis of the provisions of Section 5, 8, 17 and 18, it is clear that provisions of the Second Amendment Act have carefully ironed out the creases and the latent rucks in the texture of the provisions of the Act relating to attachment, adjudication and confiscation in Chapter-III. Attachment or confiscation of proceeds of crime in the possession of a person who is not accused or charged of an offence under Section 3 is thus not an incorporation for the first time by the provisions of the Second Amendment Act, 2009. The contention on behalf of

the petitioners that the second proviso to Section 5(1) of the Act, applies only to property acquired/possessed prior to enforcement of this provision or if interpreted as being retrospective, the provision itself must be invalidated for arbitrary retrospective operation is therefore without substance or force.

[emphasis 2(a) supplied]

*The above contention does not merit acceptance even otherwise. Article 20 of the Constitution enacts an injunction only in respect of ex post facto laws resulting in conviction for offences or imposition of penalties greater than which might have been inflicted under the law enforceable at the time of commission of the offence. **No provision of the Constitution has been brought to our notice which prohibits a legislative measure which targets for attachment and confiscation proceeds of crime.** On the text and authority of our Constitution while it may perhaps gainfully be contended that conviction for the offence of money-laundering cannot be recorded if the said offence is committed prior to the enforcement of Section 3 of the Act, such a contention cannot be advanced to target proceedings for attachment and confiscation, as these fall outside the pale of the prohibitions of the Constitution, in particular Article 20(1).*

*To support the empirical contention that attachment and confiscation of property is a process that is grave in itself; has serious economic consequences for the person in the ownership, control or possession of such property and must be given the same exalted status as deprivation of personal liberty, for the purposes of applying the constitutional prohibition of ex post-facto laws, Sri Choudary & Niranjana Reddy rely on the observations in the majority opinions of the Constitution Bench in **M/s. Khemka & Co. [Agencies] Pvt. Ltd. Vs. State of Maharashtra**. The leading opinion of the majority was delivered by Ray C.J. (for himself and Khanna J); Beg J concurred, while Mathew and Chandrachud J (per Mathew J) recorded a dissenting opinion. The question involved was whether the assessee under the Central Sales Tax Act, 1956 (the 'Central Act') could be made liable for penalty under the provisions of the State Sales Tax Act (the State Act) for default of payment of the tax liability under the Central Act. The assessee contended that there being no provision in the Central Act for imposition of penalty or default in payment of tax, imposition of penalty under the provisions of the State Act is illegal. In defence, the Revenue contended that the*

provision of penalty for default of payment of tax as enacted in the State Act is equally applicable to the payment and collection of the tax under the Central Act and is incidental to and part of the process of such payment and collection. Ray, C.J. held that the provisions of the State Act imposing penalty for non-payment of the tax under the Central Act within the prescribed time is not attracted to impose penalty on dealers under the Central Act. The Central Act is a self-contained code which by the charging section creates liability for tax and penalty and Section 9(2) of the Central Act creates the State authorities as agencies to carry out the assessment, re-assessment, collection and enforcement of tax and penalty payable by a dealer under the Central Act. In his concurring majority opinion Beg, J held that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, cannot be relegated to the routine of mere procedure and machinery for the realisation of tax. It is more than that. Such liabilities must be curbed by clear, unambiguous and express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such liability for the infringement of law are not left in a state of uncertainty as to what their duties are liabilities are. This is also implied in the constitutional mandate in Article 265: No tax shall be levied or collected except by authority of law”.

[emphasis 2(b) supplied]

The majority opinion in *Khemka & Co.* is only a reiteration and application of the well-accepted “void for vagueness” principle which applies to invalidate irredeemably ambiguous statutory provisions. The observations in the majority opinions are not to be considered as encompassing legislative sanctions which do not effect personal liberties within the constitutional prohibition of ex post-facto laws enjoined by Art.20(2) of the Constitution. **The Khemka majority opinion, in our carefully considered view, only means that no regulation of conduct; imposition of person’s civil, economic rights or of personal liberty or regulation of freedoms, natural or guaranteed by constitutionally entrenched rights, may be brought about by overly vague and unspecific legislative prescriptions; and nothing more.**

[emphasis 2(c) supplied]

In *Amratlal Prajivandas* (4 supra) the validity of SAFEMA was challenged and upheld by the Constitution Bench. Section 3(c) of the

legislation defined ‘illegally acquired property’ as any property acquired whether before or after the commencement of SAFEMA, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law which the Parliament has the power to make. The challenge to the definition of illegally acquired wealth on grounds of overbreadth and as an excessive and disproportionate legislative response to the perceived evil, was repelled. Jeevan Reddy. J put it pithily when he observed: **Bitter medicine is not bad medicine.**

The huge quanta of illegally acquired wealth; acquired from crime and economic and corporate malfeasance corrodes the vitals of rule of law; the fragile patina of integrity of some of our public officials and State actors; and consequently threatens the sovereignty and integrity of the Nation. The Parliament has the authority to legislate and provide for forfeiture of proceeds of crime which is a produce of specified criminality acquired prior to the enactment of the Act as well. It has also the authority to recognise the degrees of harm an identified pejorative conduct has on the fabric of our society and to determine the appropriate remedy for the pathology.

[emphasis 2(d) supplied]

ISSUE-B is answered accordingly.

Issues C & D xxxx

ISSUE-E

The challenge to Section 23 is projected on the ground that the presumption enjoined by this provision in respect of inter-connected transactions is unduly restrictive of the right to property; is a disproportionate burden, not commensurate with legitimate Governmental interests in targeting proceeds of crime involved in money-laundering, for eventual confiscation.

[Emphasis (3) supplied]

Money-laundering, it is pleaded in the counter affidavit by the Enforcement Directorate, while apparently comprising one or more apparently clear and simple financial transactions or dealings with

property, in reality involve a complex web of transactions that are processed through three stages - the placement, layering and integration stage. When laundering operations are pursued across State boundaries, flows of funds would involve several routes. Since the object of the Act is to seize or attach proceeds of crime involved in money-laundering for eventual confiscation to the State, the enforcement strategy must be commensurate with, correspond to and complement the degree of camouflage, deceit, layering and integration normally associated with a money-laundering operation, to be effective and successful, is the contention on behalf of the respondents.

Section 23 enjoins a presumption in respect of inter-connected transactions. Money-laundering is defined in Section 2 (p) (with reference to Section 3). Though Section 3 defines the offence of money-laundering, the ingredients of the offence enumerated in this provision define money-laundering in its generic sense as applied by the Act to attachment and confiscation processes as well. Such duality is achieved by the drafting technique of defining money-laundering in Section 2 (p) by ascription of the definition of the offence of money-laundering in Section 3.

This technique, though specific, is not unique. As observed in **LIC of India Vs. Crown Life Insurance Co.**, the object of a definition clause in a statute is to avoid the necessity of frequent repetitions in describing all the subject matter to which the word or expression so defined is intended to apply. A definition section may borrow definitions from an earlier or an existing statute; not necessarily in the definition section but in some other provision, of that Act; and may equally borrow the definition from some other section of the same Act where a word or an expression is defined for a distinct purpose, occasion, or in a specific context. Section 2(1)(p), thus, defines the expression “money-laundering” by borrowing the definition expressed in Section 3, where this expression is defined for the purpose of delineating the offence. In Section 2(1)(p), however, the expression “money-laundering” is defined for the generic purpose of describing the contours of the conduct; wherever the expression is employed in the several provisions of the Act, including in Chapter.III – for attachment and confiscation. It is also well settled that the legislature has the power to define a word or an expression artificially – **Kishanlal Vs. State of Rajasthan**. The definition of a word or an expression in the definition section may thus be restrictive or extensive of its ordinary meaning. When a word is defined to “mean” so and so,

the definition is prima facie exhaustive and restrictive – Inland Revenue Commissioner Vs. Joiner; Vanguard Fire and General Insurance Co. Ltd. Vs. Frazer & Ross; and Feroze N. Dotiwala Vs. P.M.Wadhwani.

Conduct of directly or indirectly attempting to indulge, knowingly assist or being a party to or actual involvement in any process or activity connected with proceeds of crime and projecting such proceeds of crime as untainted property, constitutes money-laundering. The expression ‘proceeds of crime’ means property derived or obtained, directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or the value of any such property {Section 2 (u)}. Thus, a property acquires a taint on account of being a derivative of criminal activity relating to a scheduled offence and includes the value of such property. Since placement, layering and integration are among the essential features of money-laundering, the proceeds of crime may not necessarily continue in the hands of the original malfeasant(s).

Where proceeds of crime are layered through plural transactions, the intent to camouflage the source of the property as a derivative of criminality renders it difficult to identify the succeeding transactions as relatable to the initial proceeds of crime. It is for this reason and to effectuate the purposes of the Act that Section 23 incorporates the presumption that where money-laundering involves two or more connected transactions and one or more such transactions is/are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under Section 8, it shall, unless otherwise proved to the satisfaction of the adjudicating authority, be presumed that the remaining transactions form part of such interconnected transactions i.e., involved in money-laundering as well.

The presumption enjoined by Section 23 is clearly a rebuttable presumption i.e., presumptio pro tantum.

[Emphasis 3(a) supplied]

In Izhar Ahmad v. Union of India, Gajendragadkar, J. [as his Lordship then was] observed (in the majority opinion of the Constitution Bench) that: The term “Presumption” in its largest and most comprehensive signification, may be defined to be an inference, affirmative or disaffirmative of the truth of false-hood of a doubtful

fact or proposition drawn by a process of probable reasoning from something proved or taken for granted. Quoting with approval the statement of principle set out in the Principles of the Law of Evidence by Best, his Lordship observed that when the rules of evidence provide for the raising of a rebuttable or irrebuttable presumption, they are merely attempting to assist the judicial mind in the matter of weighing the probative or persuasive force of certain facts proved in relation to other facts presumed or inferred.

Wills observes that the expression “Presumption” inherently imports an act of reasoning ---- a conclusion of the judgment; and it is applied to denote such facts or moral phenomena, as from experience we know to be invariably, or commonly, connected with some other related facts.

*In **M. Narsinga Rao v. State of A.P.**, Thomas, J. [writing the opinion for the Court] observed that presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts, but it could as well be final, if it remains undisturbed later. Presumption in the law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.*

Having regard to the fact that money-laundering is indulgence, informed assistance or being a party to or actual involvement in any process or activity connected with proceeds of crime and projecting it as untainted property, inherently assuming a degree of deceit and camouflage in the process of layering the proceeds of crime through a series of transactions, in the considered legislative wisdom a presumption in inter-connected transactions is enjoined by Section 23 of the Act, contingent upon one or more of inter-connected transactions having to be proved to be involved in money-laundering. The legislatively enjoined presumption shifts the burden of proof to the person in the ownership, control or possession of a property comprising the inter-connected transactions to rebut the statutory presumption that this property is not involved in money-laundering.

Section 23 enacts a rule prescribing a rebuttable presumption and is a rule of evidence. The rule purports to regulate and structure the judicial process of appreciating evidence relating to adjudication of money-laundering for the purposes of confirmation of attachment/seizure and confiscation and provides that the said appreciation will draw an inference from the fact of one or more transactions forming part of inter-connected transactions having been proved to be involved in money-laundering, that the other transactions are also to be presumed so, unless the contrary is established.

[Emphasis 3(b) supplied]

As observed in Izhar Ahmad (supra), the rule of presumption enjoined by Section 23 takes away judicial discretion either to attach or not due probative value to the fact that one or more of the inter-connected transactions have been proved to be involved money-laundering; and requires prima facie due probative value to be attached and mandates an inference that the other transactions form part of the raft of inter-connected transactions involved in money-laundering, subject of course to the said presumption being rebutted by proof to the contrary.

[Emphasis 3(c) supplied]

On the aforesaid analysis, since Section 23 enjoins a rule of evidence and a rebuttable presumption considered essential and integral to effectuation of the purposes of the Act in the legislative wisdom; a rebuttable and not an irrebuttable presumption, we are not persuaded to conclude that the provision is unduly harsh, oppressive or arbitrary. After-all a legislative remedy must correspond to the social pathology it professes to regulate.

[Emphasis 3(d) supplied]

Issue-E is answered accordingly.

ISSUE-F

Section 24 shifts the burden of proving that proceeds of crime are untainted property onto person(s) accused of having

committed the offence under Section 3. This provision is challenged as arbitrary; is contended to be applicable only to the trial of an offence under Section 3 and not the proceedings for attachment and confiscation of property under Chapter-III; and alternatively as not applicable to proceedings for attachment and confiscation of property of a person not accused of an offence under Section 3.

[Emphasis (4) supplied]

On its textual and grammatical construction, the provision shifts the burden of proving that proceeds of crime are untainted property on person(s) accused of having committed the offence under Section 3.

We have noticed while on the analysis of Issues C to E that the provisions of Sections 3, 5, 8, 17, 18, 20, 21 and 23; the definitions of ‘money-laundering’ {Section 2 (p)}; ‘proceeds of crime’ (Section 2 (u)); ‘property’ (Section 2 (v) and ‘value’ (Section 2 (zb)) are inter-twined, delineate the provisions of each other and in tandem operate to effectuate one of the two substantial purposes of the Act viz., attachment for the purposes of eventual confiscation, of proceeds of crime involved in money-laundering, whether in the ownership, control or possession of a person accused of the offence under Section 3 or not. The offence of money-laundering as defined in Section 3 comprises direct or indirect attempt to indulge, knowingly assist, and knowingly be a party to or actual involvement in any process or activity connected with the proceeds of crime and projecting it as untainted property. Proceeds of crime is ‘any property’ derived or obtained directly or indirectly by any person as a result of a criminal activity relating to a scheduled offence or the value of any such property (Section 2 (u). Qua the provisions in Chapter-III of the Act, the process of provisional attachment, confirmation of such attachment by the adjudicating authority and confiscation of the property attached is operative against property constituting the proceeds of crime involved in money-laundering whether in the ownership, control or possession of a person who has committed an offence under Section 3 or otherwise. Section 8 (1) while enjoining the adjudicating authority to issue a notice to a person in possession of proceeds of a crime, whether in his own right or on behalf of any other person, calling upon the noticee to indicate the sources of his income, earning or assets for the purposes of establishing that the acquisition

of ownership, control or possession of the property by the noticee is bona fide and out of legitimate sources; of his income, earning or assets, does not enact a presumption that where the noticee is a person accused of the offence under Section 3, the provisionally attached property is proceeds of crime. Since camouflage and deceit are strategies inherent and integral to money-laundering operations and may involve successive transactions relating to proceeds of crime and intent to project the layered proceeds as untainted property, effectuation of the legislative purposes is achieved only where the burden is imposed on the accused to establish that proceeds of crime are untainted property. This is the legislative purpose and the justification for Section 24 of the Act.

[Emphasis 4(a) supplied]

In response to a notice issued under Section 8 (1) and qua the legislative prescription in Section 24 of the Act the person accused of having committed the offence under Section 3 must show with supporting evidence and material that he has the requisite means by way of income, earning or assets, out of which or by means of which he has acquired the property alleged to be proceeds of crime. Only on such showing would the accused be able to rebut the statutorily enjoined presumption that the alleged proceeds of crime are untainted property. This being the purpose, we are not satisfied that the provisions of Section 24 are arbitrary or unconstitutional. Section 24 is not confined to the trial of an offence under Section 3 but operates to attachment and confiscation proceedings under Chapter-III, as well. The legislative prescription that the burden of proof inheres on a person accused of having committed the offence under Section 3 is only to confine the inherence of the expressed burden to an accused. Where the property is in the ownership, control or possession of a person not accused of having committed an offence under Section 3 and where such property/proceeds of crime is part of inter-connected transactions involved in money-laundering, then and in such an event the presumption enjoined in Section 23 comes into operation and not the inherence of burden of proof under Section 24. This is in our considered view the true and fair construction of the provisions of Section 24.

[emphasis 4(b) supplied]

Clearly, therefore a person other than one accused of having committed the offence under Section 3 is not imposed the

burden of proof enjoined by Section 24. On a person accused of an offence under Section 3 however, the burden applies, also for attachment and confiscation proceedings.

[Emphasis 3(c) supplied]

Issue F is answered accordingly.

SUMMARY OF CONCLUSIONS :

On the several issues framed herein before we hold:

[i] On Issue – A: that property owned or in possession of a person, other than a person charged of having committed a scheduled offence is equally liable to attachment and confiscation proceedings under Chapter – III; and Section 2(1) (u) which defines the expression “Proceeds of Crime”, is not invalid;

[emphasis supplied]

[ii] On Issue – B: that the provisions of the second proviso to Section 5 are applicable to property acquired even prior to the coming into force of this provision (vide the second amendment Act with effect from 06-03-2009); and even so is not invalid for retrospective penalisation.

[emphasis supplied]

[iii] On Issue – C & D: that the provisions of Section 8 are not invalid for vagueness; incoherence as to the onus and standard of proof; ambiguity as regards criteria for determination of the nexus between a property targeted for attachment/confiscation and the offence of money-laundering; or for exclusion of mens rea/knowledge of criminality in the acquisition of such property; Section 8(4), which enjoins deprivation of possession of immovable property pursuant to an order confirming the provisional attachment and before conviction of the accused for an offence of money-laundering, is valid;

[v] On Issue – E: that the presumption enjoined in cases of interconnected transactions enjoined by Section 23 is valid; and

*[vi] On Issue – F: that the burden of proving that proceeds of crime are untainted property is applicable not only to prosecution and trial of a person charged of committing an offence under Section 3 but to proceedings for attachment and confiscation – in Chapter III of the Act as well; but only to a person accused of having committed an offence under Section 3. The burden enjoined by Section 24 does not inhere on a person not accused of an offence under Section 3. **The presumption under Section 23 however applies in interconnected transactions, both to a person accused of an offence under Section 3 and a person not so accused.***

[emphasis supplied]

11. In view of the above, I am in complete agreement with the conclusions drawn by the Division Bench of Andhra Pradesh High Court in the case of B.Rama Raju [supra] whereby the contention that the definition of “proceeds of crime” [Section 2(1)(u)] is too broad and is therefore arbitrary and invalid since it subjects even property acquired, derived or in the possession of a person not accused, connected or associated in any manner with a crime and thus places innocent persons in jeopardy, does not merit acceptance.

12. So far as second proviso to Section 5 of PML Act are applicable to property acquired even before coming into force the second amendment of the Act which came into effect from 06.03.2009 and even that is not invalid for retrospective operation. Thus, contentions of learned Senior Advocates in both the petitions that scheduled offences incorporated in the second amendment Act came into force with effect from 06.03.2009 are not applicable with retrospective effect, have no substance and without merit. Thirdly, in the facts of these cases, upon fulfilment of parameters of Section 5(1) of the Act, a detailed complaint stating the facts of the attachment under Section 5(5) is filed and

considered by the adjudicating authority and order of confirmation of provisional attachment is also passed after following the procedure laid down in Section 8(1),(2) and (3) of the Act and against which now appeal is preferred before the appellate authority. Further, satisfaction of the authority is based on the material on record about involvement of property / value of the property obtained or derived from the proceeds of crime galore on the record about cases instituted by DRI, CBI, Directorate of Enforcement under FERA / FEMA and under PML Act whereby the authorities exercising powers under Sections 5 and 8 have expressed their satisfaction based on material on record at page Nos. 22 to 27 of this order and paragraphs 5[a] to [k] and 6 of affidavit in reply reproduced therein and accordingly orders are passed. That *inter se* connectivity of transactions qua the subject property reveal three stages of transactions viz. Placement, layering and integration and such aspects are considered by the authorities upon a detailed inquiry for which complaint was filed and keeping it open for the appellate authority to peruse the record and contentions and submissions on law as well as facts on merit when the issue about jurisdiction and powers of the competent authority of provisionally attaching the property and confirming such order of provisional attachment by adjudicating authority under Section 8 of the PML Act are not contrary to law and contentions of learned Senior Advocates about lack of jurisdiction and powers of the authority vis-a-vis subject property of both the petitioners are rejected accordingly.

13. As noticed and agreed with conclusions of Division Bench of Andhra Pradesh High Court in the case of **B.Rama Raju** [supra], more particularly as per the emphasis supplied at page Nos.45 and 56, two sets of proceedings may be initiated viz. prosecution under the Act and

attachment and eventual confiscation proceedings are distinct proceedings. Therefore, the above two sets of proceedings may be initiated against the same person, if he is accused of money laundering. Even when a person is not arraigned as accused, the property in his possession may be proceeded against for attachment and confiscation on a satisfaction of the appropriate and competent authority that such property constitutes 'proceeds of crime'.

14. That provisional order of attachment of the subject property and confirmation thereof do not violate Article 14 or Article 20(1) and/or (2) of the Constitution of India. That reliance placed on Division Bench of Andhra Pradesh High Court in the case of **B.Rama Raju** [supra], more particularly emphasis supplied and marked as 1(a) to 1(h), 2(a) to 2(d), 3(a) to 3(d) and 4(a) to 4(c) in this order, answer the challenge of the respective parties about exercising power under Sections 5 and 8 of the PML Act being violative of Article 14, 20 and 21 of the Constitution of India.

15. In the above circumstances, when directions are issued by Directorate of Enforcement to the Sub-Registrar of Registration, State of Gujarat not to register the documents is well supported by reasons and rationale behind such order being the property would otherwise be frittered away and the conduct of private respondents in disposing of the subject property even during the pendency of the proceedings of PML Act justified for passing such orders. That purchase of the property which is subject matter of Special Civil Application No.1059 of 2012 for which objections are invited while seeking Title Clearance of such property and absence thereof would not *ipso facto* result into taking away powers of competent authority under the PML Act to take all

possible steps to prevent further alienation of subject properties. Such orders / instructions by the Directorate of Enforcement to the Sub-Registrar of Registration, State of Gujarat are within the four corners of law and are in consonance with the object and reasons of the Act to ensure that proceeds of crime do not change hand and ultimately result in making it impossible for the authority to recover such property.

16. Thus, to avoid any repetition, emphasis supplied and marked as 1(a) to 1(h), 2(a) to 2(d), 3(a) to 3(d) and 4(a) to 4(c) in the highlighted portions of the judgement in the case of B. Rama Raju [supra] are apt and issues with regard to jurisdiction and powers of the authorities raised in these petitions are fully covered and legality and validity of the action of the respondent Nos. 2 and 3 impugned in these petitions viz. provisional attachment order[s] passed by the competent authority and confirmation by adjudicating authority of the provisional attachment and directions issued by the Directorate of Enforcement to the Sub-Registrar of Registration, State of Gujarat not to register the documents, are within four corners of law and when both the petitioners have approached the appellate authority under Section 26 of the PML Act, and even thereafter jurisdiction of the High Court could be invoked under Section 42 of the PML Act, these petitions under Article 226 of the Constitution of India are therefore rejected.

17. So far as the decisions relied on by the learned Senior Advocates for the parties in the cases of [1] Janardhan Reddy [supra], [2] Calcutta Discount Co. Ltd. [supra] [3] M/s.Onkarlal Nandlal [supra], and [4] M/s. Filterco [supra] are concerned, I am in complete agreement with the proposition of law laid down by the Apex Court in the above mentioned cases, but they have no applicability to the facts of

the present case.

18. Considering the facts and circumstances of the case, no interference is called for by this Court in exercise of powers under Article 226 of the Constitution of India.

19. However, it is made clear that any infraction on merit of the cases while dealing with the contentions about jurisdiction and powers of authorities under Sections 5 & 8 of the PML Act, shall have no bearing on pending proceedings before the Appellate Tribunal.

Notice issued in each of the petitions stands discharged.

(ANANT S.DAVE, J.)

At this stage, Mr. Mihir Thakore, learned Senior Advocate and Mr. Mihir Joshi, learned Senior Advocate appearing for petitioners in Special Civil Application No.4171 of 2012 and Special Civil Application No.1059 of 2012 respectively request that at least possession qua the subject properties be not disturbed till the appellate tribunal decides the pending appeals.

Mr. P.S.Champaneri, learned Assistant Solicitor General, is unable to dispute that during the pendency of both these petitions, pursuant to the impugned orders passed by the respondent authorities viz.

provisional attachment of the properties and confirmation thereof except notice dated 09.10.2012 for handing over possession, no action is taken in furtherance thereof. Therefore, status quo as on date qua the subject properties in both these petitions shall continue till the appellate tribunal takes final decision on the pending appeals keeping in view the provisions of sub-section (6) of section 26 of the PML Act.

(ANANT S.DAVE, J.)

pvv