

Soverign Developers And Vs. The Assistant Director

Soverign Developers And Vs. The Assistant Director

SooperKanoon Citation : sooperkanoon.com/1232310

Court : Karnataka

Decided On : Dec-11-2020

Judge : Aravind Kumar

Appeal No. : WP 24480/2018

Appellant : Soverign Developers And

Respondent : The Assistant Director

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE11H DAY OF DECEMBER, 2020 BEFORE THE HONBLE MR. JUSTICE ARAVIND KUMAR W.P. NO.38642/2016 C/W W.P. NOs.15917/2013, 15918/2013, 39889/2014, 17894/2015, 24444/2015, 19313/2016, 23176/2016, 33740/2016, 42157/2016, 57756/2016, 62102/2016, 4215/2017, 5269/2017, 6159/2017, 6173/2017, 8261/2017, 13160/2017, 14158/2017, 18557/2017, 36309/2017, 36310/2017, 41176/2017, 46318/2017, 48031/2017, 24480/2018, 27705/2018, 27744/2018, 28027/2018, 35991/2018 (GM-RES) IN W.P. NO.38642/2016: BETWEEN:

1. . MR. DYANI ANTONY PAUL S/O LATE JOSEPH PAUL AGED ABOUT33YEARS NO.1/77, VAILANKANI COTTAGE PADAVINANGADY, KONCHADY MUGRODY ROAD MANGALORE - 575 008. 2 . MR. LAWENCE PAUL S/O LATE JOSEPH PAUL AGED ABOUT42YEARS NO.1/77, VAILANKANI

COTTAGE PADAVINANGADY, KONCHADY MUGRODY ROAD MANGALORE - 575 008. 2 3 . SMT. ANITA DORINE FERNANDES W/O LAWRENCE PAUL AGED ABOUT 46 YEARS NO.1/77, VAILANKANI COTTAGE PADAVINANGADY, KONCHADY MUGRODY ROAD MANGALORE - 575 008. PETITIONERS NO.2 AND 3 ARE REPRESENTED BY THEIR GPA HOLDER MR. DYANI ANTONY PAUL (PETITIONER NO.1) S/O LATE JOSEPH PAUL AGED ABOUT 33 YEARS NO.1/77, VAILANKANI COTTAGE PADAVINANGADY, KONCHADY MUGRODY ROAD MANGALORE - 575 008. ...PETITIONERS (BY SRI. MANMOHAN P.N, ADVOCATE) AND:

1. . UNION OF INDIA DEPARTMENT OF DIRECTORATE OF ENFORCEMENT, BENGALURU ZONAL OFFICE, 3RD FLOOR B-BLOCK, BMTC SHANTHINAGAR K.H. ROAD, BENGALURU - 560 002. 2 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA, 3RD FLOOR B-BLOCK, BMTC SHANTHINAGAR K.H. ROAD, BENGALURU - 560 027. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC FOR R-1 AND R-2) 3 THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE

ORDER

DATED: 30.06.2016 PASSED BY R-2 AT ANNEX-A. IN W.P. NO.15917/2013: BETWEEN: M. GOPI S/O LATE SRI. MUNIVENKATAPPA AGED ABOUT 42 YEARS R/A NO.253, WARD NO.110 9TH MAIN ROAD, SAMPANGIRAMNAGAR BANGALORE - 560 027. ...PETITIONER (BY SRI. R. SWAROOP ANAND, ADVOCATE) AND:

1. . THE JOINT DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA, BANGALORE 3D FLOOR, "B" BLOCK, BMTC-TTMC BUILDING, K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. 2 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA, BANGALORE 3D FLOOR, "B" BLOCK, BMTC-TTMC BUILDING, K.H. ROAD SHANTHINAGAR BANGALORE - 560 027. 3 . THE UNION OF INDIA MINISTRY OF FINANCE AND REVENUE RAISINA HILL, 4 NEW DELHI - 110

011 REPRESENTED BY SECRETARY. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARAGUND, ASGI A/W SRI. S. MADHUKAR DESHPANDE, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED: 28.03.13 VIDE ANNEX-F ISSUED BY R-2 WITHOUT AUTHORITY OF LAW AND JURISDICTION. IN W.P. NO.15918/2013: BETWEEN:

1. . M. GOPI S/O LATE SRI. MUNIVENKATAPPA AGED ABOUT 42 YEARS R/A NO.253, WARD NO.110 9TH MAIN ROAD, SAMPANGIRAMNAGAR BANGALORE - 560 027. 2 . SMT. SOWBHAGYA W/O M. GOPI AGED ABOUT 35 YEARS R/A NO.253, WARD NO.110 9TH MAIN ROAD, SAMPANGIRAMNAGAR BANGALORE - 560 027. ...PETITIONERS (BY SRI. R. SWAROOP ANAND, ADVOCATE) AND:

1. . THE JOINT DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA, BANGALORE 3D FLOOR, "B" BLOCK, BMTC-TTMC BUILDING, K.H. ROAD, 5 SHANTHINAGAR BANGALORE - 560 027. 2 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA, BANGALORE 3D FLOOR, "B" BLODK, BMTC-TTMC BUILDING, K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. 3 . THE UNION OF INDIA MINISTRY OF FINANCE AND REVENUE, RAISINA HILL NEW DELHI - 110 011. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. MADHUKAR DESHPANDE, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED: 28.03.2013 VIDE ANNEX-F ISSUED BY R-2 WITHOUT AUTHORITY OF LAW AND JURISDICTION. IN W.P. NO.39889/2014: BETWEEN: MR. JOHN MICHEAL S/O YESUDAS AGED ABOUT 42 YEARS NO.3, III CROSS, VARANASI ROAD JINKETHIMMANAHALLI NEAR OM SHREE KATERAMMA LAYOUT, T.C. PALYA P.O BANGALORE - 560 036. ...PETITIONER (BY SRI. KIRAN S JAVALI, ADVOCATE) 6 AND:

1. . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR, B BLOCK BMTC-TTMC BUILDING

K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. 2 . ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR, B BLOCK BMTCC-TTMC BUILDING K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARAGUND, ASGI A/W SRI. S. MADHUKAR DESHPANDE, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED NIL VIDE ANN-A PURPORTED TO BE UNDER SUB SECTION (4) OF SEC. 8 OF THE PREVENTION OF MONEY LAUNDERING ACT 2002 (ACT NO. 15 OF 2003 AS NULL AND VOID. IN W.P. NO. 17894/2015: BETWEEN: M/S JSW STEEL LIMITED REPRESENTED BY ITS GENERAL MANAGER MR. MANI C. MANUEL 7 GENERAL MANAGER BRANCH OFFICE AT: U-607, 6TH FLOOR EAST WING, RAHEJA TOWERS M.G. ROAD, BANGALORE - 560 001. REGISTERED OFFICE: JSW CENTRE, BANDRA KURLA COMPLEX, BANDRA (EAST) MUMBAI - 400 051. WORKS OFFICE AT: VIJAYANAGAR WORKS P.O. VIDYANAGAR, TORANAGALLU DIST. BALLARI - 583 275 KARNATAKA. ...PETITIONER (BY SRI. KIRAN S JAVALI, ADVOCATE) AND:

1. . DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT [FOREIGN EXCHANGE MANAGEMENT ACT & PREVENTION OF MONEY LAUNDERING ACT]. DEPARTMENT OF REVENUE, MINISTRY OF FINANCE GOVERNMENT OF INDIA 3D FLOOR, B BLOCK, BMTCC SHANTHINAGAR TTMC, K.H. ROAD BANGALORE - 560 027. 2 . VIJAYA BANK JVSL BRANCH, TORANAGALLU DIST. BALLARI REP. BY ITS BRANCH MANAGER. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARAGUND, ASGI A/W SRI. S. MADHUKAR DESHPANDE, CGC) 8 THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISIONAL ATTACHMENT

ORDER

NO. 8/2015 PASSED BY THE R-1 DATED: 27.03.2015 (ANNEX-A) AS ILLEGAL AND AB INITIO VOID. IN W.P. NO. 24444/2015: BETWEEN: M/S JSW STEEL LIMITED REPRESENTED BY ITS AUTHORIZED SIGNATORY MR. MANI C MANUEL AGED ABOUT 45 YEARS GENERAL MANAGER BRANCH OFFICE AT:

6. H FLOOR EAST WING, RAHEJA TOWERS M.G. ROAD, BANGLAORE - 560 001. REGISTERED OFFICE: JSW CENTRE BANDRA KURLA, COMPLEX BANDRA (EAST) MUMBAI - 400 051. WORKS OFFICE AT: VIJAYANAGAR WORKS P.O. VIDYANAGAR TORANAGALLU, DIST. BALLARI - 583 275 KARNATAKA. ...PETITIONER (BY SRI. KIRAN S JAVALI, ADVOCATE) AND:

1. . DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT (FOREIGN EXCHANGE MANAGEMENT ACT & PREVENTION OF MONEY LAUNDERING ACT) DEPARTMENT OF REVENUE, MINISTRY OF FINANCE GOVERNMENT OF INDIA, 3RD FLOOR "B" BLOCK, BMTc, SHANTINAGAR TTMC, K.H. ROAD, BANGALORE - 560 027. 2 . REGISTRAR ADJUDICATING AUTHORITY PREVENTION OF MONEY LAUNDERING 4th FLOOR, ROOM NO.20, JEEVAN DEEP BUILDING, PARLIAMENT STREET, NEW DELHI - 110 001. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARAGUND, ASGI A/W SRI. S. MADHUKAR DESHPANDE, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE COMPLAINT DATED: 21.04.2015 (ANNEX-A) AS ILLEGAL AND AB INITIO VOID AND CONSEQUENTLY QUASH THE NOTICE DATED: 27.04.2015 IN O.C.NO.457/2015 (ANNEX-B) AS ILLEGAL AND BAD AT LAW. IN W.P. NO.19313/2016: BETWEEN: M/S JSW STEEL LIMITED WORKS OFFICE AT: VIJAYANAGAR WORKS P.O. VIDYANAGAR, TORANAGALLU DIST. BALLARI - 583 275 KARNATAKA. REGISTERED OFFICE: JSW CENTRE, BANDRA KURLA COMPLEX, BANDRA (EAST) MUMBAI - 400 051. REPRESENTED BY ITS P.A. HOLDER MR. MANI C. MANUEL GENERAL MANAGER BRANCH OFFICE AT: U-607 6TH FLOOR, EAST WING RAHEJA TOWERS, M.G. ROAD BENGALURU - 560 001. ...PETITIONER (BY SRI. KIRAN S JAVALI, SRI. K. CHANDRASHEKARA K, ADVOCATES) AND:

1. . DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT (FOREIGN EXCHANGE MANAGEMENT ACT & PREVENTION OF MONEY LAUNDERING ACT) DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA 3D FLOOR, "B" BLOCK, BMTc SHANTHINAGAR TTMC, K.H. ROAD BENGALURU - 560 027. 2 . VIJAYA BANK JVSL BRANCH TORANAGALLU DIST. BALLARI - 583 201 REP. BY ITS BRANCH MANAGER. RESPONDENTS

(BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARAGUND, ASGI A/W SRI. P. KARUNAKAR, CGC FOR R-1 SRI. N. SUKUMAR JAIN, ADVOCATE FOR R-2) 11 THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISIONAL ATTACHMENT

ORDER

NO.11/2016 DATED:30.03.2016 ANNEX-A AS ILLEGAL AND AB INITIO VOID. IN W.P. NO.23176/2016: BETWEEN:

1. . SHRI. R.K. NAYAK AGED ABOUT 59 YEARS S/O LATE KASNAPPA NAYAK RESIDING AT NO.64, BASAVA NILAYA, GACHCHINKATTI COLONY VIJAYAPURA - 586 103 KARNATAKA. 2 . SMT. JAYASHREE NAYAK W/O SHRI. R.K. NAYAK AGED ABOUT 50 YEARS RESIDING AT NO.64, BASAVA NILAYA, GACHCHINKATTI COLONY VIJAYAPURA - 586 103 KARNATAKA. ...PETITIONERS (BY SRI. CHANDRASHEKARA K, ADVOCATE) AND:

1. . REGISTRAR ADJUDICATING AUTHORITY PREVENTION OF MONEY LAUNDERING, 4TH FLOOR ROOM NO.26, JEEVAN DEEP BUILDING, PARLIAMENT STREET NEW DELHI - 110 001. 2 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR, B BLOCK, BMTCC-TTMC BUILDING, K.H. ROAD SHANTHINAGAR BANGALORE - 560 027. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARAGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICES DATED:31.03.2016 (ANNEX-A AND A-1) AND CONSEQUENT COMPLAINT IN O.C.NO.557/2016 (ANNEX-D) AND PROVISIONAL ATTACHMENT

ORDER

DATED:29.02.2016 VIDE ANNEX-C AS ILLEGAL AND AB INITIO VOID. IN W.P. NO.33740/2016: BETWEEN: SHRI. M. JAYARAM AGED ABOUT 61 YEARS S/O LATE H. MAYANNA GOWDA RESIDING AT IRUBANAHALLI NAGAMANGALA TALUK MANDYA DISTRICT. ...PETITIONER (BY SRI. CHANDRASHEKARA K, ADVOCATE) AND:

1. . REGISTRAR ADJUDICATING AUTHORITY PREVENTION OF MONEY LAUNDERING 134TH FLOOR, ROOM NO.26 JEEVAN DEEP BUILDING PARLIAMENT STREET NEW DELHI - 110 001. 2 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR, "B" BLOCK, BMTC-TTMC BUILDING, K.H. ROAD SHANTHINAGAR BANGALORE - 560 027. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARAGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE DATED: 26.04.2016 AT ANNEX-A AND CONSEQUENT COMPLAINT IN O.C.576/2016 AT ANNEX-D AND PROVISIONAL ATTACHMENT

ORDER

DATED: 23.03.2016 AT ANNEX-C AS ILLEGAL AND AB INITIO VOID. IN W.P. NO.42157/2016: BETWEEN: SRI. S. THIMMARAJU S/O MARIDASEGOWDA AGED ABOUT 59 YEARS RESIDING AT #143/96 JYOTHI NIWAS 3RD CROSS BANAGIRINAGARA BANASHANKARI 3D STAGE BANGALORE - 560 085. ...PETITIONER (BY SRI. NAGENDRA NAIK R, ADVOCATE) 14 AND: THE ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA BANGALORE ZONAL OFFICE 3D FLOOR, B-BLOCK BMTC BUILDING, SHANTHINAGAR K.H. ROAD, BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. PRASANNA KUMAR, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE ANNEX-A DATED: 08.06.2016 AND GRANT AN INTERIM

ORDER

TO STAY ALL FURTHER PROCEEDINGS PURSUANT TO THE NOTICE ANNEX-A DATED: 08.06.2016 ISSUED BY RESPONDENT. IN W.P. NO.57756/2016: BETWEEN: ANIL HEGDE S/O LATE BHASKAR HEGDE AGED ABOUT 54 YEARS RESIDING AT 11H FLOOR, 1102 SAI PALACE LOKAYYA SHETTY ROAD BALLAL BAGH, MANGALORE - 575 003. ...PETITIONER (BY SRI. SACHIN B.S, ADVOCATE) 15 AND:

1. . UNION OF INDIA DEPARTMENT OF DIRECTORATE OF ENFORCEMENT, BENGALURU ZONAL OFFICE, 3RD FLOOR B BLOCK, B M T C SHANTHINAGAR K.H. ROAD, BENGALURU - 560 002. 2 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA 3RD FLOOR, B BLOCK B M T C SHANTHI NAGAR K.H. ROAD, BENGALURU - 560 027. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR,CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE

ORDER

DATED: 30.06.2016 PASSED BY THE R-2 VIDE ANNEXURE-A. IN W.P. NO.62102/2016: BETWEEN:

1. . MEERAMA OVERSEAS PVT LTD A PRIVATE COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING REGISTERED OFFICE AT NO.471, MARUTHI NILAYA I CROSS, PAVAGADA ROAD CHALLAKERE, CHITRADURGA DISTRICT - 577 522 REPRESENTED BY ITS 16 MANAGING DIRECTOR G.M. RAMESH. 2 . G.M. RAMESH MANAGING DIRECTOR MEERAMS OVERSEAS PVT LTD., #.471, MARUTHI NILAYA, I CROSS PAVAGADA ROAD, CHALLAKERE CHITRADURGA DISTRICT - 577 522. 3 . R.S. BADRI PRASAD DIRECTOR MEERAMS OVERSEAS PVT LTD., FLAT 6 II FLOOR, HOSABETTU MANGALURU - 575 019. ...PETITIONERS (BY SRI. VINAYA KEERTHY M, ADVOCATE) [AND: THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA III FLOOR, BLOCK-B, BMTc BUILDING K.H. ROAD, SHANTHINAGAR BENGALURU - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED DATED: 22.07.2016 PASSED THE HONBLE CHAIRPERSON, ADJUDICATION AUTHORITY UNDER THE 17 PREVENTION OF MONEY LAUNDERING ACT, 2002 IN O.C. NO.556/2016 (ANNEXURE-C) IN W.P. NO.4215/2017: BETWEEN: DEVAS MULTIMEDIA PRIVATE LIMITED UNIT 502 PRESTIGE MERIDIAN-1 NO.209, M.G. ROAD BANGALORE - 560 001

REPRESENTED BY ITS AUTHORIZED SIGNATORY. ...PETITIONER (BY SRI. UDAY HOLLA, SR COUNSEL FOR SRI. NANDISH PATEL, ADVOCATE) AND:

1. . THE ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3^D FLOOR, B BLOCK, BMTc BUILDING SHANTHINAGAR, K.H. ROAD BANGALORE - 560 027. 2 . ASSOCIATION OF MUTUAL FUNDS OF INDIA ONE INDIABULLS CENTRE NO.701, TOWER 2 B WING (7TH FLOOR) 841, SENAPATI BAPAT MARG ELPHINSTONE ROAD MUMBAI - 400 013. 3 . IDFC ASSET MANAGEMENT COMPANY LIMITED KRM TOWER, 8TH FLOOR 18 NO.1, HARRINGTON ROAD CHETPET, CHENNAI - 600 031. 4 . BARCLAYS BANK PLC FIRST FLOOR, PARAMANNA LAYOUT B.H. ROAD, NELAMANGALA BANGALORE - 562 123. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC FOR R-1; R-2 SERVED SMT. RESHMA THAMMAIAH, ADVOCATE FOR M/S LAW LINKS ADVOCATES FOR R-3; SRI. SHEYAS JAYASIMHA, ADVOCATE FOR M/S AARNA LAW ADVOCATES FOR R-4) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE IMPUGNED PROCEEDINGS INITIATED BY THE R-1 UNDER PMLA ACT 2002 IS WITHOUT JURISDICTION AND QUASH THE IMPUGNED LETTER DATED: 06.01.2017 VIDE ANNEX-A ISSUED BY THE R-1. IN W.P. NO.5269/2017: BETWEEN: SMT. NAMITA SAMANTARA W/O SRI. NIHAR RANJAN SAMANTARA 23 BASUDEVA NIWAS, 13TH CROSS KAGGADASAUPRA, CVR NAGAR BENGALURU - 560 093. ...PETITIONER (BY SRI. ARAVIND KAMATH, ADVOCATE) 19 AND: THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BENGALURU ZONAL OFFICE 3^D FLOOR, BLOCK-B BMTc BLDG K.H. ROAD, SHANTINAGAR BENGALURU - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED PROVISIONAL ATTACHMENT

ORDER

DATED: 03.01.2017 PASSED BY THE RESPONDENT VIDE ANNEX-B IN SO FAR AS THE SCHEDULE PROPERTY IS CONCERNED, BY HOLDING IT AS

WHOLLY ILLEGAL AND ARBITRARY. IN W.P. NO.6159/2017: BETWEEN: NATARAJ DAKSHINAMURHTY S/O S. DAKSHINAMURTHY AGED ABOUT 61 YEARS RESIDING AT: JADE NO.202 ESTEEM HERITAGE APARTMENT ROSE GARDEN ROAD, BEHIND DOLLARS COLONY J.P. NAGAR 5TH PHASE BANGALORE - 560 078. ..PETITIONER (BY SRI. UDAY HOLLA, SR. COUNSEL FOR SRI. MANU KULKARNI, ADVOCATE) 20 AND:

1. . THE ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR B BLOCK, BMTC BUILDING, SHANTHINAGAR K.H. ROAD, BANGALORE - 560 027. 2 . ASSOCIATION OF MUTUAL FUNDS OF INDIA, ONE INDIABULLS CENTRE #701, TOWER 2 B WING (7TH FLOOR) 841, SENAPATI BAPAT MARG ELPHINSTONE ROAD MUMBAI - 400 013 REPRESENTED BY ITS MANAGER. 3 . IDFC ASSET MANAGEMENT COMPANY LIMITED KRM TOWER, 8TH FLOOR, NO.1 HARRINGTON ROAD, CHETPET CHENNAI - 600 031 REPRESENTED BY ITS MANAGER. 4 . CITIBANK M.G. ROAD BRANCH #5 M.G. ROAD BANGALORE - 560 001 REPRESENTED BY ITS MANAGER. 5 . ICICI BANK J.P. NAGAR III PHASE BRANCH 759 8TH MAIN ROAD, J.P. NAGAR III PHASE, BANGALORE - 560 078 REPRESENTED BY ITS MANAGER. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND 21 SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC FOR R-1; R-2 & R-5 SERVED; SMT. RESHMA THAMMAIAH, ADVOCATE FOR R-3; SRI. ABHISHEK BAGAD, ADVOCATE FOR SRI. M.D. JIDESH KUMAR, ADVOCATE FOR R-4) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE IMPUGNED PROCEEDING INITIATED BY THE R-1 UNDER PMLA ACT, 2002 IS WITHOUT JURISDICTION AND QUASH THE IMPUGNED LETTER DATED: 16.01.2017 (ANNEXURE-A) ISSUED BY THE R-1. IN W.P. NO.6173/2017: BETWEEN: RANGANATHAN MOHAN S/O D. RANGANATHA AGED ABOUT 64 YEARS RESIDING AT: #77, MOUNT VIEW ENCLAVE, BETTAHALSOOR CROSS /POST, DEVANAHALLI MAIN ROAD, BANGALORE - 562 157. ...PETITIONER (BY SRI. UDAY HOLLA, SR. COUNSEL FOR SMT. ASHWIN KURIAN, ADVOCATE) AND:

1. . THE ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE, 3RD FLOOR, B BLOCK, BMTc BUILDING, SHANTHINAGAR K.H. ROAD BANGALORE - 560 027. 2 . ASSOCIATION OF MUTUAL FUNDS OF INDIA ONE INDIABULLS CENTRE #701, TOWER2 B WING (7TH FLOOR) 841, SENAPATI BAPAT MARG ELPHINSTONE ROAD MUMBAI - 400 013 REPRESENTED BY ITS MANAGER. 3 . IDFC ASSET MANAGEMENT COMPANY LIMITED KRM TOWER, 8TH FLOOR, NO.1 HARRINGTON ROAD, CHETPET CHENNAI - 600 031 REPRESENTED BY ITS MANAGER. 4 . CENTRAL BANK OF INDIA RAJAJINAGAR BRANCH, #4/33, DR RAJKUMAR RD, 4TH N BLOCK, RAJAJI NAGAR, BANGALORE-560 010 REPRESENTED BY ITS MANAGER. 5 . VIJAYA BANK VIDYANAGAR BRANCH MAIN ROAD, VIDYANAGAR BANGALORE - 562 157 REPRESENTED BY ITS MANAGER. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC FOR R-1; R-2 AND R-5 SERVED SMT. REHSMA THAMMAIAH, ADVOCATE FOR R3; SRI. P. UDHAYASHANKAR RAI, ADVOCATE FOR F-4) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE IMPUGNED PROCEEDINGS INITIATED BY THE R-1 UNDER 23 PMLA, ACT 2002 IS WITHOUT JURISDICTION AND QUASH THE IMPUGNED LETTER DATED: 16.01.2017 VIDE ANNE-A ISSUED BY THE R-1. IN W.P. NO.8261/2017: BETWEEN: DESARAJU VENUGOPAL S/O SRI. D.V. PRASAD AGED ABOUT 65 YEARS RESIDING AT: G-02 PALASHA APARTMENTS 26 9TH CROSS, 4TH MAIN MALLESHWARAM BENGALURU - 560 003. ...PETITIONER (BY SRI.UDAY HOLLA, SR, COUNSEL FOR SRI. BRIJESH PATIL, ADVOCATE) AND:

1. . THE ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT 3RD FLOOR, B BLOCK, BMTc BUILDING SHANTHINAGAR, K.H. ROAD, BANGALORE - 560 027. 2 . ASSOCIATION OF MUTUAL FUNDS OF INDIA, ONE INDIABULLS CENTRE # 701, TOWER2 B WING (7TH FLOOR) 841, SENAPATI BAPAT MARG ELPHINSTONE ROAD, MUMBAI - 400 013 REPRESENTED BY ITS MANAGER. 3 . IDFC ASSET MANAGEMENT COMPANY LIMITED KRM TOWER , 8TH FLOOR, NO.1 24 HARRINGTON ROAD, CHETPET CHENNAI - 600 031 REPRESENTED BY ITS MANAGER. 4 .

STATE BANK OF INDIA M.G. ROAD BRANCH, MAHALAKSHMI CHAMBERS M.G. ROAD BANGALORE - 560 001 REPRESENTED BY ITS MANAGER. 5 . ICICI BANK LIMITED NO.47, 5TH CROSS ROAD 5H MAIN, MALLESHWARAM BRANCH, BANGALORE - 560 003 REPRESENTED BY ITS MANAGER. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC FOR R-1; R-2 AND R-4 SERVED SMT. RSHMA THAMMAIAH, ADVOCATE FOR R-3; SRI. JAI M PATIL, ADVOCATE FOR R-5) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE IMPUGNED PROCEEDINGS INITIATED BY THE R-1 UNDER PMLA ACT, 2002 IS WITHOUT JURISDICTION AND QUASH THE IMPUGNED LETTER DATED: 16.01.2017 (ANNEXURE-A) ISSUED BY THE R-1. IN W.P. NO.13160/2017: BETWEEN:

1. . SRI. NEELKANTHA RATHOD S/O SRI. SEETHARAM AGED ABOUT 60 YEARS NO.137, 8TH MAIN, 2ND STAGE 2D BLOCK, OPP: BDA COMPLEX OUTER RING ROAD, NAGARABHAVI BANGALORE - 560 072. 2 . SMT. TARABAI W/O SRI. NEELKANTHA RATHOD AGED ABOUT 52 YEARS NO.137, 8TH MAIN, 2ND STAGE 2D BLOCK, OPP: BDA COMPLEX OUTER RING ROAD, NAGARABHAVI BANGALORE - 560 072. 3 . SHRI. AKSHAY S/O SRI. NEELKANTHA RATHOD AGED ABOUT 24 YEARS NO.137, 8TH MAIN, 2ND STAGE 2D BLOCK, OPP: BDA COMPLEX OUTER RING ROAD, NAGARABHAVI BANGALORE - 560 072. 4 . SHRI. RAHUL S/O SRI. NEELKANTHA RATHOD AGED ABOUT 30 YEARS NO.137, 8TH MAIN, 2ND STAGE 2D BLOCK, OPP: BDA COMPLEX OUTER RING ROAD, NAGARABHAVI BANGALORE - 560 072. 5 . SMT. SINDHU W/O SRI. RAJESH RATHOD AGED ABOUT 32 YEARS NO.4, CIDCO, NEAR HANUMAN MANDIR, AURANGABAD MAHARASTRA STATE. 26 6 . SRI. SEETHARAM S/O SRI. RAMU AGED ABOUT 100 YEARS NO.137, 8TH MAIN, 2ND STAGE 2D BLOCK, OPP: BDA COMPLEX OUTER RING ROAD, NAGARABHAVI BANGALORE - 560 072. 7 . SRI. TARASINGH CHITTU CHAVAN S/O CHITTU CHAVAN AGED ABOUT 53 YEARS NO.87, JAYANAGAR, SEDAM ROAD, GULBARGA - 585 105. ...PETITIONERS (BY SRI. VIJAYA KUMAR, ADVOCATE) AND:

1. . THE ADJUDICATING AUTHORITY BY ITS CHAIRPERSON PREVENTION OF MONEY LAUNDERING, ROOM NO.26 4TH FLOOR, JEEVAM DEEP BUILDING, PARLIAMENT STREET NEW DELHI - 110 001. 2 . THE DEPUTY DIRECTOR ENFORCEMENT DIRECTORATE BANGALORE ZONAL OFFICE 3D FLOOR, B-BLOCK BMTCL, SHANTHINAGAR BANGALORE - 560 027. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. MADHUKAR DESHPANDE, CGC) 27 THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA R/W SECTION 482 OF CPC PRAYING TO CALL FOR THE RECORDS RELATING TO ISSUE OF THE IMPUGNED PROCEEDINGS INITIATED BY THE R-2 UNDER SECTION (3) OF THE PMLA, 2002 DATED: 15.09.2010 (ANNEXURE-F) PASSED BY THE R-2 AND AFTER PERUSAL SET ASIDE THE SAME. IN W.P. NO.14158/2017: BETWEEN: SMT. MANJRI CHOUDHARY W/O SHRI. VIJAY MADANLAL CHOUDHAR AGED ABOUT 50 YEARS RESIDENT OF 905906 INDRA DARSHAN, BUILDING NO.19 NEAR MILLAT NAGAR, ANDHERI (EAST) MUMBAI, MAHARASHTRA. ...PETITIONER (BY SRI. SANKET M YENAGI, ADVOCATE) AND:

1. . THE DIRECTORATE OF ENFORCEMENT 6H FLOOR, LOKNAYAK BHAVAN KHAN MARKET, NEW DELHI - 110 001. 2 . UNION OF INDIA REPRESENTED BY: SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NORTH BLOCK NEW DELHI - 110 001. 3 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT (FOREIGN EXCHANGE MANAGEMENT ACT, 1999 28 & PREVENTION OF MONEY LAUNDERING ACT, 2002) DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA #209, PLIKA PLAZA, PHASE-II, MTH COMPOUND INDORE, MADHYA PRADESH - 452 001. 4 . THE ADJUDICATING AUTHORITY PREVENTION OF MONEY LAUNDERING 4H FLOOR, COURT ROOM-3, ROOM NO.17 JEEVAM DEEP BUILDING, PARLIAMENT STREET, NEW DELHI-110 001. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISIONAL ATTACHMENT

ORDER

DATED:16.01.2017 AT ANNE-A PASSED BY THE R-3 AND QUASH ALL THE PROCEEDINGS ARISING THERE FROM INCLUDING THE ORIGINAL COMPLAINT NO.683/2017 DATED:02.02.2017 FILED BY R-3 UNDER SECTION55) OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AT ANNEX-B PENDING BEFORE R-4 AUTHORITY. IN W.P. NO.18557/2017: BETWEEN: VENUGOPAL A.T AGED ABOUT29YEARS S/O SHRI. THIMMAPPA POPPANNA OIL MILLS NEAR STATE BANK OF MYSORE BANK, LAKSHMIPURA, B.H. ROAD ARISIKERE, 29 HASSAN DISTRICT - 573 103. ...PETITIONER (BY SRI. KIRAN S JAVALI, ADVOCATE) AND:

1. . JOINT DIRECTOR DIRECTORATE OF ENFORCEMENT3D FLOOR, B BLOCK, BMTC BUILDING SHANTINAGAR, K.H. ROAD BANGALORE - 560 027.
2 . ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT3D FLOOR, B BLOCK, BMTC BUILDING SHANTINAGAR, K.H. ROAD BANGALORE - 560 027.
3 . REGISTRAR THE ADJUDICATING AUTHORITY (PMLA) 4TH FLOOR, DEEP BUILDING PARLIAMENT STREET NEW DELHI - 110 001. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. MADHUKAR DESHPANDE, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLE226AND227OF CONSTITUTION OF INDIA PRAYING TO QUASH THE REMAND APPLICATION DATED:08.12.2016 VIDE ANNEX- D AND ALL CONSEQUENTIAL PROCEEDINGS INITIATED INCLUDING THE PROCEEDINGS BEFORE THE R-3 CONSEQUENT TO THE APPLICATION IN O.A12016 UNDER SECTION1810) OF THE PML ACT VIDE ANNEX-E AS ILLEGAL AND BAD AT LAW. 30 IN W.P. NO.36309/2017: BETWEEN: SMT. G. NIRMALA W/O SHRI. S. THIMMARAJU RESIDING AT NO.14/96 JYOTHI NIWAS 3RD CROSS BANAGIRINAGARA BANASHANKARI III STAGE BENGALURU - 560 085. ...PETITIONER (BY SRI. KIRAN S JAVALI, ADVOCATE) AND: THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE3D FLOOR, B BLOCK BMTC-TTMC BUILDING, K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISIONAL ATTACHMENT

ORDER

PASSED BY THE RESPONDENT DATED:13.07.2017 VIDE ANNEX-A AS ILLEGAL AND ABINITIO VOID. IN W.P. NO.36310/2017: BETWEEN: SHRI. S. THIMMARAJU31S/O MARIDASEGOWDA AGED ABOUT61YEARS RESIDING AT NO.143/96 JYOTHI NIWAS, 3RD CROSS BANAGIRINAGARA BANASHANKARI III STAGE BENGALURU - 560 085. ...PETITIONER (BY SRI. KIRAN S JAVALI, ADVOCATE) AND: THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE3D FLOOR, B BLOCK, BMTCTTMC BUILDING, K.H. ROAD SHANTHINAGAR BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISIONAL ATTACHMENT

ORDER

NO.9/2017 PASSED BY THE RESPONDENT DATED:13.07.2017 VIDE ANNEX-A AS ILLEGAL AND ABINITIO VOID. IN W.P. NO.41176/2017: BETWEEN: AXIS BANK LTD (FORMERLY UTI BANK LTD) M.G. ROAD BRANCH NO.9, ESQUIRE CENTRE32BLOCK A M.G. ROAD BANGALORE - 560 001. REPRESENTED BY ITS LAW OFFICE & SENIOR MANAGER MR. BALVEER KAPOOR SINGH. ...PETITIONER (BY SRI. K.P. THRIMURTHY, ADVOCATE) AND:

1. . THE JOINT DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONE OFFICE3D FLOOR, B BLOCK, BMTCTTMC BUILDING SHANTINAGAR, K.H. ROAD BANGALORE - 560 027. 2 . THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT (FOREIGN EXCHANGE MANAGEMENT ACT & PREVENTION OF MONEY LAUNDERING ACT) DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, GOVERNMENT OF INDIA3D FLOOR, B BLOCK, BMTCTTMC BUILDING SHANTINAGAR, K.H. ROAD BANGALORE - 560 027. 3 . THE ADJUDICATING AUTHORITY PREVENTION OF MONEY LAUNDERING4H FLOOR, ROOM NO.20, DEEP BUILDING PARLIAMENT STREET, NEW DELHI - 110 001 REPRESENTED BY ITS REGISTRAR. 4 . THE ASSISTANT DIRECTOR

DIRECTORATE OF ENFORCEMENT BANGALORE ZONE OFFICE 3D FLOOR, B BLOCK BMTB BUILDING 33 SHANTINAGAR, K.H. ROAD BANGALORE - 560 027. 5 . DCT NETWORKS PRIVATE LIMITED (FORMERLY MANIPAL SOFTWARE PVT. LTD) A COMPANY REGISTERED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 WITH ITS REGISTERED OFFICE AT NO.102 EDEN PARK, NO.20, VITTAL MALLYA ROAD BANGALORE - 560 001 BY IT AUTHORISED SRI. R MOHAN. 6 . UNION OF INDIA DEPARTMENT OF TELECOMMUNICATION OFFICE OF THE CONTROLLER OF COMMUNICATION ACCOUNTS 1T FLOOR, AMENITY BLOCK, PALACE ROAD, BANGALORE - 560 052 REPRESENTED BY THE CONTROLLER OF COMMUNICATION ACCOUNTS. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. MADHUKAR DESHPANDE, CGC FOR R-1 TO R-4 AND R-6; R-5 SERVED) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE

ORDER

DATED: 27.02.2017 VIDE ANNEX-A PASSED BY THE OFFICE OF THE JOINT DIRECTOR, ENFORCEMENT DIRECTORATE, BENGALURU ZONAL OFFICE I.E., R-1. IN W.P. NO.46318/2017: BETWEEN:

1. . C MAHADESH @ AVVAMAHADESH AGED ABOUT 54 YEARS S/O CHIKKAPUTTAIAH HOUSE NO.2550/5 MAHADESHWARALAYA III CROSS, KALIDASA ROAD V.V. MOHALLA, MYSORE - 570 002 PRESENTLY IN JUDICIAL CUSTODY. 2 . C. MANJU AGED ABOUT 50 YEARS S/O CHIKKAPUTTAIAH HOUSE NO.2554/2, 3RD CROSS VONTIKOPPAL, KALIDASA ROAD MYSORE - 570 002 PRESENTLY IN JUDICIAL CUSTODY. 3 . BHAGYA W/O C. MAHADESH @ AVVAMAHADESH AGED ABOUT 46 YEARS HOUSE NO.2550/5 MAHADESHWARALAYA III CROSS, KALIDASA ROAD V.V. MOHALLA, MYSORE - 570 002. 4 . SMT. S NALINA MANJU AGED ABOUT 38 YEARS W/O C. MANJU HOUSE NO.2554/2, 3RD CROSS VONTIKOPPAL, KALIDASA ROAD MYSORE - 570 002. 5 . C. KAPPANAIAH AGED ABOUT 62 YEARS S/O CHIKKAPUTTAIAH HOUSE NO.108, 1ST STAGE 5H CROSS, GOKULAM V.V. MOHALLA MYSORE - 570 002. 35 6 .

SHIVAMMA AGED ABOUT 75 YEARS W/O CHIKKAPUTTAIAH HOUSE NO.2550/5 MAHADESHWARALAYA II CROSS, KALIDASA ROAD V.V. MOHALLA, MYSORE - 570 002. ...PETITIONERS (BY SRI. KIRAN S JAVALI, ADVOCATE FOR SRI. K. CHANDRASHEKARA, ADVOCATE) AND: THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR, B BLOCK BMTCC-TTMC BUILDING K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. MADHUKAR DESHPANDE, CGC FOR R-1) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISIONAL ATTACHMENT

ORDER

NO.8/2017 PASSED BY THE RESPONDENT DATED: 11.07.2017 VIDE ANNEX-A AS ILLEGAL AND AB INITIO VOID. IN W.P. NO.48031/2017: BETWEEN:

1. . SHRI. C. DEVARAJU AGED ABOUT 60 YEARS S/O LATE CHANNEGOWDA 36 ASSISTANT MANAGER HOPCOMS NO.28, 4TH MAIN ROAD, 4TH CROSS 7H BLOCK, BANASHANKARI III STAGE BENGALURU - 37.
2 . SMT AMMAIAH W/O C. DEVARAJU AGED ABOUT 52 YEARS NO.28, 4TH MAIN ROAD 4H CROSS, 7TH BLOCK BANASHANKARI III STAGE BENGALURU - 37.
3 . SRI. C. HEMANT S/O C. DEVARAJU AGED ABOUT 22 YEARS NO.28, 4TH MAIN ROAD 4H CROSS, 7TH BLOCK BANASHANKARI III STAGE BENGALURU - 37.
4 . SHRI. YOGANARASIMHA SWAMY EDUCATIONAL TRUST BEVUR MANDYA VILLAGE CHANNAPATNA TALUK MANDYA DISTRICT REP. BY ITS PRESIDENT SRI. C. DEVARAJU. ...PETITIONERS (BY SRI. KIRAN S JAVALI AND SRI. K. CHANDRASHEKARA, ADVOCATES) AND: THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR, B BLOCK 37 BMTCC-TTMC BUILDING K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISIONAL ATTACHMENT

ORDER

NO.12/2017 PASSED BY THE RESPONDENT DATED:20.09.2017 (ANNEXURE-A) AS ILLEGAL AND ABINITIO VOID. IN W.P. NO.24480/2018: BETWEEN:

1. . SOVERIGN DEVELOPERS AND INFRASTRUCTURE LTD., (A COMPANY INCORPORATED UNDER THE COMPANIES ACT1956 HAVING ITS PRINCIPAL PALCE OF BUSINESS AT #16 AND17 2ND FLOOR S.D. COMPLEX, JALADARSHINI LAYOUT, NEW BEL ROAD BANGALORE - 560 054 REP. BY DIRECTOR. 2 . PRAKAASH KUMAR SINGH S/O SATYA BRAT SINGH AGED ABOUT43YEARS MANAGING DIRECTOR SOVERIGN DEVELOPERS AND INFRASTRUCTURE LTD., (A COMPANY INCORPORATED UNDER THE COMPANIES ACT1956 HAVING ITS PRINCIPAL PLACE OF38BUSINESS AT # 16 AND172ND FLOOR S.D. COMPLEX, JALADARSHINI LAYOUT NEW BEL ROAD, BANGALORE - 560 054. 3 . DEEPAK KUMAR S/O SATYA BRAT SINGH AGED ABOUT40YEARS DIRECTOR AND PROMOTER SOVERIGN DEVELOPERS AND INFRASTRUCTURE LTD., (A COMPANY INCORPORATED UNDER THE COMPANIES ACT1956 HAVING ITS PRINCIPAL PLACE OF BUSINESS AT # 16 AND172ND FLOOR S.D. COMPLEX, JALADARSHINI LAYOUT NEW BEL ROAD, BANGALORE - 560 054. ...PETITIONERS (BY SRI. N. NAGENDRA NAIK, ADVOCATE FOR SRI. MUNIYAPPA, ADVOCATE AND:

1. . THE ASSISTANT DIRECTOR THE OFFICE OF THE JOINT DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALURU ZONAL OFFICE3D FLOOR, B BLOCK, BMTc SHANTINAGAR TTMC, K.H. ROAD SHANTINAGAR, BANGALURU - 560 027. 2 . THE CANARA BANK NEW BEL ROAD BRANCH BANGALORE - 560 094 REPRESENTED B CHIEF MANAGER. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND39SRI. M.B. NARGUND, ASGI A/W SRI. JAYAKAR SHETTY, CGC FOR R-1; SRI. T.P. MUTHANNA, ADVOCATE FOR R-2) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF CONSTITUTION OF INDIA PRAYING TO QUASH THE

ORDER

DATED:21.05.2018 PASSED BY TH ERESPONDENT NO.1 VIDE ANNEXURE-A. IN W.P. NO.27705/2018: BETWEEN:

1. . MR. DYANI ANTONY PAUL S/O LATE JOSEPH PAUL AGED ABOUT 33 YEARS NO.1/77, VAILANKANI COTTAGE PADAVINANGADY KONCHADY MUGRODY ROAD MANGALORE - 575 008. 2 . MR. LAWENCE PAUL S/O LATE JOSEPH PAUL AGED ABOUT 42 YEARS NO.1/77, VAILANKANI COTTAGE PADAVINANGADY, KONCHADY MUGRODY ROAD MANGALORE - 575 008. 3 . SMT. ANITA DORINE FERNANDES W/O LAWRENCE PAUL AGED ABOUT 46 YEARS NO.1/77, VAILANKANI COTTAGE PADAVINANGADY, KONCHADY MUGRODY ROAD MANGALORE - 575 008. PETITIONERS NO.2 AND 3 ARE REPRESENTED BY THEIR 40GPA HOLDER MR. DYANI ANTONY PAUL S/O LATE JOSEPH PAUL AGED ABOUT 33 YEARS, NO.1/77, VAILANKANI COTTAGE PADAVINANGADY, KONCHADY MUGRODY ROAD MANGALORE - 575 008. ...PETITIONERS (BY SRI. P. N. MANMOHAN, ADVOCATE) AND:

1. UNION OF INDIA DEPARTMENT OF DIRECTORATE OF ENFORCEMENT BENGALURU ZONAL OFFICE, 3RD FLOOR, "B" BLOCK B.M.T.C, SHANTHINAGAR, K.H. ROAD BENGALURU - 56002.

2. THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA, 3RD FLOOR, "B" BLOCK B.M.T.C, SHANTHINAGAR, K.H. ROAD BENGALURU - 560 027.

3. THE ADJUDICATING AUTHORITY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA, 4TH FLOOR JEEVAN DEEP BUILDING PARLIAMENT STREET NEW DELHI - 110 001. RESPONDENTS (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. H. JAYAKARA SHETTY, CGC FOR R-1 AND R-2) 41 THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE

ORDER

DATED: 16.12.2016 PASSED BY THE 3D RESPONDENT PRODUCED AS ANNEXURE-AA. IN W.P. NO.27744/2018: BETWEEN: SHRI. V. BHASKAR S/O VENKATARAMANAPPA AGED ABOUT 47 YEARS SKYLINE GOLDEN RAYS APARTMENTS GAVIPURAM, GUTTAHALLI BEHIND RAMA KRISHAN ASHRAM

BENGALURU- 560 018. ...PETITIONER (BY SRI. KIRAN JAVALI AND SRI. K. CHANDRASHEKARA, ADVOCATES) AND: THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT BANGALORE ZONAL OFFICE 3D FLOOR, B BLOCK BMTT TMC BUILDING, K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. JEEVAN NEERALGI, ADVOCATE AND SRI. H. JAYAKARA SHETTY, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE EVICTION NOTICE ISSUED BY THE RESPONDENT DATED: 20.06.2018 (ANNEXURE-A) AS ILLEGAL AND AB INITIO VOID. 42 IN W.P. NO. 28027/2018: BETWEEN: SRI. M.B. VIKRAM AGED ABOUT 35 YEARS S/O T. BASAVARAJU NO. 21, CEIS (ENGINEERING) LAYOUT, 2ND STAGE, 4TH CROSS BOGADI MYSORE - 570 026. ...PETITIONER (BY SRI. ANIYAN JOSEPH, ADVOCATE) AND: DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA 3D FLOOR, B BLOCK, BMTT BUILDING K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. H. JAYAKAR SHETTY, CGC) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS OF THE RESPONDENT RELATING TO THE PROVISIONAL ATTACHMENT

ORDER

NO. 03/2014 DATED: 27.03.2014 IN ECIR/03BGZO/2014 UNDER SEC 5(1) OF PMLA AND SET ASIDE ANNEXURE-3 NOTICE NO RCIR/BGZO/03/2014/771 DATED: 07.06.2018 ISSUED BY THE RESPONDENT. 43 IN W.P. NO. 35991/2018: BETWEEN: SRI. T. BASAVRAJU AGED ABOUT 63 YEARS S/O THOTAPPA NO. 21, CEIS (ENGINEERING) LAYOUT 2D STAGE, 4TH CROSS BOGADI MYSORE - 570 026. ...PETITIONER (BY SRI. ANIYAN JOSEPH, ADVOCATE) AND: ASSISTANT DIRECTOR DIRECTORATE OF ENFORCEMENT GOVERNMENT OF INDIA 3D FLOOR, B BLOCK, B.M.T.C. BUILDING K.H. ROAD, SHANTHINAGAR BANGALORE - 560 027. RESPONDENT (BY SRI. K.M. NATARAJ, ASGI AND SRI. M.B. NARGUND, ASGI A/W SRI. P. KARUNAKAR, CGC) THIS WRIT PETITION IS FILED UNDER

ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO CALLING FOR THE RECORDS OF THE FIRST RESPONDENT RELATING TO THE PROVISIONAL ATTACHMENT NO.03/2014 DATED:27.03.2014 ECIR/03/BGZO/2014 UNDER SECTION 51) OF PMLA VIDE ANNEX-B AND SET ASIDE ANNEX-D

ORDER

DATED:07.06.2018 PASSED BY THE RESPONDENT. THESE PETITIONS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF

ORDER

S THIS DAY, COURT MADE THE FOLLOWING:

44.

ORDER

These batch of writ petitions have been filed questioning the provisional order of attachment, summons issued, order passed by the adjudicating authority, proceedings initiated, complaint filed before the adjudicating authority, consequential possession notice issued under the Prevention of Money Laundering Act, 2002 (for short PML Act). Hence, for the purposes of convenience, the aforesaid writ petitions are broadly categorized on the basis of prayer sought for in the respective writ petitions: I. Provisional Attachment Order: Sl.No.Case No.1 W.P.Nos.38642-44/2017 2 W.P.No.36309/2017 3 W.P.No.36310/2017 4 W.P.Nos.23176-77/2017 5 W.P.No.33740/2016 6 W.P.No.14158/2017 7 W.P.No.57756/2016 8 W.P.Nos.46318-323/2017 9 W.P.No.5269/2017 10 W.P.No.19313/2016 11 W.P.No.17894/2015 12 W.P.No.28027/2018 13 W.P.No.48031 & 48531/2017 45 II. Information sought from Institutions/Bank is under challenge: Sl.No.Case No.1 W.P.No.6159/2017 2 W.P.No.6173/2017 3 W.P.No.8261/2017 4 W.P.No.4215/2017 5 W.P.No.24480/2018 III. Confirmation Order passed by the Adjudicating Authority: Sl.No.Case No.1 W.P.No.62102/2016 2 W.P.No.27705/2018 IV. Writ Petition filed by Axis Bank Limited challenging the provisional order of attachment dated 27.02.2017 and confirmation of provisional attachment dated 16.08.2017 and

consequential notice issued to the petitioner to transfer the amount of Rs.58,37,34,000/- to the account of Joint Director, Directorate of Enforcement, Bangalore Zone. Sl.No.Case No.1 W.P.No.41176/2017 V. Challenging initiation of proceedings under Section 3 of PMLA on the ground Section 13(1)(e) and 13(2) of PC Act was subsequently included in the schedule of offences under PMLA: Sl.No.Case No.1 W.P.Nos.13160-66/2017 46 VI. Challenging the consequential order/possession notice: Sl.No.Case No.1 W.P.No.39889/2014 2 W.P.No.27744/2018 3 W.P.No.24444/2015 4 W.P.No.35991/2018 VII. CONSTITUTIONAL VALIDITY1W.P.Nos. 15917/2013 & 15974/2013 2 W.P.Nos. 15918/2013 & 15961/2013 VIII. Proceedings initiated under PMLA and remand application filed before the Special Judge of PMLA Court is sought for being quashed: Sl.No.Case No.1 W.P.No.18557/2017 IX. Summons issued under Section 50(3) of PMLA: Sl.No.Case No.1 W.P.No.42157/2016 2. The respondents on service of notice of these writ petitions have appeared and filed their statement of objections and have denied the averments made in the petition. In W.P.No.38642/2016 it has been contended 47 that Ankola Police Station had registered an FIR2452013 against Mr.Vivek Kumar and three unknown persons for the offence punishable Under Section 302, 353 & 307 IPC read with Section 34 IPC and Section 25 & 27 of the Arms Act for killing Sri R.N.Naik, an Industrialist and Co- operative leader from Ankola and on completion of investigation, charge sheet has been filed under various provisions of IPC, Indian Arms Act, 1959 (for short Arms Act) and Karnataka Control of Organised Crime Act, 2000 (KCOCA for short) against Sri Bannanje Raja @ BR and 11 others for indulging in underworld activities and during course of investigation, it was unearthed that the money required for the said illegal activities was arranged from Dubai through Hawala channels by person named Sri Hajee Ameen Basha operating from Dubai and the offences under IPC and Arms Act as indicated in the charge sheet being scheduled offences under Section 2(1)(y) of PML Act, a prima-facie case of money laundering having been made out, an Enforcement Case Information Report (ECIR for short) was registered by the Directorate of Enforcement (for short ED). It is further contended that supplementary 48 charge sheet filed, Mr.Hajee Ameen Basha and three others were added as accused for indulging in underworld activities involving life threats, extortion, murder and supply the money through

Hawala channels for criminal activities.

3. It is further contended that second respondent is conferred with the powers under section 5(1) of PML Act read with Rule 3 of Rules to pass provisional attachment order. It is also contended that under section 5(5) of PML Act, a complaint has been filed before the adjudicating authority and same is pending and now adjudicating authority now having issued show cause notice under section 8 of the Act, the petitioners without replying to the same, cannot seek remedy in these writ petitions and as such, the petitions are liable to be dismissed.

4. In W.P.Nos.38642/2016, 15917/2013 & 15974/2013, 15918/2013 & 15961/2013, 23176- 77/2016, 33740/2016, 24480/2018, 41176/2017 and 24444/2015, the contesting respondents have filed their 49 statement of objections traversing the writ petition averments wherein it is contended that writ petitioners have alternate remedy of filing an appeal when there is a final order passed under Section 26 of PML Act and where the provisional order is passed, it requires to be confirmed under Section 8(3), as otherwise, such provisional attachment would get spent itself. Hence, without there being a challenge to the confirmatory order by filing an appeal, the present writ petitions where the order confirming the provisional attachment has been passed is not require to be entertained.

5. It is contended that the impugned notices issued under Section 8 is in consonance with Section 8 of PML Act. It is also contended that dehorse the report under Section 173 CrP.C., the authorities under PML Act are empowered to conduct independent investigation and as such, the final report of the police cannot by itself form the basis for the respondent - authorities to exercise the power. It is further contended that Directorate of Enforcement would initiate prosecution separately by filing 50 a complaint under Section 45(1) read with Section 3 and 4 for the offence of money laundering and not for schedule offence. It is also contended that offence of money laundering is an independent offence. It is contended that proceedings initiated under PC Act by the Lokayukta or CBI are entirely different from the proceedings initiated by respondents for the offence punishable under PML Act. It is also contended that money laundering offence is a continuing offence as it involves three stages namely, placement, layering and

integration. On the issue of retrospective effect or continuing offence, it is contended that in case of a continuing offence, the ingredients of the offence continued i.e., endure even after the period of consummation, whereas, in an instantaneous offence, offence takes place once and for all, when the same actually takes place. In such cases, there is no continuing offence even though the damage resulting from the injury may itself continue. Hence, the amendments made under the Act neither created the new offence nor enhanced the punishment nor changed the procedure or forum of trial to the prejudice of accused. It is also contended that it would 51 only be a procedural in nature and can have retrospective effect.

6. By relying upon circular No.8/2015 issued by the Director of Enforcement, it is contended that Deputy Director is authorized to issue order of provisional attachment of properties and accordingly, provisional orders of attachment have been issued. Contending that Deputy Director is empowered to issue provisional attachment and also file a complaint under Section 5(5) of the Act under authorization issued by the Director (delegation of power) the orders of provisional attachment is sought to be sustained. It is also contended, it would suffice if the authority has recorded in its file the reasons to believe that such person/s is/are in possession of proceeds of crime or involved in money laundering, it would meet the requirement of Section 8(1) and it is to be read along with Section 8(2), which only mandates issuance of notice to show cause. Contending that PML Act is a special enactment and would prevail over any other enactment inconsistent therewith and also contending that 52 when both Acts are special Acts, the later Act would prevail, they have sought to repel the contentions raised. The entertainment of reasonable belief is sufficient for provisional order of attachment to be passed. It is further contended that person referred to in Section 5 is not restricted to a person accused of a crime.

7. It is further contended that expression any property occurring in sub-section (1) of Section 5 encompasses not only the property of a person who is accused of a schedule offence but any other person who involves himself in money laundering and such person can also be roped in for the purposes of investigation and attachment of his property under Section 5 of the PML Act. Hence, the person who

is not charged of a predicate offence would also come within the sweep of PML Act.

8. Insofar as the absence of full quorum consisting of Chairman and two members to constitute an Adjudicating Authority raised by the petitioners as a ground to assail the impugned order as one without jurisdiction is rebutted by contending as Sections 6(13), 53 6(14) & 6(15) would clearly indicate that in the event of vacancy in the office of Chairperson due to death, resignation or otherwise or if the Chairperson of the adjudicating authority is unable to discharge his functions due to absence, illness or any other causes, the senior most member of the adjudicating authority would discharge the functions of chairperson until the date on which new chairperson is appointed in accordance with the provisions of the Act to fill such vacancy. Referring to Section 6(5)(a & b), it is contended that if the Bench hearing the original complaint consists of only one member, it would satisfy the mandate of law and the order passed by such adjudicating authority consisting of one member cannot be rejected.

9. It is also contended that Section 5 empowers the Director to AUTHORISE Officers not below the rank of Deputy Director for the purposes of Section 5 of the PML Act and the Director of Enforcement as such would be empowered to authorize all Deputy Directors of Enforcement to attach the property under Section 5. It is 54 also contended that under Section 49(1) of PML Act, the Central Government has appointed the Deputy Director of Foreign Exchange Management Act as the Deputy Director for the purposes of PML Act by order dated 06.02.2005 which has been duly gazetted on 13.09.2005. On these grounds amongst others raised in the statement of objections, respondents have sought for dismissal of writ petitions.

10. I have heard the arguments of Sri Udaya Holla for Sri Nandish Patil, Sri Arvind Kamath, learned Senior Advocates, Sriyuths P N Manmohan, Kiran S Javali, Chandrashekhara K, R Swaroop Anand, Nagendra Naik, Sachin B.S., Vinay Keerthi, Vijaya Kumar, Manu Kulkarni, Ashwin Kurian, Sanket M Yenagi, Thrimurthy, Muniyappa and Aniyam Joseph for petitioners. Sri K.M.Nataraj, then Additional Solicitor General of India, Sri Prabhuling K Navadgi, then Additional

Solicitor General of India, Sri M.B.Nargund, Additional Solicitor General of India, Sriyuths Madhukar Deshpande, Jayakar Shetty, S Mahesh, S S Hiremath, Unnikrishnan M, Jeevan M55Neeralgi, P Karunakar, P Prasanna Kumar, Ashok M Patil, N Sukumar Jain, Reshma Thammaiah, Jidesh Kumar M.D., T.P.Muthanna, learned Advocates appearing for respondents.

11. It is the contention of Sri P N. Manmohan, learned Advocate appearing for petitioners in W.P.Nos.38642/2016, 27705/2017 & 28586-587/2018 that respondents have proceeded to pass the impugned order of attachment on the basis of assumptions and presumptions namely, on the ground that petitioners have invested the amount in purchasing the property as indicated in the impugned order as though it is from proceeds of the crime. He would submit that Section 5 of the PML Act provides an explanation which enables the authority to attach the property if any person is in possession of proceeds of crime or a person being charged of having committed a scheduled offence and if such person is likely to transfer or deal with the said property in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of the 56 crime and when petitioners are neither accused nor having been charged for any of the schedule offence and there being no prima-facie material against petitioners, impugned order could not have been passed. He would contend that provisional order cannot be given retrospective effect and in the instant case, the alleged offence has taken place in the year 2013 and as on the said date, the offence alleged did not find a place in the Schedule to the PML Act and as such, impugned order is liable to be set aside. He would draw the attention of the court to contend that accused Ameen Basha was absconding and based on his call details, proceedings against petitioners has been initiated on the ground they have purchased the properties from the monies generated through proceeds of crime. He would submit there is no dispute to the fact that all these monies having been transferred on-line and properties were purchased in Mangalore even prior to the offence alleged i.e., schedule offence. He would draw the attention of the court to the expression has reason to believe would acquire significance for initiating proceedings and such reasons are 57 not forthcoming under the impugned orders. He would submit that Section 22 of PML Act draws a presumption that when the properties standing in the name of a particular person, it shall be presumed that

property belongs to that person. In the light of said presumption, it is not open for the respondents to say that consideration paid by the petitioners for purchase of the property is to be construed as proceeds of crime. He would further contend that to record reasons to believe there should be basis and if not, it would be without jurisdiction. 11.1) He would also contend that offence has occurred in India and money is transferred from Dubai and there is no compliance of Section 2(1)(ra) of PML Act. When money was transferred from Dubai i.e., outside India, the offence has not occurred at all. He would also contend Section 55 of PML Act deals with definition of Contracting State and section 56 refers to agreement between foreign countries and section 57 deals with letter of request to contracting state in certain cases and reading of these provisions together does not indicate that any offence has been committed by the petitioners at Dubai, which is a 58 condition precedent for invoking proceedings under PML Act as indicated in Section 2(1)(ra) of PML Act. Therefore, very initiation of proceedings is bad in law. 11.2) His next limb of argument is, prior to 2013 amendment, Section 5(a) and Section 2(u) defined proceeds of crime and against whom proceedings can be initiated and it included only a person who was accused of the offence alleged. However, by 2013 amendment, it took away said requirement and the provision included any person and thus, whether a person is accused or otherwise is sufficient for proceeding under the PML Act. The alleged incident having taken place prior to the amendment, the amended provision cannot be made applicable or in other words, petitioners cannot be proceeded for an offence which was not in existence and thereby the action of the respondents would be hit by Article 20 of the Constitution of India. He would also contend that alternate remedy of appeal which has been canvassed by the respondents to stave off the claim of the petitioners is liable to be rejected as the issue raised in the writ petitions is one of 59 jurisdiction and as such, he prays for allowing the writ petition by quashing the impugned orders. He has relied upon the following judgments in support of his contentions: i) LAWS(APH)-2014-12-183: TECH MAHINDRA LIMITED vs. JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT. ii) SLP (CRIMINAL) DAIRY NO.34143/2017: JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT AND OTHERS vs. TECH MAHINDRA LTD. AND ANOTHER. iii) 2015 SCC ONLINE DEL8658 ARUN KUMAR MISHRA vs DIRECTORATE OF ENFORCEMENT. iv)

LAWS(DLH) 2015 4 47: AJANTA MERCHANTS PVT. LTD. vs. DIRECTORATE OF ENFORCEMENT. v) (2013) 2 SCC212 SUKHDEV SINGH vs. STATE OF HARYANA. vi) (2014) 3 SCC151 VARINDER SINGH vs. STATE OF PUNJAB AND ANOTHER. vii) (2008) 14 SCC186 ASLAM MOHAMMAD MERCHANT vs. COMPETENT AUTHORITY AND OTHERS. viii) (2015) 11 SCC628 TATA CHEMICALS LIMITED vs. COMMISSIONER OF CUSTOMS (PREVENTIVE), JAMNAGAR. ix) (2009) 2 SCC630 COMMITTEE OF MANAGEMENT AND ANOTHER vs. VICE- CHANCELLOR AND OTHERS. x) ILR 2015 KAR1825 BANGALORE TURF CLUB LIMITED vs. UNION OF INDIA, MINISTRY OF FINANCE AND OTHERS. 60 xi) (1994) 1 SCC243 LUCKNOW DEVELOPMENT AUTHORITY vs. M.K. GUPTA. xii) (2006) 1 SCC275 STATE OF ORISSA AND OTHERS vs. MD. ILLIYAS. xiii) AIR 1960 SC675 CORPORATION OF THE CITY OF NAGPUR vs. EMPLOYEES (IN CA NO.143 OF1959 AND ANOTHER. xiv) ILR 2015 KAR3609 BANGALORE DEVELOPMENT AUTHORITY, BY ITS SECRETARY vs. SMT. VENKATA RATNAMMA AND OTHERS. xv) LAWS(MAD)-2012-7-39: INDIAN BANK REPRESENTED BY ITS CHIEF MANAGER,. PALPAP ICHINICHI SOFTWARE INTERNATIONAL LTD vs. GOVERNMENT OF INDIA. xvi) 2004 (2) MH.L.J: ABDUL RAZAK HAJI ISMAIL vs. DIRECTOR OF ENFORCEMENT, NEW DELHI AND OTHERS. xvii) (2006) 4 SCC620 O KONAVALOV vs. COMMANDER, COAST GUARD REGION AND OTHERS.

12. Sri Swaroop Anand, learned Advocate appearing for petitioners in W.P.No.15917/2013 & 15974/2013 and 15918 & 15961/2013 would contend that petitioner in W.P.No.15917/2013 was accused No.9 in a scheduled offence numbered as Spl.C.C.135/2011 and FIR pertaining to said charge sheet was filed on 01.12.2010 in Crime No.57/2010 and after investigation, charge sheet came to be filed in July, 2011. Offences alleged against 61 petitioner is under 420 & 506 IPC. Offences that are alleged against petitioner in the scheduled offence pertaining to the period 2007-08. Provisional order of attachment was passed on 25.09.2012; he would contend that allegations against the petitioner for the predicate offence is that he was a broker and was responsible for disbursement of certain compensation to certain people for lands that came to be acquired and agency which was responsible for disbursement of compensation had taken the assistance of the accused, who had felicitated for payment of bribe and in that

regard, it has been alleged that petitioner was responsible for cheating certain land owners of compensation. He would contend that scheduled offences alleged against petitioner has been quashed on 03.11.2016 by this court in Crl.P.No.2313/2016 and when there is no predicate offence pending against petitioner, question of proceedings under PML Act does not arise. He would fairly submit that prosecution has challenged the said order of quashing before Honble Supreme Court and same is pending. A provisional order of attachment came to be passed as 62 against petitioner on 25.09.2012 under section 5(1) of PML Act and as on the said date, 2013 amendment had not come into force. Under section 5(1) of PML Act, the basis for initiation of proceedings is that a person should have been charged of a schedule offence and having realized certain amount as proceeds of crime and should have attempted to project said money as untainted money. He would submit that as on that date of complaint having been filed, petitioner was not an accused for the predicate offence and no charges had been made against him. When petitioner was not charged for the scheduled offence and criteria prescribed under section 5(1) of the Act being absent, question of the authority being satisfied or having reasons to believe that property had been purchased from the proceeds of crime, is erroneous. 12.1) He would also submit that mere filing of final report under Section 173 of Cr.P.C. would not tantamount to charging the petitioner of a predicate offence. He would contend that criteria for issuance of show cause notice under Section 8(1) of PML Act is that adjudicating 63 authority upon receipt of complaint under Section 5(5) of PML Act should have reason to believe that petitioner has committed an offence under Section 3 or being in possession of proceeds of crime, which aspect should be forthcoming from the complaint filed under Section 5(5) of PML Act and such order should also be a speaking order as to how the adjudicating authority has arrived at a prima facie case. Records do not disclose petitioner was in possession of proceeds of crime or having committed an offence under Section 3 and even if any reasons are assigned, it ought to be communicated to the petitioner under Section 8(1) which is not forthcoming from the notice dated 18.10.2012 (Annexure-C). He would contend that reading of clause (a) and (b) of sub-section (3) of Section 8 of PML Act would indicate that order confirming the provisional attachment passed under sub-section (1) of Section 5 would become final only on conclusion of trial

and passing of confiscation order by a Special court. Hence, he would contend impugned notice dated 28.03.2018 (Annexure-F) is premature, highly illegal, arbitrary and liable to be quashed. 64

12.2) He would also submit that pursuant to impugned notice issued, petitioner had appeared before the adjudicating authority and had filed a detailed reply on 10.12.2012 (Annexure-D), pursuant to which, matter was finally heard and reserved for orders on 03.01.2013 i.e., before Amendment Act 2 of 2013 came into force with effect from 15.02.2013 and the order of confirmation came to be passed by the adjudicating authority after extracting the verbatim language found in the amended Section 8(3) as amended by Act 2 of 2013. He would contend that prior to Amendment Act 2 of 2013 came into force, Section 8(3) as it stood and amended under Act No.21/2009 with effect from 01.06.2009 where the words schedule offence before a court was substituted with the words offence under this Act and as such, the proceedings could not have been initiated against petitioners.

12.3) He would contend that entire crux of PML Act would revolve around the authorities exercising jurisdiction by virtue of Section 2(u), which broadly defines proceeds of crime as referred to in the penal provision Section 3. 65 He would draw the attention of the court to the said provision pre and post amendment, to contend that that prior to 2013 amendment, the endeavour of PML Act was to completely co-relate the proceedings under PML Act to a schedule offence. He would contend that requirement under Section 5(1) was that a person should be charged for the schedule offence. Section 3 would indicate that a person should have knowingly received the proceeds of the crime and this read along with Section 8(3) would confer the provisional attachment during the subsistence of the proceedings before the jurisdictional court for the schedule offence. He would contend that adjudicating authority decides under sub-section (2) that any property is involved in money laundering, would confirm the attachment of property made under sub-section (1) of Section 5 as per the procedure contemplated under Section 8(3) of PML Act. He would draw the attention of the court to post and pre amendment of sub-section (3) of Section 8 to contend that it is Sine qua non that there should exist a proceeding under the Act relating to an offence under the Act, more particularly a complaint under Section 45 of the Act should 66 exist for an offence under Section 3 which is punishable under Section 4. Contending that by

operation of law, when the provisional attachment was confirmed on 22.02.2013, there was no complaint filed by respondent under Section 45 of the Act for an offence under Section 3 punishable under Section 4. Hence, contending that by virtue of sub-section (3) of Section 5, order of attachment made under sub-section (1) on 25.09.2012 cease to exist after the expiry of the period specified in sub-section (1) of Section 5 and as such, it is liable to be quashed. 12.4) He would contend that complaint under Section 45 of PML Act was filed against petitioner in March, 2014 and referring to Section 5(3) and Section 8(3)(b) as it stood prior to Amendment carried out by Act 2 of 2013, he would contend that power of confiscation after confirmation of provisional attachment was taken away. He would submit that sub-section (5) of Section 8 earlier provided power of confirmation again back to the adjudicating authority, in the event of Special court forming an opinion that such person is guilty of offence 67 under Section 3, in which event, petitioner had a one more chance to appear before the adjudicating authority and demonstrate as to why the properties were not involved in the offence of money laundering. Thus, he would contend the power to confiscate again vested back with the adjudicating authority, but by virtue of 2013 amendment, said power was taken away from the adjudicating authority and same was conferred with the trial courts. Hence, he would contend, trial Court had to simultaneously decide as to whether such person was guilty of the offence of money laundering under Section 3 and as to whether properties that were attached were entitled for confiscation under Section 8(5). He would also contend, two fold criteria for confirmation under Section 8(3) as per 2013 amendment is that firstly, there should exist proceedings for an offence under this Act and secondly, such provisional order of attachment would become final upon order of confiscation being passed by the Special Court. In this background, he would contend that in the instant case, firstly, there was no complaint that was existing against the petitioner for an offence under the Act and secondly, there was no 68 complaint filed under Section 45 against the petitioner, as a result of which, the order of attachment by operation of law as contemplated under Section 5(3) would get extinguished. He would also contend that in case of petitioner, confirmation has not happened in terms of Section 8(3). Hence, by operation of law, provisional attachment order dated 25.09.2012 passed against petitioner stood extinguished.

12.5) He would submit that confirmation of attachment order should be read in terms of Section 8(3) and on account of the procedural defect under Section 8(3), the provisional attachment stood automatically vacated or in other words, it has not continued by operation of law. He would submit that requirement of Section 8(3) is, there should be an offence necessarily in existence under the Act. He would submit that if the authorities had invoked 2009 amendment against petitioner, there would have been absolutely no hurdle, as the provision then existing would specifically disclose that existence of scheduled offence would suffice for confirmation. However, respondent - 69 authorities have specifically invoked the provisions as found in Amendment Act 2 of 2013 and on account of attachment having not continued in terms of Section 8(3), by operation of law, Section 5(3) would surface and the provisional order of attachment passed under Section 5(1) would automatically extinguish. He has relied upon the following judgments in support of his contentions: i) MP-PMLA-3146/BNG/2017 (MISC) A/W MP- PMLA-1595/BNG/2015 (U/X35 AND FPA-PMLA- 446/BNG/2013: S.V. SRINIVAS vs. THE JOINT DIRECTOR. ii) CRL.P. NO.5102/2015, DECIDED ON1003.2016: SRI. S.V. SRINIVAS vs. STATE OF KARNATAKA. iii) M.P.PMLA-3145/BNG/2017 (MISC) A/W FPA- PMLA-444/BNG/2013: M. GOPI vs. THE JOINT DIRECTOR. iii) AIR 1958 SC915: ANANT GOPAL SHEOREY vs. THE STATE OF BOMBAY. iv)FPA-PMLA-1529/COCHIN/2016 AND CONNECTED MATTERS: SANTIAGU MARTIN AND OTHERS vs. THE DEPUTY DIRECTOR AND OTHERS. v) (2011) 3 ALT443(DB) = (2011) 164 COMP CAS149 B. RAMA RAJU vs. UNION OF INDIA AND OTHERS. 70

13. It is the contention of Sri Udaya Holla that in W.P.Nos.4215/2017, 6159/2017, 6173/2017 & 8261/2017 that confirmation of provisional order of attachment passed by the adjudicating authority on 21.02.2013 which is subsequent to amending Act of 2013 i.e. Act 2 of 2013 and the language employed in the amended Section 8(3) has been applied and it does not satisfy the requirement of Section 8(3), inasmuch as, there is no complaint under Section 45 of the Act for an offence under Section 3 punishable under Section 4 of PML Act. In the instant case, he would contend that complaint under Section 45 was filed on 24.3.2014 and thus by operation of law as contemplated under Section 5(3), the provisional order of attachment in the instant case cease to operate. Hence, the consequential

notice issued is also bad in law. 13.1) Insofar as W.P.Nos.4215/2017, 6159/2017, 6173/2017 and 8261/2017 he would contend that PML Act is a complete code by itself. He would also contend that impugned communication issued to Association of Mutual Funds of India - AMFI being a company, is not a person 71 and/or a listed entity as mentioned in Section 54 of PML Act and the said provision enlists certain officers who are to assist the authorities in the enforcement of the Act and it makes it clear that only officers who are appointed under the statute and as such, Section 54 has no application. He would also contend that AMFI is also not a reporting entity as defined under Section 2(wa) as indicated in Section 54(j) of the PML Act and as such, the purported exercise of jurisdiction by first respondent is illegal and void. 13.2) He would also contend that it is only the Director or any other officer not below the rank of Deputy Director authorized by him for the purpose of Section 17(1A) has the authority to exercise the power on the basis of the information in his possession and has reason to believe. He would contend that notice is issued by the Assistant Director who has no jurisdiction and as such, the impugned communication is illegal, void and without jurisdiction and therefore, liable to be quashed. 72

13.3) He would submit that within 30 days from the seizure or freezing, respondent No.1 has to take steps to make an application in terms of Section 17(4) of PML Act for retention or continuation of the order of freezing and such measures having not been taken, the proceedings are liable to be quashed. 13.4) He would further contend before exercising the power of freezing or seizure, it is mandatory requirement of respondent No.1 to provide its reasons to believe in writing and same is the mandate under Section 17(1) of the PML Act. Hence, he has prayed for allowing the writ petitions. He has relied upon the following judgments in support of his contentions: i) (2008)14 SCC186- ASLAM MOHAMMAD MERCHANT vs COMPETENT AUTHORITY & OTHERS. ii) (1976)3 SCC757- INCOME TAX OFFICER vs LAKHMANI MEWAL DAS. iii) (2008)2 SCC302- RAMAN TECH & PROCESS ENGG CO., & ANOTHER vs SOLANKI TRADERS. iv) (1998)8 SCC1- WHIRLPOOL CORPORATION vs REGISTRAR OF TRADE MARKS, MUMBAI & OTHERS. 73 v) W.P.(C) 5537/2018 & CM Nos.21583/2018 & 33487/2018, DECIDED ON2308.2018 - M/S.HIMACHAL EMTA POWER LIMITED vs UNION OF INDIA & OTHERS .

14. Sri Kiran S Javali, learned Advocate appearing for petitioners in W.P.Nos.17894/2015, 18557/2017, 19313/2016, 24444/2015 27744/2018, 36309/2017, 48031-33/2017, 33740/2016, 36310/2017, 46318/2017, 23176-77/2016 & 39889/2014 has contended as under: (a) That first proviso to Section 5(1) of PML Act as existed prior to 2013 amendment would indicate that basis for arriving at a conclusion there are reasons to believe to attach the property is traceable to report forwarded to a Magistrate under Section 173 of Cr.P.C. and this would be the foundation and in other words, if the final report under Section 173 Cr.P.C. is not forwarded, the attachment proceedings cannot be resorted to. He would contend that in the instant cases that proceedings initiated prior to 01.06.2009 is void, inasmuch as, it is only from the said date, Section 13(1) of PML Act was included into the schedule and only from that date, it would constitute a 74 crime for the purposes of PML Act and not prior to that and as such, proceedings initiated under the PML Act prior to 01.06.2009 is void ab initio. He would that the FIRs came to be filed subsequent to 01.06.2009 and as such, the proceedings initiated under the PML Act are bad in law. (b) He would also contend that under the unamended Section 8 of PML Act, confiscation can take place only if the guilt of the accused has been proved before competent court and post 2013 amendment, the Special court has been given the power to confiscate the property which has been attached. He would further contend that in Section 2(y) schedule offence has been defined and under clause (ii) the monetary limit had been fixed at Rs.30 lakhs till 14.05.2015 and from 15.05.2015 it has been fixed at Rs.1 crore or more. He would submit that Clause (ii) was substituted by Act 29 of 2009 with effect from 1.06.2009 and after Act, 2 of 2013 the schedule as indicated in clause (i), (ii) and (iii) of Section 2(y) has substantially changed and that it will have to be examined on case to case basis, the entry in the schedules 75 existing as on those dates and which relates to the final report under Section 173 of Cr.P.C. (c) He would draw the attention of the court to Section 5 to contend that initially order of attachment was for a period of 90 days which was increased to 150 days and then to 180 days. Secondly, by amending Act 2 of 2013 with effect from 15.02.2013, Sub-Section (1) of Section 5, the expression the Director came to be inserted, which expression was not found earlier. He would contend that by amending Act 22 of 2009, the proviso came to be amended. He would

draw the attention of the court to Sections 8 & 5 pre amendment of 2013, to contend that prior to 15.02.2013, the proceedings were with the adjudicating authority both for consideration of provisional attachment order and confiscation of the property thereafter. However, post 15.02.2013, it is only the provisional attachment order that is going to be passed by the adjudicating authority and confiscation of the same would lie to the Special court. Thus, area of consideration of confiscation is totally changed post 15.02.2013. Hence, 76 he would contend that if an applicant is going before the adjudicating authority with respect to matters or assets acquired prior to 1.6.2009 and if the proceedings have to continue, law would be that adjudicating authority can provisionally attach the property and await results of the predicate offence and if the law that stood prior to 15.02.2013 is applied, the provisional attachment ceases after acquittal and if convicted, still the such person is required to be heard before ordering confiscation of the property attached. He would also contend the situation has totally changed now making it mandatory for such person to face criminal trial in respect of a crime where final report presented by the investigating authority alleging that there is schedule offence. Thus, respondent- authorities retrospectively are proceeding against the petitioners for a crime which did not exist under this Act prior to 1.6.2009. He would submit that earlier situation under this Act was that confiscation or prosecution are separate and distinct which is how it was under section 8(5) and 8(6) prior to 15.02.2013 and post 15.02.2013, and now petitioners are made to face trial under the PML Act 77 for the offence which did not exist and the respondent- authorities are attempting to make non-existing offence as a crime on the date he did not exist. (d) He would contend that respondents wants the petitioner to go before the authority and submit that there is no authority provided under section 8 and there is an appeal under section 26 of the Act and thereafter to the High Court. All these proceedings post 15.02.2016 will be restricted or limited only to the provisional attachment. Satisfaction of the authority to the existence of some material for him to derive satisfaction that there is a crime and these are proceedings of crime, he cannot do anything more than that. Then, the question that would arise would be which is the law to be applied?. The law to be applied as on that date when the crime allegedly took place as set out in the final report under Section 173 or ECIR registered by the Enforcement Directorate

based on report under Section 173 or the law on the date the proceedings are going on under Section 8 before the adjudicating authority or law 78 when the appeal is pending before appellate authority under Section 26. (e) He would submit that proceedings initiated prior to 15.02.2016 which provided for confiscation only after the prosecution is over in the schedule offence is no longer available under the Act and such person is now compulsorily required to face trial. These proceedings are not just proceedings for confiscation, it is proceedings only as prelude to the prosecution. These aspects of the matters are to be adjudicated by this court as they are not admittedly within the jurisdiction of the adjudicating authority or appellate authority and thereby such person is made to face trial which was not in existence prior to 15.02.2016 or 01.06.2009. The scenario has changed from 1.7.2005, 6.3.2009, 15.3.2013 & 29.3.2018. If that is the position and petitioners are before this court in the year 2018, then, this court will have to look at the law existing as on 29.03.2018 and the next question would be as to what position of law as on that date will have to be applied, has to be gone into. Thus, it would mean, all 79 these contentions will have to be urged before the Special court constituted under Section 43 and not before the adjudicating authority or the appellate authority on the ground of they are doing only confirming the order of attachment. (f) He would draw the attention of the court to Section 24, which provides for burden of proof. He would submit that prior to 15.02.2013, it was made applicable only when a person is accused of having committed an offence under Section 3 of the Act and now the burden of proof has changed. The petitioners are in a situation prior to 15.02.2013 which provision then existed cast the burden of proof was applicable only to a person accused of offence under Section 3 and there was no such proceedings initiated are pending against the petitioners at the relevant point of time. Consequently, Section 24 as it then stood would be available to the petitioners. However, the respondents would now say no to the petitioners namely, they are contending that existing Section 24 is to be applied. 80 He has relied upon the following judgments in support of his submissions: i) (1994) 4 SCC602 HITENDRA VISHNU THAKUR AND OTHERS vs. STATE OF MAHARASHTRA AND OTHERS. ii) AIR 2001 SUPREME COURT958 SOLIDAIRE INDIA LTD., vs. FAIRGROWTH FINANCIAL SERVICES LTD. AND OTHERS. iii) AIR 1977 SC265 SARWAN SINGH AND ANOTHER vs.

KASTURI LAL. iv) AIR 2000 SC1535 ALLAHABAD BANK vs. CANARA BANK AND ANOTHER. v) (1990) 4 SCC76 NIRANJAN SINGH KARAM SINGH PUNJABI vs. JITENDRA BHIMRAJ BIJJAYA AND OTHERS. vi) (1996) 5 SCC1 BIJAYA KUMAR AGARWALA vs. STATE OF ORISSA. vii) (1986) 4 SCC746 STATE OF KERALA vs. MATHAI VERGHESE AND OTHERS. viii) (2013) 4 SCC540 TEJ PRAKASH PATHAK AND OTHERS vs. RAJASTHAN HIGH COURT AND OTHERS. ix) (2013) 5 SCC111 STATE OF ANDHRA PRADESH AND OTHERS vs. CH. GANDHI. x) (2014) 3 SCC151 VARINDER SINGH vs. STATE OF PUNJAB AND ANOTHER. xi) (2000) 2 SCC536 KOLHAPUR CANESUGAR WORKS LTD AND ANOTHER vs. UNION OF INDIA AND OTHERS. xii) (2016) 1 HCC (DEL) 265: MAHANIVESH OILS AND FOODS PRIVATE LIMITED vs. DIRECTORATE OF ENFORCEMENT. 81 xiii) CRL.O.P.NOS. 10497 AND10500OF2017 SHRI AJAY KUMAR GUPTA AND OTHERS vs. ADJUDICATING AUTHORITY (PMLA) AND OTHERS. xiv) (1998) 8 SCC1 WHIRLPOOL CORPORATION vs. REGISTRAR OF TRADE MARKS, MUMBAI AND OTHERS. xv) SLP (CRIMINAL) DIARY No.4968/2018: ADJUDICATING AUTHORITY (PMLA) AND OTHERS vs. AJAY KUMAR GUPTA AND OTHERS. xvi) CRL.R.P. NO.432/2013 C/W CRL.P NO.2313/2016, DECIDED ON0311.2016: SRI KATTA SUBRAMANYA NAIDU vs. STATE OF KARNATAKA.

15. Sri Arvind Kamath, learned Senior counsel appearing for petitioner in W.P.No.5269/2017 would contend that the property purchased by the petitioner is under sale deed dated 19.10.2000 and the consideration has been paid by the petitioner from her lawful funds and lawfully borrowed money. He would submit that petitioner has constructed a house and has been residing there along with his family members and prima facie, it would establish that schedule property was acquired by the petitioner by lawful means. He would also contend that certain transactions that took place during September to October, 2010 has been correlated to the proceeds of crime under 82 the impugned order dated 03.01.2017 (Annexure-B) and well before September, 2010 the loan borrowed by the petitioner had also been settled with the Bankers, secured creditor and there being no relationship between the acquisition of the schedule property and the proceeds of crime, the provisional attachment order dated 03.01.2017 (Annexure-B) is liable to be set aside. He would further contend that the respondents have erroneously

concluded that proceeds of crime were utilized to clear the debts against the schedule property i.e., repayment of Rs.1.2 crores to M/s.Cholamandalam Investment and Finance Company, inasmuch as, the petitioner had already completed acquisition of the property by a registered sale deed and thereafter on the request of her husband, she had borrowed a loan of Rs.1.2 crores from M/s.Cholamandalam Investments and Finance Company and then lent the said amount to the company M/s.Ignis Technology Solutions Private Limited, of her husband of which, she was also a Director and the said loan was neither borrowed for acquisition of the property or for repayment of the loan borrowed for such construction. On 83 the other hand, it was borrowed as a personal loan by the petitioner lent to the company. He would contend that respondent is empowered to initiate action under Section 5 of PML Act only in respect of proceeds of crime and the property purchased by the petitioner was not out of the proceeds of crime. Hence, contending that authority has no jurisdiction to initiate proceedings under PML Act has sought for allowing the writ petition.

16. Sri R Nagendra Naik, learned counsel appearing for petitioner in W.P.No.42157/2016 would contend that Section 5 does not contemplate enquiry and summoning of accused at the stage of adjudication of provisional attachment does not arise and hence, the impugned notice is liable to be quashed. He would also submit Section 8 provides for enquiry and under Section 8, the adjudicating authority decides that property is involved in money laundering and thereafter 90 days time is allowed for investigation and criminal case can be registered if required only after decision of the adjudicating authority. 84 He has relied upon the following judgment in support of his contentions: i) 2011(5) KCCR4080-Smt.P.VIJAYALAKSHMI vs DEPUTY DIRECTOR, ENFORCEMENT DIRECTORATE AND ANOTHER.

17. Sri Nagendra Naik, learned counsel appearing along with Sri Muniyappa in W.P.No.24480/2018 would contend that Section 50 of PML Act does not authorize the Assistant Director to freeze the Bank account. He would contend that proviso to subsection (5) prohibits the authorities mentioned thereunder from impounding any records without recording reasons for doing so, by referring to Rule 6 of the Prevention of Money Laundering (Forms, Search and Seizure or Freezing and the

manner of forwarding the reasons and material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005. Hence, he has prayed for allowing the writ petition by quashing the impugned order.

18. Sri Vijayakumar Bajantri, learned counsel appearing for petitioner in W.P.No.13160-66/2017 would contend that petitioner who was tried for the offence punishable under Section 13(1)(e) and 13(2) of PC Act has been acquitted on 23.02.2017 and as such, there being no predicate offence, proceedings initiated against the petitioner under PML Act is liable to be quashed. He would also contend that FIR against the petitioner for the offence punishable under Section 13(1)(e) and 13(2) of PC Act was registered on 30.06.2010 and provisional order of attachment was passed on 20.10.2016 and prior to the attachment, the proceedings under PML Act has been initiated under Section 3 by issuance of notice dated 15.09.2010 (Annexure-F) on which date, Section 13 of PC Act did not find a place in the schedule to PML Act and it was included by Act 2 of 2013 with effect from 15.02.2013 and there being no criminal case in existence as on the date the proceedings under PML Act was initiated, the amended provision could not have been made applicable to the petitioner. Hence, the proceedings initiated against petitioner is liable to be quashed. 86

19. Sri Aniyam Joseph, learned counsel appearing for petitioners in W.P.Nos.28027/2018 & 35991/2018 would reiterate the contentions raised by the learned Senior Advocates who have challenged the provisional attachment order and consequential possession notice. 19.1) He would submit in W.P.No.35991/2018 that provisional order of attachment was passed on 27.03.2014 and confirmed on 15.12.2014 against which, appeal has been filed and is pending before the appellate authority and yet notice dated 07.06.2018 has been issued to take possession of the property which has been called in question in W.P.No.28027/2018 and he has prayed for allowing the writ petition, contending inter alia that Sri T Basavaraj (petitioner in W.P.No.35991/2018) was working in Department of Education, Government of Karnataka as a teacher and retired on 30.09.2012 as District Education Officer and just prior to his retirement on 25.06.2009 an FIR in Crime No.9/2009 was registered on 25.05.2009 by the

Lokayukta Police, Mysore and after investigation, charge sheet has been filed on 25.05.2013 for the offence 87 punishable under Section 13(1)(e) and 13(2) of PC Act alleging that he had amassed wealth disproportionate to his known source of income. It is also contended that house has been constructed and the predicate offence was not a schedule offence under the PML Act at the time of registration of FIR and Section 13 of PC Act was inserted a schedule offence with effect from 01.06.2009 and as such, the proceedings initiated against the petitioner is liable to be quashed. Hence, on these grounds, he has prayed for both the petitions being allowed. In support of his submissions, he has relied upon the judgment of Honble Apex Court in the matter of KALPANATH RAY vs STATE (THROUGH CBI) reported in (1997)8 SCC732 20. Sri B S Sachin, learned counsel appearing for petitioner in W.P.No.57756/2016 has sought for quashing of the provisional order of attachment dated 30.06.2016 contending interalia that said order has been passed on assumptions and presumptions and the petitioner has sold the property bearing Sy.No.40/5(P) and 40/8 of Idya village, Mangalore Taluk measuring 19 cents which is a 88 non-agricultural property in the year 2012 and the mineral water plant is not sold and the petitioner is no way concerned with the transactions of Sri.Dyana Antony Paul and others and petitioner has been wrongly arrayed as a party to the proceedings. Hence, he has prayed for quashing of the provisional order of attachment. He would also reiterate the contentions raised by the learned Advocates who have hitherto argued.

21. Sri Sanketh Yenagi, learned Advocate appearing for petitioner in W.P.No.14158/2017 has prayed for quashing of the provisional order of attachment including the complaint lodged in O.C.No.683/2017 (Annexure-B) and the consequential notice dated 14.02.2017, contending interalia that the property/assets which are sought to be attached were acquired prior to 01.06.2009 namely, it was acquired on 19.07.2004 and the offences alleged are on the basis of investigation by CBI which was committed prior to 2009 namely, prior to the insertion of provisions of PC Act to the schedule of PML Act. Hence, he has sought for 89 quashing of the provisional order of attachment, complaint and consequential notice.

22. Sri Vinaya Keerthi, learned Advocate appearing for petitioner in W.P.No.62182/2016 has sought for quashing of the order dated 22.07.2016 (Annexure-C) whereunder the provisional order of attachment came to be confirmed, contending inter alia that constitution of adjudicating authority is without a judicial member and as such, impugned order is liable to be set aside. It is also contended, the order of attachment is without notice to the respondent. Hence, he has prayed for quashing of the impugned order.

23. In W.P.No.41176/2017, Sri Thrimurthy, learned Advocate appearing for petitioner has challenged the communication dated 23.08.2017 whereunder first respondent by forwarding the order dated 16.08.2017 confirming the provisional attachment order and has requested the Bank to transfer a sum of Rs.58,37,34,000/- by contending that the order of attachment and its confirmation thereof is erroneous, contrary to Section 8 of 90 PML Act on the ground that it is not a party in the complaint before the adjudicating authority, since the petitioner Bank as a secured creditor, has a claim over the fixed deposits. He has also reiterated the contentions raised by Sri Udaya Holla, learned Senior counsel appearing for petitioners in the connected matters.

24. Sri K.M.Nataraj, learned Additional Solicitor General of India appearing for the respondents would contend that PML Act is targeted at money or source of proceeds of crime, which a person derives from a particular offence. It is contended that such person might have acquired some assets through tainted means or illegally and when such person comes before the society and claims that said money was acquired by proper means, then he is guilty of this offence. He would submit that we are not at all concerned about other offence/s. A person might have committed it long back. Incorporation of certain offences in the schedule is to bring it within the net of PML Act i.e., proceeds of that crime is also brought within the purview of this Act. Unless it is brought within the schedule, proceeds 91 of crime even by assuming that he has acquired some wealth by wrong means, then, he is not under the provisions of PML Act. He would submit that at different points of time, by amendment, scheduled offences have been incorporated so that proceeds of crime arising out of that particular offence also is an offence under this Act. Hence, he brings to the notice of the court Section 3 to

contend that offence under the PML Act is connected with the proceeds of the crime and not the crime. He would submit that when a person projects the property secured by illegal means as untainted property, same would be brought under the net of PML Act, as it amounts to money laundering. Hence, he contends that the offence indicated under Section 3 is a standalone offence and it has nothing to do with the scheduled offence committed. Hence, the argument of the petitioners that condition precedent to bring money laundering within Section 3, there must be scheduled offence, is erroneous. He would submit that Section 498A of IPC is not a scheduled offence under PML Act. By assuming that he has acquired some property and even he projects it as untainted property, he is not guilty of 92 money laundering, but in respect of scheduled offence, when he projects it as untainted property, he is guilty of offence punishable under PML Act. Therefore, offence under PMLA is stand alone offence and as such person will be tried independently by the court, he may be guilty or he may not be guilty, it is irrelevant. 24.1) He would submit that a person might have acquired vast properties in the name of third parties and there may be couple of people involved in activities and said person might be tried under the PC Act and on being tried for the offence punishable under PC Act he may be punished for the offence under PC Act at that point of time. He submits that under PML Act, the authorities are targeting two things. One is property which may be the subject matter of the proceedings under PC Act or IPC which may be in the hands of somebody else. Now if third party knowingly acquires or possess or projects it as untainted property, same is brought under Section 3 of PML Act. Therefore, double jeopardy concept propounded by the learned counsel appearing for petitioners that such 93 person was already tried under the PC Act at some point of time and at that time, the provision of PC Act was not there in the schedule, has no legs to stand under this Act. He would submit present affairs are covered by the present law or in other words present affairs are determined on the basis of existing law. As of now, Section 3 would indicate that either acquiring, projecting or concealment, of the proceeds of crime is an offence. So far as money laundering is concerned, concealment of proceeds of crime is an offence. Section 2(u) mandates by virtue of scheduled offence some proceeds of crime if knowingly acquired or in possession or acquisition, it would become crime and projecting any activity

connected to it, is an offence under Section 3 of PML Act. That is how Section 3 is to be read. 24.2) He would submit that any schedule offence which may be under the IPC or any notified offence, then such person will be tried independently for the offence that was existing at that point of time. By different enactments, what is targeted is proceeds of activities that such person may acquire some property and if it is projected as untainted or knowingly in possession of such property and attempt is made to bring it or thrust into the main stream, entire focus would be that by virtue of such activity, then such person will be guilty of the offence specified under Section 3 and liable for punishment under Section 4. 24.3) He would submit that under the provisions of the PML Act, a person who is found guilty of the offence, the property will be confiscated to the Government and it becomes property of the Government. He would contend for invoking Section 5 of the PML Act, such prescribed authority will have to meet with three (3) requirements namely, (i) he has reason to believe; (ii) has material on the basis of which he has reason to believe; and, (iii) such material should be in his possession. Then, in such an event he may by order in writing provisionally attach such property for a period not exceeding 180 days from the date of order. He would submit that Section 5 and Section 8(a) cannot be read in isolation as sought to be made out by the counsel for the petitioners. He would submit that a provision in a statute must be read word to word and sentence to sentence and not in isolation. 24.4) He would also submit that by Act 2 of 2013 it clarifies that the adjudicating authority while confirming the order of attachment made under sub-section (1) of Section 5 or retention of property or records seized or frozen under Section 17 of 18, such order would continue during the pendency of the proceedings relating to any offence under the PML Act or under the corresponding law of any other country before the competent court of criminal jurisdiction outside India, as the case may be vide clause (a) of sub-section (3) of Section 8. Thus, by clarification in 2013 amendment it only clarifies the position as to what period the confirmation order of attachment should continue. 24.5) He would draw the attention of the court to Section 8(4) of PML Act to contend that the Director or any other officer authorized by him would be required to take possession of the property, where the provisional order of attachment is confirmed and it is a statutory mandate without any discretion to the authorities. He would submit

that in some of the writ petitions possession notice have been challenged and the authorities having no discretion at all, they are bound by the mandate of Section 8(4) to take possession forthwith on provisional order being confirmed. He would submit that possession means physical possession and repelling the contention raised by Sri. Nagendrda Naik by relying upon judgment of Madras High Court in THE DEPUTY DIRECTOR & OTHERS vs A.KAMARUNNISA GHORI & OTHERS (M.A.No.1/2012 in W.A.No.2137/2012 and M.P.No.2/2012 in W.A.No.2138-2140/2012, decided on 11.07.2012) to contend that 2013 amendment was not available at that time and said judgment was rendered on 11.07.2012 i.e., much before Act 2 of 2013 came into force. He would submit that language employed under Section 8(4) by 2009 amendment is different from the language employed in Section 8(4) post 2013 amendment. Therefore, language of the provision as found in Section 8(4) shall forthwith take possession of attached property came to be amended by inserting the expression possession of the property attached under 97 Section 5 or frozen under sub-section (1-A) of Section 17, in such manner as may be prescribed. The Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authorities) Rules, 2013, having come into force w.e.f. 19.08.2013 would govern the issue relating to the manner in which possession of such movable or immovable properties is to be taken, vide Rule 4 and 5 respectively. Hence, he would contend that the contentions raised by the learned Advocates appearing for the petitioners that taking possession would only mean constructive possession, would not hold water and the prescription in which possession of the property has to be taken as indicated in sub-section (4) of Section 8, has resulted in 2013 Rules being framed and if the intention of the parliament was only to include constructive possession and not physical possession, they would have said so. Hence, he would contend that a delegated amendment partakes the character of a statutory provision. Section 5(4) also makes it very clear that at the initial stage only attachment is permitted and the authority has not been 98 allowed to take possession and such person is allowed to enjoy the property and only when provisional order of attachment is confirmed, possession can be taken by depriving enjoyment of the property, in the manner prescribed namely, as per 2013 Rules. Hence, it is contended that KHAMARUNNISAs case relied upon by the petitioners has no

application at all to the present scenario by virtue of amendment of the Act and also having regard to the Rules made thereunder. Even otherwise, he would contend that observation made in KAMARUNNISAs case is referable to that particular judgment only and has no universal application. He would further submit that his argument on this proposition is fortified by referring to Section 2(t). He would draw the attention of the court to proviso to Section 8(4), Section 8(5) and 8(6) of the PML Act to contend that attachment and confirmation would depend upon conclusion of a trial under the PML Act and not depending upon the trial or outcome of the scheduled offence. He would submit that sub-section (5) & (6) of Section 8 is a complete answer to this proposition. By drawing the attention of the court to sub-section (7), (8) 99 and (9) of Section 8 of PML Act he would submit that the same deals with the consequences of property that has been confiscated to the Government and till such time the steps prescribed under sub-section (1) to (4) are all steps in aid of further proceedings, which are to take place under the provisions of the PML Act and therefore, the authorities under the PML Act are holding the property so attached are seized or frozen as statutory trustees, ultimately to achieve the object of the PML Act. 24.6) He would read Section 10 of PML Act which relates to management of properties confiscated. He would also invite the attention of the court to Section 23 and 24 of the PML Act, which relates to the presumption in interconnected transactions and upon whom the burden of proof lies. He would contend that under Section 23 the adjudicating authority and the special court is empowered to presume that where money laundering involves 2 or more interconnected transactions and 1 or more such transactions is or are proved to be involved in money laundering, such authority or court can draw presumption, 100 shall otherwise proved or rebutted. To illustrate this issue, he would contend that one transaction when it had taken place in 2010 or 2012 and out of the proceeds, such person had acquired some property and there is a connection with the proceeds of crime, it can be presumed by the authority or court, as the case may be that remaining transactions form part of such interconnected transactions. In other words, he would submit the person who claims that such transactions are not interconnected is required to prove the said fact. He would also draw the attention of the court to Section 24 of PML Act, which places the burden of proof on the person charged with the offence of money

laundering to prove that the money is not relatable to proceeds of crime and same is not used for money laundering. He would submit that unless the contrary is proved, presumption is that such proceeds of crime are involved in money laundering. 24.7) He would contend that under Section 26 of PML Act first appeal lies to the appellate tribunal and under Section 42 an appeal lies to the High Court against 101 the decision of the appellate tribunal and thereby, two (2) layers are provided under the PML Act to an aggrieved person. He would also submit that PML Act is a complete code for redressal of the grievance with two (2) layered mechanism. 24.8) He would contend that in respect of the offences punishable under Sections 3 & 4 of PML Act, special courts are constituted under Chapter VII whereunder we get a clue with regard to offences which had taken place even before commencement of the Act. He would draw the attention of the court to Section 44 of PML Act to contend that such special courts would not only conduct trial of the offence punishable under Section 4 but also try an offence other than offence referred to in sub-section (1) of Section 43 which means that the offence under the PML Act as well as offence under any other enactment to which such persons may be charged. He would submit that Section 48 prescribes the authorities under the PML Act and sub-section (2) of Section 49 empowers the Central Government to authorize the 102 Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under sub-section (1) to appoint other authorities below the rank of an Assistant Director. He would also draw the attention of the court sub-section (2) of Section 50 to contend that power of investigation is conferred upto the Assistant Director or any officer as may be appointed under Section 49(2) including the Director. He would submit sub-section (3) of Section 50 is in paramateria with Section 104 of Customs Act. He would also draw the attention of the court to Section 54 of the PML Act where certain officers are empowered and required to assist the authorities in the enforcement of the PML Act. 24.9) By referring to Chapter IX he would contend that Reciprocal Arrangement for assistance in certain matters and procedure for attachment and confiscation of property has been provided and it is an enabling provision when there is cross border implications or matters falls under contracting state where the Government of India takes the assistance of other countries. He would submit 103 that this Chapter has to be read along with provisions of the

PML Act and not in exclusion. By reading Section 56 of PML Act, he would submit that it is an enabling provision to enter into agreement with foreign countries and it does not exclude other provisions of the PML Act. 24.10) He would further submit that reading of Section 60 of PML Act would indicate that whatever orders that are passed under the PML Act, would be applicable in a contracting state or in India. He would submit by interpreting Chapter IX that it cannot be said that order of attachment is vitiated though reciprocal agreement provides otherwise. He would submit that where an order of attachment has been passed and it is to be executed in a contracting state by virtue of reciprocal agreement with another country, Section 60 would come to the assistance and in such circumstances, a letter of request to a court or an authority in the contracting state for execution of such order will be issued. 24.11) He would submit that these are the salient features of the PML Act under which authorities 104 pass order. There are three streams of proceedings namely, (1) scheduled offence that will be independently tried i.e., independent offence; (2) offence under the Act i.e., which is Money Laundering is totally a standalone offence; and, (3) in aid of the proceedings under Sections 3 & 4 read with offence indicated in Section 44 and all these ultimately depend upon the result of Chapter III i.e., with regard to attachment that comes into play. Ultimately, attachment under Section 5 and 8 depends upon trial of the offence under the PML Act. 24.12) He would draw the attention of the court to Section 8(5) and 8(6) to contend that conviction is not required and if a finding has been recorded by the court that there is offence of money laundering, it would suffice. He would also submit that once a complaint is filed, it is for the special court to take cognizance of the offence under Section 3 and proceed with the matter as prescribed under Section 44 of the PML Act. Where the complaint is filed for the offence under Section 3, what is targeted is only the projection and whether such person who is accused of 105 money laundering, had amassed wealth or not would not be the criteria at all and this distinction has to be borne in mind. 24.13) He would submit that in some of the matters, the order of attachment or its confirmation thereof has not been challenged and only the statutory notice issued under sub-section (4) of Section 8 is challenged. 24.14) He would also submit that constitutional validity of Section 8 which has been challenged in W.P.Nos.15917/2013 and 15918/2013 has already been upheld by three

judgments of this court in W.P.Nos.14649/2014 c/w 19732/2014 dated 28.01.2016 and contends that the said ground has to fail. He would also draw the attention of the court to the judgment of Ramrajus case and to the judgment of Usha Agarwal rendered by Sikkim High Court to contend that in the writ petitions filed in W.P.No.15917/2013 what has been challenged is only notice issued under Section 8(4) which is a consequential notice and the order of provisional attachment and its confirmation thereof has not been 106 challenged and as such said writ petitions are liable to be dismissed. He would also submit that petitioner has nowhere contended that the authority who has issued the notice is without jurisdiction. 24.15) He would also contend that in some of the writ petitions only possession notice has been challenged and against order of attachments the appeals are pending before the appellate authority and on the ground that there was no sitting of the appellate authority and they are likely to be dispossessed they had approached this court and they have obtained interim orders by suppressing the fact the appellate authority had in fact being conducting the proceedings. He would submit that taking possession would mean physical possession and the authorities have recourse to Rule 3 and 5 of Rules 2013 and as such the petitioners are not entitled to the reliefs sought for. 24.16) He would submit that arguments of Sri. Nagendra Naik canvassed with regard to symbolic possession in W.P.No.20307/2017 by referring to KAMARUNNISSAs case would be inapplicable to the facts 107 on hand, inasmuch as, there are two parts in the said judgment namely, it was rendered on 11.07.2012 in the background of 2009 amendment and even otherwise, said judgment has been stayed by the Division Bench. He would also submit that except physical possession aspect rendered thereunder, entire judgment is against the contentions raised by him. 24.17) He would also refer to the arguments canvassed by Sri. Manmohan, learned counsel appearing for petitioners with reference to cross border implication to contend Chapter IX is only an enabling provision namely, it would enable to execute the order of attachment and connected issues by entering into reciprocal arrangement with any other country and it would not take away the effect of authority to pass the order of attachment. He would submit that provisions in Section 55 to 61 of PML Act is not to weaken other provisions of the PML Act. He would submit that with regard to retrospectivity Sri Manmohan has relied upon the judgment in the

case TECH MAHINDRA in support of his contention and the prayer in 108 the said proceedings was for quashing criminal case and the appeal filed before the Division Bench as dismissed as not maintainable and the Honble Apex Court has observed that on facts the impugned order did not call for interference. He would submit that the two judgments rendered by the Delhi High Court in the matter of AJANTA MERCHANTS AND ARUN KUMAR MISHRA by relying upon TECH MAHINDRA's case has been challenged and stayed. He would contend that TECH MAHINDRA's case came to be examined in the context of criminality i.e., Section 3 criminal proceedings visa-vis knowledge of the person who commits offence, on merits by examining the facts and arriving at a conclusion that the petitioner had no knowledge. 24.18) He would also rebut the contentions raised by Sri Uday Holla with regard to the authority of the Assistant Director to freeze the account and contends that Section 17 has no application at all as it is not a case of search or seizure. He would submit Section 54 is an added safeguard during investigation. He would also submit that 109 the impugned communication issued to AMFI to give certain information has not questioned the said communication and both the banks and AMFI have furnished the information, but the petitioners have contended that under Section 54 AMFI is not required to give information and under Section 17 of PML Act Assistant Director has no jurisdiction. He would submit that during course of investigation the authority has right to secure the information from anyone and it is a statutory obligation for such of those authorities prescribed under Section 54 to assist during investigation. By relying upon the judgment of the Calcutta High Court in Rose Valley Real Estate and Constructions Ltd. V. Union of India he has prayed for rejection of said writ petition. By drawing the attention of the court to the impugned communication issued to AMFI and Bank, he would contend that they need not be reporting entity and by virtue of interim order granted the petitioners have withdrawn all the amounts and as such the petitioners are bound to disclose the amount which has been withdrawn by them. 110

24.19) He would also contend what is challenged is either provisional order or confirmation order or consequential notice. Hence, we are not concerned about prosecution of the case. Since Sections 44, 45 & 46 falling under Chapter VII deals with criminal proceedings, whereas, the order of attachment and its

confirmation thereof would fall under Chapter III and under Chapter III, limited examination is to be made. He would submit that only with the intention of protecting the property as otherwise, it may frustrate the proceedings, the safeguard is provided under Chapter III. The authorities who act under Chapter III are only statutory trustees who would preserve the property. By drawing the attention of the court to Section 8(3), he would submit that investigation is not a condition precedent for purposes of criminal prosecution. The authorities are empowered to file a criminal case or leave at that. He would refer to Section 8(5) to contend that there would be no necessity for separate confiscation order being passed and on conclusion of a trial of an offence under the Act, if the Special court finds that the offence of money laundering 111 has been committed, it can order such property involved in the money laundering or which has been used for the commission of money laundering to stand confiscated to the Central Government. He would further contend that under Section 8(3), first it is confirmation of attachment and then, continue the investigation for a period not exceeding 90 days and thereafter file a complaint before the Special court which is the purport of 2018 amendment. 24.20) He would also submit that proceedings relating to provisional attachment and its adjudication for confirmation is not an appeal proceedings, but original proceedings and as such, the petitioners cannot be heard to contend that under Article 226 or 227 of the Constitution of India, this court is required to examine the said proceedings in threadbare. He would submit that confiscation would arise only after conclusion of trial and in none of the cases which are before this court the said issue has not arisen and as such, the principles as applicable to confiscation including the provisions thereof would have absolutely no bearing on these proceedings. 112

24.21) He would also contend that even a financial institution not being a reporting entity, the proceedings can be proceeded and it is a matter of investigation. Hence, officers authorized to investigate can seek information from any person whether it is governmental body or private body and this being one step of the investigation. He would rely upon ROSE VALLEYs judgment to support his submission in this regard. He would also submit that Assistant Director is the competent authority to issue notice and by referring to sub-section (2) of Section 50 he would contend incidental power of investigation for the purposes of the Act

is to ensure enforcement of the provisions of the Act. Hence, he prays for dismissing the writ petitions. He has relied upon the following judgments in support of his contentions: i) 2015(3)CLJ(CAL)536: ROSE VALLEY REAL ESTATE AND CONSTRUCTIONS LTD. AND OTHERS vs.. UNION OF INDIA AND OTHERS. ii) 2018 SCC ONLINE MAD3138 SMT. SOODAMANI DORAI vs. THE JOINT DIRECTOR OF ENFORCEMENT (PMLA) AND OTHERS. 113 iii) (2003) 7 SCC628 BALRAM KUMAWAT vs. UNION OF INDIA AND OTHERS. iv) (1987) 2 SCC364 STATE OF GUJARAT vs. MOHANLAL JITAMALJI PORWAL AND ANOTHER. v) (2013) 7 SCC439 Y.S. JAGAN MOHAN REDDY vs. CENTRAL BUREAU OF INVESTIGATION. vi) (1986) 2 SCC237 M/S GIRDHARI LAL AND SONS vs. BALBIR NATH MATHUR AND OTHERS. vii) (2015) 16 SCC1 GAUTAM KUNDU vs. DIRECTORATE OF ENFORCEMENT (PREVENTION OF MONEY-LAUNDERING ACT) GOVERNMENT OF INDIA THROUGH MANOJ KUMAR, ASSISTANT DIRECTOR, EASTERN REGION. viii) (1996) 4 SCC622 DELHI DEVELOPMENT AUTHORITY vs. SKIPPER CONSTRUCTION CO. (P) LTD. AND ANOTHER. ix) 2014 AIR SCW2550 RAM BUILDERS vs. STATE OF M.P AND OTHERS. x) SLP (CRIMINAL) DIARY NO.34143/2017: JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT AND OTHERS vs. TECH MAHINDRA LTD. AND ANOTHER. xi) W.P. NO.17525/2014 DECIDED ON2212.2014: TECH MAHINDRA LIMITED vs. JOINT DIRECTOR. xii) (2007) 5 SCC211 PUNE MUNICIPAL CORPN vs. STATE OF MAHARASHTRA AND OTHERS. xiii) M.P.NO.1 OF 2012 IN W.A.2137/2012 AND M.P.NO.2 OF 2012 IN W.A.2138 TO21402012, DECIDED ON1107.2012: THE DEPUTY DIRECTOR AND OTHERS vs. A. KAMARUNNISA GHORI AND OTHERS. xiv) CRL.P. NO.432/2013 C/W CRL.P. NO.2313/2016 DECIDED ON0311.2016: SRI. 114 KATTA SUBRANANYA NAIDU AND ANOTHER vs. STATE OF KARNATAKA. xv) (2003) 3 SCC57 COMMISSIONER OF INCOME TAX vs. HINDUSTAN BULK CARRIERS. xvi) (2002) 5 SCC738 SHASHIKANT SINGH vs. TARKESHWAR SINGH AND ANOTHER. xvii) (2013) 7 SCC653 LILY THOMAS vs. UNION OF INDIA AND OTHERS. xviii) CRL.M.P.NO.18478/2015 DECIDED ON2311.2015: DIRECTORATE OF ENFORCEMENT vs. M/S AJANTA MERCHANTS PVT. LTD. xix) W.P. (CR.) NO.325/2010 DECIDED ON0608.2010: HARI NARAYAN RAI vs. UNION OF INDIA AND ANOTHER. xx) CR.M.P. NO.2686/2013 DECIDED

ON0603.2014: NARANDRA MOHAN SINGH AND ANOTHER vs. DIRECTORATE OF ENFORCEMENT, RANCHI AND ANOTHER. xxi) SPECIAL CIVIL APPLICATION NO.4171/2012, DECIDED ON3107.2013: ALIVE HOSPITALITY AND FOOD PRIVATE LIMITED vs. UNION OF INDIA AND OTHERS. xxii) FIRST APPEAL NO.967/2010 A/W FIRST APPEAL NO.968/2010 DECIDED ON2909.2011: OM PRAKASH DAULAT RAM NOGAJA vs SHRI ATUL VERMA AND ANOTHER. xxiii) FIRST APPEAL NO.527/2010 A/W FIRST APPEAL No.529/2010 DECIDED ON0508.2010 : RADHA MOHAN LAKHOTIA AND ANOTHER vs THE DEPUTY DIRECTOR AND ANOTHER. xxiv) CRL.O.P. NO.2240/2011 DECIDED ON1307.2012 : M. SARASWATHY AND ANOTHER vs. THE REGISTRAR AND ANOTHER. 115 xxv) W.P(C) NO.15378/2016 DECIDED ON1911.2016: A.K. SAMSUDDIN vs. UNION OF INDIA AND OTHERS. xxvi) W.A. NO.764/2015 AND M.P.NO.1/2015 DECIDED ON1808.2015: R. SUBRANANIA vs. THE ASSISTANT DIRECTOR. xxvii) ANTICIPATORY BAIL APPLICATION NO.823/2012 DECIDED ON0104.2013: NITISH J.

THAKUR vs. STATE OF MAHARASHTRA AND ANOTHER. xxviii) (2011) 10 SCC235 UNION OF INDIA vs. HASSAN ALI KHAN AND ANOTHER. xxxix) SLR 2017 SIKKIM280: SMT. USHA AGARWAL vs. UNION OF INDIA AND OTHERS. xl) SPECIAL LEAVE TO APPEAL (CRL) CRLMP No.18015/2015, DECIDED ON2311.2015 - DIRECTORATE OF ENFORCEMENT, NEW DELHI vs ARUN KUMAR MISHRA. xli) AIR 1970 SC636- NANI GOPAL MITRA vs STATE OF BIHAR xlii) AIR1961(CALCUTTA) 560 (FB) - AJIT KUMAR PALIT vs THE STATE. xliii) W.P.No.14649/2014 c/w W.P.No.19732/2014 DISPOSED OF ON2801.2016 - SMT.K SOWBHAGYA vs. UNION OF INDIA²⁵ Sri Prabhuling K Navadgi, the then Additional Solicitor General of India appearing for respondents has supported the arguments advanced by Sri K.M.Nataraj, 116 learned Additional Solicitor General of India and has prayed for dismissal of the writ petitions.

26. Sri M.B.Nargund, learned Additional Solicitor General of India appearing for respondents by reiterating the contentions raised by the learned Advocates appearing on behalf of the Revenue, would contend even if proceedings relating to predicate offence is closed, the proceedings under the PML Act would not come to an end. He would also contend that constitutional validity of Section 8(4) has been

challenged before the Madras High Court in W.P.No.3176/2020 and same has been negatived by the Division Bench by order dated 17.02.2020 and as such, he prays for rejecting similar contention raised with regard to constitutional validity of Section 8(4) of PML Act. He would further contend the writ petitions filed by the Directors and ex-employees of Devas Multimedia Limited namely, W.P.Nos.6159/2017, 6173/2017, 8261/2017 & 4215/2017 are premature since only information has been sought from the Bank. He would contend that power to seek such information by the authorities is traceable under 117 Sections 54 and 55 of the Act and as such, said writ petitions are liable to be dismissed as not maintainable. In support of his submissions, he has relied upon the following judgments: i) AIR 1952 SC324- SHAMARAO V PARULEKAR vs DISTRICT MAGISTRATE, THANA, BOMBAY AND OTHERS ii) W.P.No.3176/2020 DECIDED ON 17.02.2020 - TRIAD TRADING SERVICES P LTD. vs UNION OF INDIA & ANOTHER REPLY ARGUMENTS:

27. Sri. Nagendra Naik, learned Advocate would submit that provisions of PMLA is borrowed from Cr.P.C. He would submit that Section 46 of PMLA is corresponding to Section 105A(c). He would draw the attention of the court to Section 105C and 105E which is traceable to Section 5 of PML Act. Hence, he would contend that the intention of the legislature was to make the offence under PML Act as a criminal offence and not as a civil offence. He would submit that the proceedings would commence with a charge that a person has committed an offence under 118 Section 3 resulting in provisional attachment, its confirmation, adjudication and thereafter prosecution. He would contend that under first proviso of Section 5(1) a report has to be forwarded to a Magistrate under Section 173 of Cr.P.C. or a complaint has to be filed by a person authorized to investigate the offence mentioned in that schedule, before a Magistrate or court for taking cognizance of the scheduled offence and this being the intention of the legislature, the incorporation of second proviso by 2015 amendment it cannot take away the right vested to an applicant. Hence, he prays for allowing the writ petitions filed by him.

28. Mr.Swaroop Anand, learned Advocate appearing for petitioners would contend that possession notice issued under Section 8(4) has been challenged and the crux of the matter is confirmation of the provisional attachment. Section 8(2)(a)

and 8(2)(b) mandates twin requirement and only upon completion of these requirements, the provisional attachment is confirmed. He would submit that under Section 8(3)(a) as it stood on 2009, the reason 119 for believing was directly correlated to the schedule offence, which does not find a place in Section 8(3)(a) after amendment by Act 2 of 2013 and the definition of proceeds of crime having remained unamended, the condition precedent for attachment of the properties is proceeds of crime should be relatable to schedule offence. He would submit that constant feature in the amendments carried out to Sections 3, 5 & 8 is that legislature has ensured that the aspect of mens rea is taken away. He would further submit by virtue of the amendment, if a person receives something without knowing the fact that what he has received is proceeds of crime, the very fact that it is in my possession is sufficient to constitute an offence under Section 3 and requirement of scheduled offence has been decoupled both under Section 5 as well as under Section 8. 28.1) He would also contend that additional feature under Section 8 is that there is added safeguard that has now been introduced for confirmation of provisional order of attachment and there has to be necessarily a proceeding 120 for the offence under the Act subsisting on the date of confirmation. Enactment of Prevention of Money Laundering Act would not fall within the fiscal statute, it would definitely be a penal statute. The colour of PML Act being a fiscal statute could have been attributed to it prior to 2013 amendment since it had the attributes of a fiscal statute. Subsequent to 2013 amendment, there has been a conscious effort to ensure that procedure for attachment is directly linked to commencement of proceedings for an offence of money laundering within the scope of the enactment. A plain reading of Section 8(3)(a) prior to 2018 amendment would indicate that complaint under Section 45 should exist for conformation to be made thereunder. Now relaxation has been granted to the respondents and they can continue their investigation for a period not exceeding 90 days or proceedings under the Act. He would contend that authorities under the Act have to complete their investigation within 90 days from the date of confirmation and initiate proceedings under this Act failing which by virtue of Section 5(3), order of confirmation would lapse by operation of law. He would submit that in 121 W.P.Nos.15917/2013 & 15974/2013 and 15918/2013 & 15961/2013, petitioners have been issued with a notice under Section 8(4) upon

confirmation order that has been passed against them. Petitioners were heard by the adjudicating authority prior to 2013 amendment coming into force but an order has been passed by the adjudicating authority in terms of 2013 amendment without giving an opportunity of hearing and they have specifically invoked language of the amended Section 8(3)(a) under the order of confirmation passed on 22.02.2013 and subsequent to which impugned possession notice under Section 8(4) has been issued. He would submit that only if the requirement of Section 8(3) is met, question of issuing notice under Section 8(4) would arise. He would submit that twin requirements indicated under Section 8(3) will have to be met namely, there should be proceedings under the Act as on the date of confirmation and meeting of the requirement prescribed under clause (b) is also a condition precedent insofar as the order of confirmation of provisional attachment to become final. He would submit order of confiscation has to be passed in 122 terms of Section 8(5) which is done only by the Special court constituted under section 43 after 2013 amendment. A plain reading of Section 8(3) makes it amply clear that now upon fulfilment of entire conditions stipulated under Section 8(3), notice under Section 8(4) can be invoked, failing which notice issued under Section 8(4) would be premature and de hors the jurisdiction conferred on the authorities. 28.2) He would submit that contention raised with regard to alternate remedy available to the petitioners under Section 26 is concerned, would be against an order of provisional attachment and confirmation of such provisional attachment, but not against a notice issued under Section 8(4). Hence, he contends that writ petitions are maintainable. 28.3) He would submit that provisional order of attachment was passed on 25.09.2012 under Section 5(1), in pursuance of the same, complaint came to be filed on 5.10.2012 in terms of Section 5(5) before the adjudicating authority and on 18.10.2012 notice under Section 8(1) 123 was issued by the adjudicating authority, for which petitioners have filed reply on 10.12.2012 before the adjudicating authority. Subsequently, order of confirmation in terms of Section 8(3) as amended by 2013 amendment was passed by the adjudicating authority on 22.02.2013 and immediately petitioner has preferred an appeal in No.444/2013 wherein petitioner has taken a specific contention that order of adjudicating authority by operation of law has lapsed because there is no proceedings for an offence under the Act amongst

other contentions. He would submit that on issuance of impugned notice on 28.03.2013 under Section 8(4), writ petition has been filed on 03.04.2013 and interim relief was granted. It is thereafter, the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Conferred by the Adjudicating Authority) Rules, 2013 which has come into force with effect from 19.08.2013 and subsequently during March, 2014 the authorities have initiated proceedings under Section 45 of PML Act. He would submit that initiation of proceedings has been challenged before this court in 124 W.P.No.14549/2016 by invoking Article 226 of Constitution of India read with Section 482 Cr.P.C. In the appeal filed against the order of confirmation of attachment, the Appellate tribunal has adjourned the same and is awaiting orders in W.P. 14549/2016. Hence, he prays for allowing the writ petitions.

29. Sri P.N.Manmohan, learned Advocate appearing for petitioners would rely upon the RAMA RAJUs case to contend as to whether the provisions of PML Act is penal in nature has not been considered and the petitioner not being connected with any offence, merely based on message found in her mobile phone, she sought to be prosecuted and according to the authorities, the offence has been committed in India and money has come from abroad and for this, there should be compliance of Section 2(ra). He would submit that even according to the authorities, the money has come from abroad and as such, the petitioners cannot be brought within the purview of PML Act. He would contend that either offence should have committed in India and amount should be transferred 125 outside India for Section 2(ra) being attracted and as such, the proceedings against the petitioners cannot be continued. He would further submit that there are no reason whatsoever to believe that petitioner is associated with the offence and by relying upon TECH MAHINDRAs case, he would contend that the language used in Section 3 is knowingly and directly or indirectly and these ingredients are not to be found insofar as petitioners are concerned and as such, the proceedings are bad in law. He would also submit that Section 3 as well as Section 5(1)(a) refers to proceeds of crime which is referable to schedule offence and as such, the contention of learned ASG that scheduled offence has no relevance to the money laundering is an argument which ought not to be accepted.

30. Having heard the learned Advocates appearing for parties, I am of the considered view that following points would arise for my consideration: (i) Whether sub-section (4) of Section 8 of PML Act is violative of Article 14 and Article 300A of the Constitution of India and as such proceedings 126 initiated against petitioners under PML Act are liable to be quashed?. (ii) Whether the proceedings initiated under the PML Act by the authorities would be bad in law or without jurisdiction for want of existence of predicate offence or offence prescribed under the Schedule to the PML Act not being in existence on the date of initiation of proceedings under PML Act?. OR Whether the offence of money laundering under Section 3 of PML Act is a stand alone offence?. (iii) Whether the proceedings initiated by the authorities under PML Act and passing orders of provisional attachment and its confirmation thereof is liable to be set aside or quashed on account of any procedural lapse prescribed under Sections 5 and 8 of PML Act?. (iv) Whether the notice/s issued by the authorities to take possession of the 127 property on provisional order of attachment being confirmed is liable to be set aside?. (v) Whether writ petitions are liable to be dismissed on the ground of petitioners having not availed the alternate remedy of appeal available under Section 25 and under Section 42 of PML Act?. (vi) What order?.

31. In order to examine and adjudicate the points formulated herein above, in the background of rival contentions raised, it would be apt and appropriate to narrate the historical background resulting in birth of PML Act, 2002. HISTORICAL BACKGROUND LEADING TO ENACTMENT OF PML ACT, 2002:

32. Since Money Laundering was an international phenomenon, having felt Trans National Co-operation is of critical importance in the fight against this menace, a number of initiatives were taken to deal with the problem at the international level. The major international 128 agreements addressing money laundering include the United Nations Convention against illicit trafficking in drugs and psychotropic substances, which is popularly known as Vienna Convention and the Council of Europe Convention on Laundering, search, seizure and confiscation of the proceeds of crime. The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and

the International Organization of Securities Commissions.

33. The Vienna Convention was the first major initiative in the prevention of Money laundering held in December, 1988, which laid down the ground work for efforts to combat money laundering by obliging the member States to criminalize the laundering of money from drug trafficking, apart from promoting international co-operation in investigation amongst others. The Council for Europe Convention in 1990 made an attempt to establish a common policy on money laundering and it laid down 129 principles for international co-operation among the member States and the purpose of this convention was to facilitate international co-operation as regards investigative assistance, search, seizure and confiscation of the proceeds of all types of criminality, particularly serious crimes such as drug offences, arms dealing, terrorist offences etc., which generate large profits.

34. During December, 1988 the Basel Committee on Banking Regulations and Supervisory Practices, a statement came to be issued of principles which aimed at encouraging the Banking sector to adopt common position in order to ensure that Banks are not used to hide or launder funds acquired through criminal activities. Its statement of principles did not restrict itself to drug related money laundering, but also extended to all aspects of laundering through banking system. In effect, it sought to deny the banking system to those involved in money laundering by the application of the four basic principles namely, identifying the customer, compliance with the 130 laws, co-operation with law enforcement agencies and adherence to the Statement.

35. The Financial Action Task Force (FATF) is an inter-Governmental Body established at G-7 Summit in Paris in 1989 with the objective to set standards and promote effective implementation of legal, regulatory and operational measures to combat money laundering and terrorist financing and other related threats to the integrity of the International Financial System . In 1990 a report was issued containing set of 40 recommendations to fight against money laundering. In October, 2001 8 special recommendations came to be issued to deal with the issue of terrorist financing and during October, 2004, 9 special recommendations was published for further strengthening the agreed international standards for

combating money laundering and terrorist financing.

36. The initiatives under the aegis of the United Nations are: (i) United Nations Political Declaration and Action Plan against Money- Laundering 1988; 131 (ii) United Nations Global Programme against Money Laundering; (iii) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; (iv) International Convention for Suppression of the Financing of Terrorism 1999; (v) United Nations Convention against Organised Transnational Crimes 2000 and (vi) United Nations Convention against Corruption 2003.

37. India being a party at the United Nations Convention, felt there being urgent need for the enactment or a comprehensive legislation interalia for preventing money laundering and connected activities as it posed a serious threat not only to the financial system of the country but also a threat to integrity and sovereignty and as such, for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating, measures for combating money laundering etc., and keeping in view the Basel Statement of Principles, enunciated in 1989 as well as the recommendations of FATF at G-7 1989 Summit, the 132 Prevention of Money Laundering Bill , 1988 was introduced in the Lok Sabha on 04.08.1988. After being referred to the Standing Committee on Finance and on receipt of the said report, which came to be accepted by the Central Government, resulted in introduction of the said Bill in both the Houses of the Parliament and was passed by both the Houses and received the assent of the President on 17.01.2003. Thus, the birth of the Prevention of Money Laundering Act, 2002 (Act 15 of 2003) took place and it came into the statute book on its publication in the Gazette on 01.07.2005.

38. The statement of objects and reasons as outlined for enacting PML Act are: (a) The United Nationals Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence. (b) The Basle Statement of Principles, enunciated in 1989, outlined to basic policies and procedures that banks should follow in order to assist the law enforcement agencies 133 in tackling

the problem of money laundering. (c) The Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989 to examine the problem of money laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money laundering. The recommendations were classified under various heads. Some of the important heads are--- (i) Declaration of laundering of monies carried through serious crimes a criminal offence; (ii) To work out modalities of disclosure by financial institutions regarding reportable transactions; (iii) Confiscation of the proceeds of crime; (iv) Declaring money laundering to be an extraditable offence; and (v) Promoting international co- operation in investigation of money-laundering. (d) The Political Declaration and Global Programme of Action adopted by United Nations General 134 Assembly by its Resolution No.S- 17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering. (e) The United Nations in the Special Session on countering World Drug Problem Together concluded on 8th to the 10th June, 1998 has made another declaration regarding the need to combat money laundering. India is a signatory to this declaration.

39. Keeping the aforesaid object in mind, which the Parliament has envisaged to achieve by the aforesaid enactment, I proceed to adjudicate the points formulated hereinabove. RE. POINT NO.(i) & (iv):

40. In W.P.Nos.15917/2013 & 15974/2013 and W.P.Nos.15918/2013 & 15961/2013, petitioners have sought for declaring sub-section (4) of Section 8 of PML Act as unconstitutional and in W.P.Nos.39889/2014, 27744/2018, 24444/2015 and 35991/2018 petitioners 135 have sought for quashing of possession notices issued by authorities to take physical possession of properties which have been attached. Discussion on these two (2) points would overlap and as such, they are taken together for adjudication.

41. Before embarking upon adjudication on merits, the parameters and principles governing the issue of a construction of a statute and the adjudicating mechanism

to be adopted when constitutionality of an enactment or its provisions is under challenge, requires to be addressed in the background of judicial pronouncements.

42. A construction which reduces the statute to a futility has to be avoided. The principle expressed in the maxim *ut res magis valeat quam pereat* i.e., liberal construction should be put upon written instruments so as to uphold them, if possible and carry into effect the intention of parties has to be adopted. (See *Brooms Legal Maxims* 10th Edition, page 361, *Craies on Statutes* (7th edition), page 95 and *Maxwell on Statutes* (11th edition) page 221.) A statute or a provision in any enactment must be so construed to make it effective and operative. The Honble Apex Court in the case of *CIT vs S.TEJA SINGH* reported in AIR 1959 SC352 have held that a statute is designed to be workable and interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. It has been further held that courts will have to reject that construction which will defeat the plain intention of the legislature, even though there may be some inexactitude in the language used in the enactment.

43. The Honble Apex Court in *MOHAN KUMAR SINGHANIA vs UNION OF INDIA* reported in AIR 1992 SC1 has reiterated the principles indicated in *Nokes vs. Doncaster Amalgamated Collieries* (1940) 3 All E.R549 referred to in *Pye vs. Minister for Lands for N.S.W.* -(1954)3 All.E.R514 wherein it was held that if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid such a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view the parliament would legislate only for the purpose of bringing about an effective result.

44. Time and again, Honble Apex Court in catena of judgments has held that whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute.

45. Honble Apex Court in SHASHIKANT SINGH vs TARAKESHWAR SINGH & ANOTHER reported in (2002)5 SCC738 has held that it is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. It has been further held :

"8. When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment. The difference being that an absolute 138 enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed (Craies on Statute Law, 7th Edn., pp. 260-62) 12. On facts, the court could not have intended while concluding the trial against Chandra Shekhar Singh, to nullify its earlier order directing issue of warrants against Respondent 1. The construction to be placed on a provision like this has to commend to justice and reason. It has to be a reasonable construction to promote the ends of justice. The words "could be tried together with the accused" in Section 319(1) cannot be said to be capable of only one construction. If it was so, approach to be adopted would be different since the intention of Parliament is to be respected despite the consequences of interpretation. There is, however, a scope for two possible constructions. That being the position, a reasonable and common sense approach deserves to be adopted and preferred rather than a construction that would lead to absurd results of Respondent 1 escaping the trial despite passing of an order against him on the court's satisfaction under Section 319(1) and despite the fact that the proceedings against him have to commence afresh. In this view, the fact that trial against Chandra Shekhar Singh has already concluded is of no consequence insofar as Respondent 1 is concerned."

139 46. The constitutional validity of any law is to be tested in the teeth of law laid down by Honble Apex Court in: (1) BHANUMATHI vs STATE OF UTTAR PRADESH, THROUGH ITS PRINCIPAL SECRETARY AND OTHERS - (2010) 12

SCC1 and (2) STATE OF BIHAR & OTHERS vs BIHAR DISTILLERY LIMITED AND OTHERS - (1997)2 SCC453 whereunder it came to be held that while judging the constitutionality of an enactment, the court should (a) try to sustain validity of impugned law to the extent possible and it can strike down the enactment only when it is impossible to sustain it; (b) the court should not approach the enactment with a view to pick up holes or to search for defects of drafting or for the language employed; (c) the court should consider that the Act made by the legislature represents the will of the people and that cannot be lightly interfered with; (d) the court should strike down the Act only when the unconstitutionality is plainly and clearly established; (e) the court must recognize the fundamental 140 nature and importance of legislative process and accord due regard and deference to it.

47. In R.S.RAGHUNATH vs STATE OF KARNATAKA AND ANOTHER reported in AIR 1992 SC81 it has been observed by Hon'ble Apex Court:

12. .. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which clause to be interpreted occurs..

48. As noticed hereinabove, the constitutional validity of sub-section (4) of Section 8 of PML Act is under challenge. Contending said provision is in violation of Article 14 of the Constitution of India and dispossessing a person from the property without due process of law would be in violation of Article 300A of the Constitution of India, petitioners have prayed for said provision being struck down. Section 8 of PML Act and corresponding amendments effected thereto reads as under:

141. Act of 15 Act of 22 of Act of 13 of Act of 2 of 2013 of 2003 2009 2018 Section 8. Section 8. Section 8. Section 8. Adjudication Adjudication Adjudication Adjudication (1) On receipt of (1) On receipt of (1) On receipt of (1) On receipt of a complaint a complaint a complaint a complaint under sub- under sub- under sub- under sub- section (5) of section (5) of section (5) of section (5) of section 5, or section 5, or section 5, or section 5, or applications applications applications applications made under sub- made under sub- made under sub- made under

sub- section (4) of section (4) of section (4) of section (4) of section 17 or section 17 or section 17 or section 17 or under sub- under sub- under sub- under sub- section (10) of section (10) of section (10) of section (10) of section 18, if the section 18, if the section 18, if the section 18, if the Adjudicating Adjudicating Adjudicating Authority has Authority has Authority has Authority has reason to believe reason to believe reason to believe reason to believe that any person that any person that any person that any person has committed has committed has committed has committed an offence under an offence under an offence under an [offence under section 3, he section 3 or is in section 3 or is in section 3 or is in may serve a possession of possession of possession of notice of not less proceeds of proceeds of proceeds of than thirty days crime, it may crime, it may crime]., he may on such person serve a notice of serve a notice of serve a notice of calling upon him not less than not less than not less than to indicate the thirty days on thirty days on thirty days on sources of his such person such person such person income, earning calling upon him calling upon him calling upon him or assets, out of to indicate the to indicate the to indicate the which or by sources of his sources of his sources of his means of which income, earning income, earning income, earning he has acquired or assets, out of or assets, out of or assets, out of the property which or by which or by which or by attached under means of which means of which means of which 142 sub-section (1) of he has acquired he has acquired he has acquired section 5, or, the property the property the property seized under attached under attached under attached under section 17 or sub- section (1) of sub-section (1) of sub-section (1) of section 18, the section 5, or, section 5, or, section 5, or, evidence on seized under seized or frozen seized or frozen which he relies section 17 or under section 17 under section 17 and other section 18, the or section 18, or section 18, the relevant evidence on the evidence on evidence on information and which he relies which he relies which he relies particulars, and and other and other and other to show cause relevant relevant relevant why all or any of information and information and information and such properties particulars, and particulars, and particulars, and should not be to show cause to show cause to show cause declared to be why all or any of why all or any of why all or any of the properties such properties such properties such properties involved in should not be should not be should not be money- declared to be

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all him in this him in this behalf, and relevant behalf, and behalf, and (c) taking into materials placed (c) taking into (c) taking into account all on record before account all account all relevant him, by an order, relevant relevant materials placed record a finding materials placed materials placed on record before whether all or on record before on record before him, by an order, any of the 144 properties him, by an order, him, by an order, record a finding referred to in the record a finding record a finding whether all or notice issued whether all or whether all or any of the under sub- any of the any of the properties section (1) are properties properties referred to in the involved in referred to in the referred to in the notice issued money- notice issued notice issued under sub- laundering: under sub- under sub-section (1) are section (1) are section (1) are involved in PROVIDED that involved in involved in money- if the property is money- money- laundering: claimed by a laundering: laundering: person, other PROVIDED than a person to PROVIDED PROVIDED that if the whom the notice that if the that if the property is had been issued, property is property is claimed by a such person claimed by a claimed by a person, other shall also be person, other person, other than a person to given an than a person to than a person to whom the notice opportunity of whom the notice whom the notice had been issued, being heard to had been issued, had been issued, such person prove that the such person such person shall also be property is not shall also be shall also be given an involved in given an given an opportunity of money- opportunity of opportunity of being heard to laundering. being heard to being heard to prove that the prove that the prove that the property is not (3) Where the property is not property is not involved in Adjudicating involved in involved in money- Authority money- money- laundering. decides under laundering. laundering. sub-section (2) (3) Where the that any (3) Where the (3) Where the Adjudicating property is Adjudicating Adjudicating Authority decides involved in Authority Authority under sub- money- decides under decides under section (2) that laundering, he sub-section (2) sub-section (2) any property is shall, by an that any that any involved in order in writing, property is property is money- 145 confirm the involved in involved in laundering, he attachment of money- money- shall, by an order the property laundering, he laundering, he in writing, made under sub- shall, by an shall, by an confirm the section (1) of order in writing, order in writing, attachment of section 5 or confirm the confirm the the

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Where on forthwith take or sub-Section sub-section (2A) conclusion of a the possession of (2A) of Section of section 60 by trial for any the attached 60 by the the Special scheduled property. Adjudicating Court. offence, the Authority. (5) Where on (4) Where the person conclusion of a (4) Where the provisional order concerned is trial for any provisional order of attachment acquitted, the scheduled of attachment made under sub- attachment of offence, the made under sub-section (1) of the property or person section (1) of section 5 has retention of the concerned is section 5 had been confirmed seized property acquitted, the been confirmed under sub- or record under attachment of under sub- section (3), the Sub-section (3) the property or section (3), the Director or any and net income, retention of the Director or any other officer if any, shall seized property other officer authorised by cease to have or record under authorised by him in this effect. Sub-section (3) him in this behalf shall and net income, behalf shall forthwith take if any, shall forthwith take the possession of (6) Where the cease to have the possession of the property 147 attachment of effect. the property attached Under any property or attached under section 5 or retention of the Section 5 or frozen under seized property frozen under sub-section (1A) (6) Where the or record sub-section (1A) of section 17, in attachment of becomes final of Section 17, such manner as any property or under clause (b) in such manner may be retention of the Sub-section (3), as may be prescribed: seized property the Adjudicating prescribed. or record PROVIDED Authority shall, becomes final Provided that if that if it is not after giving an under clause (b) it is not practicable to opportunity of Sub-section (3), practicable to take possession being heard to the Adjudicating take possession of a property the person Authority shall, of a property frozen under concerned, make after giving an frozen under sub-section (1A) an order opportunity of sub-section (1A) of section 17, the confiscating being heard to of Section 17, order of such property. the person the order of confiscation shall concerned, make confiscation have the same an order shall have the effect as if the confiscating same effect as property had such property. if the property been taken had been taken possession of. possession of. (5) Where on (5) Where on conclusion of a conclusion of a trial of an trial of an offence under offence under this Act, the this Act, the Special Court Special Court finds that the finds that the offence of money- offence of laundering has money- been committed, laundering

has it shall order that been such property committed, it involved in the shall order that money- 148 such property laundering or involved in the which has been money- used for laundering or commission of which has been the offence of used for money- commission of laundering shall the offence of stand confiscated money- to the Central laundering Government. shall stand (6) Where on confiscated to conclusion of a the Central trial under this Government. Act, the Special Court finds that the offence of (6) Where on money- conclusion of a laundering has trial under this not taken place Act, the Special or the property is Court finds that not involved in the offence of money- money- laundering, it laundering has shall order not taken place release of such or the property property to the is not involved person entitled to in money- receive it. laundering, it shall order (7) Where the release of such trial under this property to the Act cannot be person entitled conducted by to receive it. reason of the death of the (7) Where the accused or the trial under this accused being Act cannot be declared a 149 conducted by proclaimed reason of the offender or for death of the any other reason accused or the or having accused being commenced but declared a could not be proclaimed concluded, the offender or for Special Court any other shall, on an reason or application having moved by the commenced but Director or a could not be person claiming concluded, the to be entitled to Special Court possession of a shall, on an property in application respect of which moved by the an order has Director or a been passed person claiming under sub- to be entitled to section (3) of possession of a section 8, pass property in appropriate respect of which orders regarding an order has confiscation or been passed release of the under sub- property, as the section (3) of case may be, section 8, pass involved in the appropriate offence of money- orders regarding laundering after confiscation or having regard to release of the the material property, as the before it. case may be, (8) Where a involved in the property stands offence of confiscated to money- 150 laundering after the Central having regard to Government the material under sub- before it. section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money-laundering: PROVIDED that the Special Court shall not consider such claim unless

it is satisfied that the claimant has acted in good faith and has suffered the loss despite 151 having taken all reasonable precautions and is not involved in the offence of money- laundering; PROVIDED FURTHER that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

49. A plain reading of sub-section (4) of Section 8 would indicate that where the provisional order of attachment is made under sub-section (1) of Section 5 has been confirmed under sub-section (3), the Director or any other officer authorized by the Director is empowered to 152 take possession of the property so attached forthwith. By Act, 2 of 2013 after the words shall forthwith take the, the words possession of the attached property under Section 5 or frozen under sub-section (1-A) of Section 17, in such manner as may be prescribed" came to be substituted. The proviso thereto also came to be added which would indicate that if it is not possible to take possession of a property frozen under sub-section (1-A) of Section 17, the order of confiscation shall have the same effect as if the possession of the property had been taken.

50. A plain reading of sub-section (5) of Section 8 of PML Act would indicate that on conclusion of a trial of an offence under the Act, if the Special Court finds that offence of money laundering has been committed, it can order that such property involved in the money laundering or which has been used for commission of an offence of money laundering to stand confiscated to the Central Government. Thus, it would emerge from these provisions that even if the Special court finds that offence under the Act has not been committed and yet, if such property has 153 been used for commission of the offence of money laundering, even in such circumstances, the Special court can order for confiscation of the property so attached.

51. At this juncture, it would be useful to notice that expression proceeds of crime has been defined to include property. The expression 'property' has been defined under clause (v) of Section 2(1) of the Act which defines property to mean "any property or assets of every description" and this is clarified in the Explanation thereto which came to be inserted by Act 2 of 2013. It reads : Explanation - For the

removal of doubts, it is hereby clarified that the term property includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences. Plain reading of above explanation would indicate that property includes "property of any kind used in the commission of an offence under the Act" or "any of the scheduled offences". Even under sub-section (5) of Section 8, the property which can be confiscated to the Central Government after conclusion of a trial of an offence under the Act, includes property involved in money laundering or which has been used for commission of an offence of money laundering. Thus, harmonious reading of Sections 2(u), 2(v) and sub-section (5) of Section 8, it can be held without any iota of doubt that expression proceeds of crime would not only include money used in the commission of an offence under the Act but also the scheduled offence. Thus, money laundering by itself is to be treated as a stand alone offence, notwithstanding the scheduled offence, if the circumstances warrant.

52. From yet another angle, the challenge to the validity of sub-section (4) of Section 8 ought to fail for the reasons more fully indicated herein below:

53. On confirmation of an order of provisional attachment under Section 8(4) of PML Act, the authorities specified thereunder would be empowered to take possession of the property so attached. If the Special court arrives at a conclusion after trial, relating to an offence under the Act that offence of money laundering has been committed, it can order for confiscating such property involved in money laundering or which has been used for 155 money laundering. Under sub-section (6) of Section 8, if the Special court after trial finds that offence of money laundering has not taken place or the property is not involved in money laundering, it can order for release of such property to the person so entitled to receive it.

54. Section 8 as amended by the Amendment Act 2 of 2013 cannot be said to be arbitrary or violative of fundamental right of a person, even if the proceedings are continued for trial of scheduled offence resulting in acquittal and the alleged proceeds of crime pertained to that scheduled crime. It is to be further noticed that mandate of sub-section (4) of Section 8 to the authorities is to take possession of the property forthwith which is attached under Section 5 or frozen under sub-

section (1-A) of Section 17 on the provisional order of attachment made under sub-section (1) of Section 5 has been confirmed under sub-section (3). The authorities have no discretion at all and they are bound to take possession and the expression "possession" referred to in sub-section (4) refers to physical possession. The judgment of the 156 KAMARUNNISAs case relied upon by petitioners was rendered on 11.07.2012 i.e., pre 2013 amendment i.e., prior to Act 2 of 2013 coming into force. The amendment which was brought to sub-section (4) of Section 8 namely, the expression possession of the property attached under Section 5 or frozen under sub-section (1-A) of Section 17 in such manner as may be prescribed was not found in sub-section (4) as it stood in the year 2009. Hence, the judgment of KAMARUNNISA would not come to rescue of the petitioners.

55. It is in the aforesaid background. the Rules namely, The Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 (for short 'Possession Rules, 2013') , which was made in exercise of the power vested under sub-section (2) of Section 73 of PML Act which came into force with effect from 19.08.2013 will have to be seen. In the matter of KAMARUNNISAs case where Section 8(4) came to be interpreted, neither the amended sub-section (4) nor the 2013 Rules were in force 157 and as such the interpretation extended to the word possession as found in sub-section (4) was held to be constructive possession only. It is in this background, the Parliament introduced by Act 2 of 2013 to interpret possession, to mean the possession as prescribed. The delegated legislation partakes the character of a statutory provision. In fact, Section 5(4) would make it expressly clear that even where the immovable property is attached, it does not prevent the person interested of its enjoyment. However, when the provisional order of attachment is confirmed under sub-section (2) of Section 8, the possession of such property has to be taken by the authorities specified thereunder by the mandate of sub- section (4) of Section 8 and thereby deprive such person from the enjoyment of the property. However, taking physical possession of such property is by the prescribed mode namely, as prescribed under Rule 5 of Possession Rules, 2013. Hence, this court is of the considered view that judgment of KAMARUNNISSAs case would have no application to the present scenario by virtue of the 158 Amendment Act i.e., Act 2 of 2013 and also having regard to the

Possession Rules, 2013.

56. It can be further noticed that under sub-section (5) of Section 20, it enables the special court to release all the property other than the property involved in money laundering to the person from whom such property was seized or the persons entitled to receive it, after passing the order of confiscation under sub-section (5) or sub-section (7) of Section 8. In other words, the special court would adjudicate as to whether the property which has been provisionally attached and same having been confirmed and arrived at a conclusion that such property was not involved in money laundering is to be released or retained.

57. A conspectus reading of sub-sections (3), (4), (5), (6) of Section 8 along with Sections 20 and 21 of the PML Act and Rule 5 of Possession Rules 2013, it would clearly emerge that the stages of confirmation of an order of provisional attachment, retention of the property so attached and the seizure of the attached property and its possession being taken are all intermediary stages prior 159 to confiscation. Thus, where the property is provisionally attached or record is seized from the ownership, control or possession, of a person accused of an offence under Section 3 or not so accused, the attachment, retention and the eventual authority to order confiscation of the property would be dependent and contingent upon proof of guilt and finality of an order of conviction of a person of the offence of money laundering under Section 3 or on conclusion arrived at by the Special court that property so attached, retained and possession taken thereof was the property which had been used for the commission of the offence of money laundering. The scheme of the Act empowers the authorities under the Act to tentatively assume or form opinion after having recorded their reasons to believe that any person is in possession of any proceeds of crime to provisionally attach the property, its confirmation thereof, as well as taking possession of such property to secure the interests of the State.

58. The Honble Apex Court in the case of STATE OF GUJARAT vs MOHAN LAL JITAMALJI PORWA¹⁶⁰ reported in (1987)2 SCC364 while examining the expression reasonable belief found in Section 123 and 135(1) read with Section 111 of Customs Act, 1962 has held: 4. P.W.1 Superintendent of Customs xxx

made of smuggled gold. Whether or not the official concerned seized the article in the reasonable belief that the goods were smuggled goods is not a question on which the court can sit in appeal. The law to this effect has been declared in no unambiguous terms in PUKHRAJ vs D.R.KOHLI - AIR 1962 SC1539 This court has administered caution to the courts not to sit in appeal in regard to this question and has observed that if prima facie there are grounds to justify the belief the courts have to accept the officers belief regardless of the fact whether the court of its own might or might not have entertained the same belief. The law declared by this court is binding on the High Court and it was not open to the High Court to do exactly what it was cautioned against by this court. It has also been held that entire community is aggrieved if the economic offenders who are ruining the economy of the State are not brought to book and the cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial function. The community or the State is not a persona-non-grata whose cause may be treated with disdain. 161

59. PML Act was brought to prevent money laundering and confiscation of property derived from or involved in money laundering. The statement of objects and reasons of the PML Act would clearly indicate that PML Act is a complete code in itself, clearly defining the offence, the Scheme of attachment of properties which are involved in the offence of money laundering and the hierarchy of authorities before whom the matters would be taken up. The PML Act read as a whole would indicate that same was brought to ensure that proceeds of crime are attached and offenders who participate and assist in the commission of crime do not enjoy the benefits of the property which is relatable to the crime. The PML Act envisages attachment of all properties involved in the offence of money laundering and the proceeds of such crime would also come within the sweep of the PML Act.

60. The issue which would fall for consideration by this court would be, whether eviction of the occupant of a property or in other words, taking possession of the property which is provisionally attached and thereafter confirmed, would be violative of Article 14 of Constitution of 162 India or does it amount to depriving a person of his property rights guaranteed under Article 300A of the Constitution of India.

61. The Honble Apex Court in YOGENDRA KUMAR JAISWAL vs. STATE OF BIHAR reported in (2016) 3 SCC183 has held: 151. We are absolutely conscious that the said judgment was delivered in a different context. What is prohibited under Article 20(1) is imposition of greater punishment that might have been imposed and prohibition of a conviction of any person for violation of law at the time of commission of the act. We repeat at the cost of repetition that confiscation being not a punishment does not come in either of the categories. Thus viewed, the property of an accused facing trial under the 1988 Act could be attached and there can be administration by third party of the said property and eventual forfeiture after conviction. The term attachment has been understood by this Court in Kerala State Financial Enterprises Ltd. v. Official Liquidator [Kerala State Financial Enterprises Ltd. v. Official Liquidator, (2006) 10 SCC709 in the following manner: (SCC p. 713, para

11) 11. The word attachment would only mean taking into the custody of the law the person or property of one already before the court, or of the whom it is sought to bring before it. It is used for two purposes: (i) to compel the appearance of a defendant; and (ii) to seize and hold his property for the payment of the debt. It may also mean prohibition of transfer, conversion, disposition or movement of property by an order issued by the court.

152. The legislature has though it property to change the nature and character of the interim 163 measure. The property obtained by ill-gotten gains, if prima facie found to be such by the authorized officer, is to be confiscated. An accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated by illegal means. That being the litmus test, the filament of reasoning has to rest in favour of confiscation and not against it. Therefore, we are of the considered view that the provision does not violate any constitutional assurance.

62. By incorporating Article 300A to the Constitution by 44th Amendment Act, 1978, it has resulted in: (1) the right to hold property to be a fundamental right; and (2) it has been left to the legislature to deprive a person of his property by the

authority of law. The deprivation of property may take place in various types such as confiscation or revocation of a proprietary right granted by a private proprietor or seizure of goods or immovable property from the possession of an individual or assumption of control of business. The expression save by authority of law would indicate that executive cannot deprive a person of his property without specific legal authority. If the State sought to acquire the property of an individual it could do only by making a law, and on payment of amount by way of compensation for such expropriation. Thus, in effect it would clearly indicate that no person can be deprived of his property, save by authority of law. In other words, if the property belonging to a person is taken away by the State by exercising its executive power without legal right to do so, then only Article 300A would be attracted or such person can complain of violation of Article 300A of the Constitution of India and not otherwise.

63. Under Section 8(5) of the PML Act the Special Court is empowered to confiscate such property after arriving at a conclusion that the offence of money laundering has been committed or such property has been used for commission of the offence of money laundering. In that view of the matter, it cannot be gainsaid by any of the petitioners that property which has been provisionally attached and said provisional order of attachment having been confirmed, the possession of such property cannot be taken under Section 8(4) of the PML Act or frozen under sub-section (1A) of Section 17. It is only the beneficial enjoyment of the property by the owner or the occupier which is taken away by the authority by virtue of express provision namely Section 8(4). There is no confiscation of the property or the owner of the property is not deprived of his title, which could happen only under sub-section (5) of Section 8. Hence, at the stage of either the provisional order of attachment passed under Section 5(1) or its confirmation thereof under Section 8(3), can it be construed as a person of having been deprived of his right, title and interest over the property. These stages as noticed hereinabove being intermediary stages before confiscation, the question of deprivation of the property right to its owner by virtue of Article 300A of the Constitution does not arise at all. Hence, contention raised in that regard is liable to be rejected and it is accordingly rejected.

64. For the reasons aforesaid, this court is unable to accept the contention raised by learned Advocate appearing for petitioners that sub-section (4) of Section 8 of PML Act falls foul of either Article 14 of the Constitution of India or Article 300A of the Constitution of India. Hence, 166 Point Nos.(i) and (iv) is answered against the petitioners and it is held that sub-section (4) of Section 8 is intra- vires of the Constitution of India. RE. POINT Nos.(ii) & (iii):

65. It takes me to the next contention raised by the learned Advocates appearing for the petitioners namely, as to whether proceedings under the PML Act can be initiated by the authorities even though offence specified under the Schedule not being in existence or in other words, even though FIR is not registered for the offences specified in the schedule to the PML Act, against such person who is facing the proceedings under the PML Act?. Point Nos.(ii) & (iii) are interlinked. Hence, they are taken up together for consideration, adjudication and being answered, since any opinion expressed on either of them is likely to overlap.

66. Before embarking upon the journey of addressing these two points, it would be apt and appropriate to notice the statutory provisions which would reflect on the findings that would be recorded by this Court. Hence, the relevant provisions which are pressed into 167 service and which are likely to be noticed by this court while adjudicating these two points, namely, Sections 2(na), 2(p), 2(ra), 2(u), 2(y), 2(wa), 3, 4, 5 together with corresponding amendments brought about have been tabulated herein below. Act, Amendment Amendment Amendment Finance Act, Latest 2002 by Act 20 of by Act 21 of by Act 2 of 2016 (28 of Amendment 2005, 2009, Section 2013, Section 2016), Section Section 2 Finance Act, Section 2 2 read as:

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67. The main thrust of the arguments advanced by the learned Advocates appearing for the parties is that the provisions of The Prevention of Corruption Act, 1988 (for short PC Act) did not find a place in the Schedule to the PML Act or in other words, Section 13 of PC Act came to be added to the Schedule of the PML Act with effect from 01.06.2009 by Act 21 of 2009 and as such the offences which had occurred prior to 01.06.2009 cannot be brought under the sweep of the PML Act or it cannot be made applicable retrospectively. It has been further contended that for invoking the provisions of PML Act, a person must have committed a schedule offence; there must be proceeds of crime; either accused or a third party must be in possession of such proceeds of crime; must be projecting that money or property as untainted; and there must be reasonable belief or apprehension in the mind of the authority that such property will be concealed, transferred or dealt with, resulting in frustrating the confiscation 173 proceedings and only when these ingredients are present, the proceedings under the PML Act can continue and not otherwise.

68. The PML Act is a special enactment having been enacted to deal with ever increasing menace of money laundering. The provisions of the PML Act have over-riding effect over provisions in other statutes or in other words, the provisions of PML Act prevail over anything inconsistent contained in any other law. It is trite law that when two Acts are Special Acts, in such an event it is the later act which will prevail. Hon'ble Apex Court in SOLIDAIRE INDIA LIMITED vs FAIRGROWTH FINANCIAL SERVICES reported in JT20012) SC642 and in BANK OF INDIA VS. KETHAN PAREKH reported in (2008) 8 SCC148 has held when both Acts are

Special Acts, it is subsequent legislation which will have a over-riding effect. It was further observed by Hon'ble Apex Court that cases might arise where both the enactments have the non-obstante clause, then in that event the proper perspective would be that one has to see the subject 174 and dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the act might have come at a later point of time, the earlier enactment prevails and the intention of law makers can be ascertained by looking to the objects and reasons.

69. In RAMA RAJUs case referred to supra, it has been further held that 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 the Act. It is also held 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.

70. The said order passed by the High Court of Andhra Pradesh is a subject matter of challenge before the Honble Apex Court and that there is no interim order against the order passed by the Andhra Pradesh High Court. This Court is in full agreement with the views 175 expressed by the High Court of Andhra Pradesh and do not find any good and valid ground to take any view contrary to the view expressed by High Court of Andhra Pradesh.

71. In fact, the High Court of Gujarat in the matter of ALIVE HOSPITALITY AND FOOD PRIVATE LIMITED VS. UNION OF INDIA AND OTHERS, 2013 SCC OnLine Guj 3909, has expressed its view that it is in agreement with the views expressed by the Andhra Pradesh High Court in B.RAMA RAJUs case including the conclusions drawn thereunder. It has been further held: 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.

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.

72. Section 2(p) defines money laundering and it has the same meaning as assigned to it in Section 3. A plain reading of Section 3 of PML Act would indicate that 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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property would be guilty of the offence of money laundering. The punishment for money laundering is prescribed under Section 4, which shall not be less than three (3) years, but may extend upto 7 years and shall also be liable to fine. The proviso to Section 4 would also indicate that if the proceeds of crime involved in money laundering relates to any offence specified under paragraph 2 of Part A of the schedule, the punishment can extend upto 10 years.

73. Section 2(u) defines the term proceeds of crime meaning 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 or where such property is taken or held outside the country, then the property equivalent in value held within the country. By Finance Act, 28 of 2016 the words or where such property is taken or held outside the country, then the property equivalent in value held within the country came to be inserted. By Act 13 of 2018, after the words within the country the words or abroad came to be added. Thus, the definition of proceeds of crime as amended give a wider ambit to include value of specific

property equivalent in value held outside the country as well. For instance, if a person in India is being labeled for having proceeds of crime in a country outside India, then, in such a scenario, his 178 property situated in India shall be attached even though it may not have a relation to the proceeds of crime. The 2018 amendment has extended the ambit, wherein, the authorities can now proceed against such property equivalent to proceeds of crime held outside the country.

74. Thus, the expression "proceeds of crime" means any property derived or obtained directly or indirectly by any person, as a result of criminal activity, related to a scheduled offence or the value of such property. The expression 'property' is elucidated in Clause (v) of Section 2, as 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. Section 2 (u), therefore, does not envisage either mens rea or knowledge that the property is a result of criminal activity. If any property, which includes value of the property, is "proceeds of crime" then any transfer in terms of Section 2(za) requires examination to verify as to whether it is by way of a money-laundering operation 179 involving the process of placement, layering or integration. Such property could be subjected to attachment and confiscation. The Section, however, does not presuppose knowledge of the proceeds being of criminal activity. Properties apart from the "proceeds of crime" are not liable to attachment, neither is it included in the ambit of the Act. All that the Section is concerned with is the "proceeds of crime" and does not extend to property not so involved.

75. A plain reading of the definition of money laundering as indicated in Section 2(p) would indicate, it has not undergone any change and it has the same meaning as assigned to it under Section 3. Whereas, Section 2(y) which defines schedule offence has undergone amendment namely, sub-clause (ii) was substituted by Act No.21 of 2009. For the words thirty lakh rupees or more was substituted by the words one crore rupees or more.

76. The expression schedule offence is defined under Section 2(y), which means - (i) the offences specified in Part-A of the Schedule; or (ii) the offences specified

under 180 Part-B of the Schedule if the total value involved in such offences is one crore rupees or more; or (iii) the offences specified under Part-C of the Schedule. Section 5 relates to attachment of the property involved in money laundering. Thus, it is evident from the aforesaid provision of the PML Act that commission of a schedule offence is not a fundamental precondition for initiating proceedings under the PML Act, since the offence of money laundering is independent of schedule offence. From a plain reading of the PML Act or on a conjoint reading of the provisions of the PML Act, it would leave no manner of doubt that it deals only with laundering of money acquired by committing the scheduled offence. To put it differently, the PML Act deals only with the process or activity with the proceeds of crime including its concealment, possession or use. The PML Act has been enacted to prevent money laundering and to provide for confiscation of property derived from or involved in, money laundering.

77. Article 20 of the Constitution prohibits conviction except for violation of a law in force at the time of 181 commission of an offence. In other words, there cannot be prosecution under the PML Act for laundering of money acquired by committing the schedule offences prior to the introduction of the PML Act. Therefore, the time of commission of scheduled offences would not be relevant in the context of the prosecution under the PML Act. What would be relevant in the context of prosecution is the time of commission of the act of money laundering. The question would be, whether a person involved in money laundering as provided under Section 3 of the PML Act has indulged in the said act or not has to be decided by the competent authority. What is the date of laundering of money will have to be decided on facts of each case and there cannot be any prescribed straight jacket formula. This is an important fact which the authority will have to examine and it is a mixed question of law and fact.

78. A person acquiring assets through illegal means who comes before the society and claims that said money was acquired by proper means, then he would be guilty of the offence of money laundering. A person might have 182 committed an offence long back and the proceeds of it is being placed, layered or sought to be integrated to the main stream of economy, then also, he is said to have committed the offence of money laundering. Incorporation of certain offences in the Schedule

is to bring it within the net of PML Act namely, proceeds of that crime within the provisions of the Act. For constituting an offence under Section 3 of PML Act, it is the connection of transaction to proceeds of crime which is sufficient and not the crime.

79. The main object of PML Act is to ascertain the proceeds of crime which involved in money laundering and attachment, confirmation and confiscation of the proceeds of crime in the form of properties and also to punish the offenders of money laundering. The date of acquisition of properties is immaterial but the date of projecting the proceeds of crime as untainted properties would only have to be ascertained by conducting investigation.

80. What is targeted by Section 3 is laundering of money and therefore, the date of laundering would be relevant. The expression laundering as found in Section 3 183 comprises of involvement in any process or activity by which the illicit money is being projected as untainted. Thus, the relevant date is not the date of acquisition of illicit money but the dates on which such money is being processed by projecting it as untainted.

81. The offence of money laundering is not covered under any other provisions of law. This Court in W.P.No.5299/2019 & connected matters disposed of on 29.08.2019 has held that a reference to criminal activity relating to a scheduled offence has wider connotation and it may extend to a person who may not be the offender but may be connected with criminal activity. It has been further held: 25. The PML Act being a special enactment contemplates a distinct procedure at the initial stage and thereafter provide for initiation of prosecution in order to achieve the special purpose envisaged under the Act and as such, it cannot be construed that proceedings under the PML Act is to be equated with prosecution initiated under the criminal proceedings for the offence punishable under the Indian Penal Code. Thus, initiation of action under the PML Act cannot have any implication or impact in respect of registration of other cases either under the Indian Penal Code or any other penal laws. 184

26. The offence of money laundering under Section 3 of the Act is an independent offence. A reference to criminal activity relating to a schedule offence has wider

connotation and it may extend to a person, who is connected with criminal activity relating to schedule offence, but may not be the offender of schedule offence. It is in this background, it has to be necessarily held that money laundering is a stand alone offence under the PML Act. In this background, when Section 44 of the PML Act is perused, it would clearly indicate that special court may take cognizance of the offence upon a complaint by authorized signatory, which means cognizance will be taken of an offence which is separate and independent. The object of issuance of summons is to trace or ascertain the proceeds of crime if any and to take steps in that regard like attaching the proceeds of crime if proved in a given case.

27. Even in case of a person who is not booked for a scheduled offence but is later booked and subsequently acquitted for the offences punishable under different enactments, prescribed under Part A to Part C of the Schedule, still such person can be proceeded under PML Act. In other words, proceedings can be against persons who are accused of a scheduled offence or against persons who are accused of having committed an offence of money laundering and also persons who are found to be in possession of the proceeds of crime. It is not necessary that a person has to be prosecuted under the PML Act only in the event of such person having committed schedule offence. The prosecution can be independently initiated only for the offence of money laundering as defined under Section 3 read with section 2(p) which provides that money laundering having the meaning assigned to it under Section 3 of the Act. 185 23. In other words, the proceedings under PML Act are independent, separate, distinct and different from the proceedings initiated for scheduled offences by other law enforcement agencies. PML Act is a stand alone enactment which differentiates the Schedule offence and the money laundering offence separately. To put it differently, if the investigation for the predicate offence is conducted by the authorities so empowered under the enactments and if for various reasons such proceedings were to be closed or dropped, then, proceedings under PML Act would not automatically disappear or is not required to be dropped.

24. Even in case of proceeds of crime not being in possession of the alleged offenders, but if it is sought to be projected as an untainted money and sought to

be ploughed into the economy, which ultimately derails the economy of the country, then, authorities under the PML Act would be empowered to proceed under the provisions of PML Act. As to whether it is proceeds of crime or its use or concealment or acquisition is to be decided only by the adjudicating authority after verifying the facts and circumstances that would be unraveled by verifying the relevant records and documents during the course of investigation. The mere suspicion of the authorities that proceeds of crime is being ploughed into main stream of the economy as untainted money is sufficient enough for the authorities to investigate and examine and this can be done only by collecting the information, recording the statements who might not be the offender also.

82. In the light of aforesaid analysis, this Court is of the considered view that existence of a predicate offence 186 for initiation of proceedings under the PML Act is not a condition precedent or in other words, the offence under Section 3 of the PML Act is a stand alone offence. Hence, the presence of a schedule offence as prescribed under the PML Act would not be condition precedent for proceeding against such person under the PML Act.

83. A plain reading of Section 5 of the PML Act would indicate where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of said section has reason to believe, to be recorded in writing, on the basis of material in his possession would proceed to pass an order in writing provisionally attaching such property of any person who is in possession of any proceeds of crime and if such proceeds of crime are likely to be concealed, transferred or dealt with any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime. Every order of attachment made under sub-section (1) of Section 5 shall cease to have effect after the expiry of the period specified in that said sub-section (i.e., 180 days) 187 or on the date of an order made under sub-section (2) of Section 8, whichever is earlier. The first proviso to sub-section (1) would indicate that no such order of attachment can be made unless, in relation to the schedule offence, a report of which has been forwarded to a Magistrate under Section 173 of Code of Criminal Procedure or a complaint has been filed by a person authorized to investigate the offence mentioned in that schedule as indicated thereunder. However, second

proviso to Section 5(1) would indicate that notwithstanding anything contained in first proviso, any property of any person may be attached under Section 5 if the authorities specified in sub-section (1) has reason to believe that such property involved in money laundering if not attached immediately is likely to frustrate the proceedings under the PML Act. Section 5 mandates that the officers specified thereunder should forward a copy of the order of provisional attachment immediately along with the material in his possession to the adjudicating authority in a sealed envelope in the manner prescribed and the adjudicating authority is required to keep such order and material for such period as may be 188 prescribed. Sub-section (3) of Section 5 would indicate that order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified thereunder or on the date of an order made under sub- section (2) of Section 8, whichever is earlier. Sub-section (4) of Section 5 entitles the person interested in the property to enjoy the said property which has been attached under sub-section (1). The authorities specified under sub-section (5) of Section 5 are required to file a complaint stating the facts of such attachment before the adjudicating authority.

84. It is contended that clause (b) of Section 5(1) of PML Act would indicate the legislative intent is 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., is an argument which requires to be considered for the purposes of rejection, inasmuch as, the second proviso to sub-section 189 (1) of Section 5 enables the authority referred to in sub-section (1) of Section 5 to attach any property of any person, in the event of such property involved in money laundering, if not attached or the non-attachment is likely to frustrate any proceedings that may be initiated under the PML Act. Second proviso to clause (b) of sub-section (1) of Section 5 would indicate that notwithstanding anything contained in Clause (b), any property of any person may be attached. This provision came into force by Act 21 of 2009 with effect from 06.03.2009. The second proviso to Section 5(1) enjoins that any property of any person may be attached if the specified authority therein has reason to believe on the basis of material in his possession that if such property is not attached, it is

likely to frustrate any proceedings under the PML Act. Thus, non-obstante clause in second proviso clearly excludes clause (b) of Section 5(1). It is this clause (b) that incorporates or mandates the requirement that the proceeds of crime should be in possession of a person who is charged of having committed a schedule offence, for initiating proceedings for attachment and confiscation. 190 Thus, reading of second proviso to clause (b) would clearly indicate that it excludes clause (b) of Section 5(1). In other words, the legislative intent to exclude clause (b) of Section 5(1) in the circumstances provided under the second proviso, is clear and unambiguous. To put it differently, if other conditions set out in Section 5 of the PML Act are satisfied, any property of any person could be proceeded against for attachment, adjudication and confiscation. In fact, the definition of the expression person under Section 2(s) is not restrictive definition limited to a person charged of having committed a schedule offence only and it includes any other person also.

85. The adjudicating authority on being satisfied and having reason to believe that any person has committed an offence under Section 3 or in possession of proceeds of crime, would serve a notice under Section 8(1) of not less than 30 days on such person by 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. The adjudicating authority would 191 thereafter pass an order by recording a finding whether all or any of the properties referred to in the notice under sub-section (1) or involved in money laundering. Thereafter the adjudicating authority would confirm or annul the provisional order of attachment.

86. Thus, on a conspectus reading of Section 8(1), (2) and (3) it would emerge therefrom that on an provisional order of attachment being passed under Section 5(1), such person would receive the notice of not less than 30 days under sub-section (1) of Section 8 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. Such person is required to demonstrate before the adjudicating authority as to why the said order of attachment should not be continued or confirmed. The adjudicating authority on consideration of the reply, would arrive at a conclusion either confirming the provisional order of attachment or annul the same. Sub-

section (4) of Section 8 authorizes the authorities specified thereunder to take possession of the property 192 attached under Section 5 and on conclusion of trial of an offence under the PML Act, such property would stand confiscated to the Central Government if the Special Court finds that the offence of money laundering has been committed vide Section 8(5). In the event of the Special Court arriving at a conclusion that money laundering has not taken place or the property is not involved in money laundering, it would order release of such property to the person entitled to receive it as indicated under Section 8(6). In the event of trial not being proceeded for the reason of death of accused or the accused being declared a proclaimed offender or for any other reason or having commenced trial, it could not be concluded, the Special Court on an application filed by the Director or a person claiming to be entitled for possession of a property can pass appropriate orders regarding confiscation or release of such property involved in the money laundering after having regard to the material before it. Section 8(8) prescribes that where property has been confiscated to the Central Government under sub-section (5) the Special Court can also direct the Central Government to restore 193 such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of money laundering.

87. Yet another contention raised in W.P.No.24444/2015 is that, amendment made to Section 8(3) to 8(6) has resulted in substantial rights accrued to the petitioner being extinguished. In other words, petitioner has prayed for unamended provisions of Section 8(3) to 8(6) being applied.

88. By amending Act 2 of 2013, Section 2(1)(ia) was inserted and the expression scheduled offence before a court and found in clause (a) of sub-section (3) of Section 8 was substituted by the expression any offence under this act before a court or under the corresponding law of any other country before the competent court of criminal jurisdiction outside India, as the case may be;. The said amendment came into force from 15.02.2013. 194

89. As could be seen from clause (2)(1)(ia) the expression corresponding law has been defined indicating the offences alleged to have been committed in any

foreign country, should be corresponding to the scheduled offence under the PML Act. A plain reading of this provision would indicate that the parliament has only envisaged or has thought fit in its wisdom to rely on the scheduled offences of the PMLA for holding person guilty in foreign jurisdictions and not leave out the persons, who have committed the scheduled offences in India, by considering them as not guilty, when both have indulged in money laundering activity. On a harmonious reading of both provisions would imply that any offence under this act before a court would include any of the scheduled offences, named under the act in terms of Section 2(1)(y) of the PML Act. Thus, intention of the parliament by bringing an amendment to Section 8(3)(a), is to include the offenders who are charged of scheduled offences committed in foreign jurisdictions, and have either laundered money in India or have ploughed the proceed of crime in India. Thus, when the intention of the parliament 195 is gathered from this amended section, it would leave no manner of doubt, that intention of the parliament was not to leave out the domestic offenders out of the ambit of scheduled offences, and to bring only those charged under Section 8(3)(a) as amended.

90. The amended provision of Section 8(3)(a) uses the phrase any offence under this act before a court, and the use of expression any offence pre-supposes more than one offence which means the scheduled offence defined under Section 2(1)(y) and not narrowly to mean only the offence of money laundering as defined under Section 3 which is punishable under Section 4 as speciously contended by the petitioners.

91. The proper and rational meaning to be attached to clause (a) in sub-section (3) of Section 8 is, that once the provisional attachment order passed under Section 5, is confirmed by the adjudicating authority under Section 8(3), the attachment would continue till the conclusion of proceedings relating to any offence under PML Act. It does not mean that confirmation of 196 provisional attachment will not have any force if no proceedings relating to the offence of money laundering are pending before Special Court on the date of confirmation.

92. The Finance Minister while introducing Bill No.133 of the Prevention of Money Laundering (Amendment) Bill, 2011 in his notes on clause relating to Section 8

has made the following explanation at clause (6): This clause seeks to amend section 8 of the Act relating to adjudication to delink the attachment from of the property to the pendency of the proceedings relating to the Scheduled offence and link it to the money laundering offence. It further seeks to delink the attachment to conviction. It also seeks to broaden the scope of seizing by also enabling freezing of property and documents which cannot be seized. It also seeks to take away the powers of the adjudicating authority to release the attached properties, where the scheduled offence itself is found not to have been committed or the attached property is not involved in money-laundering and vest the same with the Special Court.

93. In the light of the aforesaid analysis, this court is of the considered view that contention of the petitioners with regard to applicability of unamended 197 Section 8(3)(a) would not hold water and it is liable to be rejected and accordingly it stands rejected.

94. The Division Bench of Andhra Pradesh High Court in the matter of B RAMA RAJU vs UNION OF INDIA reported in (2011) 3 ALD443(DB) having examined as to whether the provision of Sections 5 and 8 of PML Act is in violation of Articles 14, 21 & 300A of the Constitution of India, has held in the negative. It came to be held: 25. 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 Section 3 with the punishment provided in Section 4; and (b) attachment, adjudication and confiscation in the sequential steps and subject to the conditions and procedures enumerated in Chapter 111 of the Act. Section 2 (p) defines the expression money-laundering as ascribed in Section 3. Section 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 198 property. On proof of guilt and conviction of the offence of Money- Laundering, the punishment provided in Section 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 Section 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.

26. 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 (Section 5(1)(b)) or even if not so charged (second proviso to Section 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 (Section 5(1)); confirm an order of provisional attachment after a process of adjudication (Section 8(3)); and eventually pass an order confiscating such property (Section 8(6)). 199

27. 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.

28. 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.

95. The offence of money laundering under Section 3 of the PML Act is an offence independent of predicate offence and to launch prosecution under Section 3 of the

PML Act, it is not necessary that a predicate offence should also have been committed. In fact, Section 3 criminalizes the possession or the conversion of the proceeds of crime, which includes projecting or claiming the proceeds of crime 200 as untainted property. The element of mens-rea is inherent in the section as against the provision of Section 2(u), thereby preventing prosecution of any innocent person.

96. The expression proceeds of crime as defined under Section 2(u) would not merely include the property derived or obtained as a result of criminal activity relating to a scheduled offence but also the value of any such property. Thus, contention of the petitioners that where proceeds of crime has been transferred by virtue of several transactions and thereby several persons having absolutely no knowledge or information as to the previous knowledge of criminality attached to the property cannot be proceeded is an argument which cannot be accepted inasmuch as, the authorities under the Act are empowered to proceed against each and all of such consequential transactions, thus, bringing within the scope of Chapter III of the Act, all the properties involved in the transactions.

97. It would not be out of context to refer at this juncture itself Sections 23 and 24 of the PML Act. For the 201 purposes of convenience, said provisions are extracted herein below: 23. Presumption in inter-connected transaction.-- 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 or for the trial or the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court]., be presumed that the remaining transactions form part of such inter-connected transactions.

24. Burden of Proof.-In any proceeding relating to proceeds of crime under this Act,-- (a) in the case of a person charged with the offence of money-laundering under section 3, the authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering; and (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money- laundering.

98. The Honble Apex Court in the case of ATTORNEY GENERAL FOR INDIA vs AMRATHLAL PRAJIVANDAS reported in (1994)5 SCC54 while considering the validity of provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) has observed: The relatives and associates are brought in only for the purpose of ensuring that the illegally acquired properties of the convict or detenu, acquired or kept in their names, do not escape the net of the Act. It is a well-known fact that persons indulging in illegal activities screen the properties acquired from such illegal activity in the names of their relatives and associates. Sometimes they transfer such properties to them, may be, with an intent to transfer the ownership and title. In fact, it is immaterial how such relative or associate holds the properties of convict/detenu - whether as a benami or as a mere name-lender or as a bona fide transferee for value or in any other manner. He cannot claim those properties and must surrender them to the State under the Act. Since he is a relative or associate, as defined by the Act, he cannot put forward any defence once it is proved that that property was acquired by the detenu whether in his own name or in the name of his relatives and associates. In fact, the aforesaid judgment has been referred to in RAMA RAJUS case referred to supra and concluded as under: 46. The object of the Act is to prevent money-laundering and connected activities and confiscation of proceeds of crime and preventing legitimizing of the money earned through illegal and criminal activities by investments in movable and immovable properties often involving layering of the money generated through illegal activities, i.e., by inducting and integrating the money with legitimate money and the expression proceeds of crime expansively to sub-serve the broad objectives of the Act. We thus do not find any infirmity in the provisions of the Act.

99. The expression proceeds of crime covers any property derived or obtained directly or indirectly by any person, as a result of criminal activity, related to a scheduled offence or the value of such property. The expression property is elucidated in Clause (v) of Section 2, as 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. Section 2(u), therefore, does not envisage either mens rea or knowledge that the property acquired is a result of

criminal activity. 204

100. The Honble Apex Court in the matter of KARTAR SINGH vs STATE OF PUNJAB, reported 1994 SCC (Cri) 899 has held that in a criminal action, the general conditions of penal liabilities are indicated in the word maxim actus non facit reum, nisi mens sit rea i.e., the act alone does not amount to guilt, it must be accompanied by a guilty mind. But there are exceptions to this Rule and the reason for this is that the legislature, under certain situations and circumstances, in its wisdom, may think it so important, in order to prevent a particular act from being committed to forbid or rule out the element of mens rea as a constituent part of a crime or of adequate proof of intention or actual knowledge. It has been further held that unless a statute either expressly or by necessary implication rules out mens rea in cases of this kind, the element of mens rea must be read into the provisions of the statute itself.

101. An argument is also canvassed on behalf of the respondents - revenue that the offence of money laundering is a continuing offence, since it also punishes possession of 205 property acquired from crime and therefore, there is no question of retrospective criminalization.

102. In the case of STATE OF BIHAR vs. DEOKARAN NENSHI reported in (1972) 2 SCC890 the Apex Court has distinguished as to what constitutes a continuing offence which is distinguishable from the offence which is committed once and for all. It has been held: 5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occurrence and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act of omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission if

committed once and for all. 206 103. Having regard to the aforesaid authoritative pronouncement of the Honble Supreme Court, when the scheme of PML Act is seen that money laundering is a continuing offence and as such question of it being made retrospective effect does not arise.

104. The process of money laundering involves three (3) stages namely, placement, layering, integration. In the case of a continuing offence the ingredient of the offence continued i.e., endure even after the period of consummation, whereas in a instantaneous offence, the offence takes place once and for all, when the same actually takes place. In such cases, there is no continuing offence even though the damage resulting from injury may itself continue. The amendments brought about under the PML Act by Act 20 of 2005, 21 of 2009, 2 of 2013, 28 of 2016 and 13 of 2018 neither create the new offence nor enhance the punishment nor they have changed the procedure or forum of trial to prejudice of the accused and it is only procedural in nature and as such it would have retrospective effect as the offence is continuing one. In 207 other words, the money laundering offence is a continuing offence.

105. Thus, in case of the proceeds of crime are being projected as being untainted and thereby ploughing such tainted money to the economy of the country, it would definitely have delirious effect and impact on the economy and as such the offence which has been committed and continuing would not wipe-out the offence committed on the premise that act is prospective and cannot have retrospective effect. It would be that date when a person is found involved in any process or activity connected with the proceeds of crime and projecting as untainted property, which would be the relevant date for the purposes of prosecution under Section 3 of the PML Act and not the date when the scheduled offence was committed. What is being targeted by Section 3 is the laundering of money which would be relevant. The expression laundering as used in Section 3 comprises of involvement in any process of activity by which the illicit money is being projected as untainted. In that view of the 208 matter, the relevant date is not the date of acquisition of illicit money but the dates on which such money is being processed and projected it as untainted.

106. The High Court of Mumbai, in the matter of RADHA MOHAN LAKHOTIA vs. DEPUTY DIRECTOR PMLA, reported in 2010 SCC OnLine Bom 1116, while examining the question as to whether Section 5 can be invoked against a person who is not named as an accused in the commission of a scheduled offence?., has discussed the definition of the expression person occurring in Section 2(s) and held that on conjoint reading with Section 5(1), wherein the expression any person is referred that proceeds of crime may be or can be in possession of "any person", be it a person charged of having committed a scheduled offence "or otherwise". It has been further held: 11. The question is whether section 5 can be invoked against a person who is not named as an accused in the commission of a scheduled offence?. Sub-section (1) of Section 5 will have to be read as a whole conjointly with the other provisions of the Act already referred to hitherto, including section 8 thereof. Section 5 authorises the 209 Director or any other officer not below the rank of Deputy Director authorised by Director for the purposes of the said section to resort to action of attachment of property if he has reason to believe and the reason of such belief has been recorded in writing arrived at on the basis of material in his possession. That action is intended to freeze the proceeds of crime, which property, is derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence or value of any such property until the criminal action for the scheduled offence is taken to its logical end against the accused named therein. The proceeds of crime 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 - which has been derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence or the value of such property. The proceeds of crime may be or can be in possession of any person Be it a person charged of having committed a scheduled offence or otherwise In the case of any other person in possession of proceeds of crime, if it is also found that he has directly or indirectly attempted to indulge or knowingly assisted 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, he shall be liable to be prosecuted for offence under section 3 read with section 4 of the Act of 2002 - in addition to

suffering the action of 210 attachment of the proceeds of crime in his possession. Attachment of proceeds of crime in possession of any person (other than the person charged of having committed a scheduled offence) will, therefore, be legitimate within the sweep of Section 5 of the Act of 2002. In our opinion, the thrust of section 5 is to attach every property involved in money-laundering irrespective of whether it is in possession of the person charged of having committed a scheduled offence or any other person- provided however it must be shown to be proceeds of crime and further, that 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 the Act.

12. Going by the definition of person occurring in Section 2(s) and on conjoint reading of section 2(u), which also refers to any person coupled with the purpose and intent for which the enactment has been brought into force, accepting the argument of the appellants would result in a pedantic approach and limiting the plenitude of action of attachment and confiscation of proceeds of crimes only in the hands of the persons who have been charged of having committed a scheduled offence and none else. Whereas, the Act has come into being 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. It is the outcome of the Political Declaration and Global Programme of Action, as annexed to the 211 resolution S-17/2 adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990. It has come into being also on account of the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 which called upon the Members States to adopt national money-laundering legislation and programme. The term money- laundering has the same meaning assigned to it in Section 3 of the Act of 2002. It essentially refers to the tainted property which is derived from criminal activity relating to a scheduled offence. Such tainted property may travel at different levels or by way of circular transactions for being eventually projected as untainted property in the hands of or possession of person other than the person charged of having committed a scheduled offence. That involves direct or indirect involvement of person or persons other than the person(s) accused of having committed a

scheduled offence. Such other person(s) may directly or indirectly attempt to indulge or knowingly assist or knowingly is a party or is actually involved in any process or activities connected with the proceeds of crime and projecting it as untainted property. If such is the nature of activity, the Act of 2002 is intended to deal with the same sternly. In a given case a person can be in possession of any proceeds of crime without his knowledge that the property held by him is tainted. That person may not face prosecution under section 3 of the Act of 2002. But even in his case, an order of attachment of the proceeds of crime can be invoked 212 and later end up with confiscation thereof depending on the outcome of the criminal action against the person charged of having committed a scheduled offence. The action of attachment is not in relation to a person as such but essentially to freeze the proceeds of crime. The interpretation given by the Appellants, if accepted would be destructive of the said legislative intent. Suffice it to observe that the term person appearing in clause (a) of Section 5(1) of the Act cannot be limited to the person who has been charged of having committed a scheduled offence. If that was the intent of the legislature, there was no reason to insert clause (a). In that case, the Legislature would have simply provided for any person who has been charged of having committed a scheduled offence and in possession of any proceed of crime, such proceeds of crime can be attached and confiscated, subject to fulfillment of the specified conditions.

107. Hence, this Court is of the considered view that contentions raised by the petitioners to quash the proceedings on the ground of the proceedings initiated against them is without jurisdiction for want of either there being no predicate offence or on the date of launch of proceedings under the PML Act, the predicate offence referred to in the schedule was not incorporated in the schedule and as such, there would be retrospective 213 application of law cannot be accepted, inasmuch as, the offence of money laundering as indicated under Section 3 of PML Act is a stand-alone offence. It is to be further noticed that the proceedings initiated by the authorities by passing an order of provisional attachment and its confirmation thereof would not fail or lapse on account of any procedural irregularity for the reasons indicated herein above. Hence, this court holds that point Nos.(ii) and (iii) are to be answered against the petitioners and they are accordingly answered. RE: POINT NO.(v):

108. It is contended by the respondents that on provisional orders of attachment being passed, show cause notices have been issued and even without filing objections to the said show cause notices by explaining as to why the provisional order of attachment should not be confirmed, petitioners have invoked the extraordinary jurisdiction of this court by challenging either the provisional orders of attachment or consequential show cause notice issued and as such the writ petitions are not maintainable. It is also 214 contended that where the provisional orders have been confirmed by the adjudicating authority, the aggrieved person has a right of appeal to the appellate tribunal and in case of the order passed by the tribunal dismissing the appeal, the aggrieved party can yet again file one more appeal to this court and without exhausting the said alternate remedies available under the PML Act the petitioners have approached this court by filing the writ petition and as such the petitions are liable to be dismissed on the ground of petitioners having not availed the alternate remedy available under the PML Act.

109. Countering the said arguments, it has been contended by the petitioners that on account of there being challenge to the constitutional validity as well as the jurisdictional issue having been raised, the writ petitions are maintainable.

110. This court, while examining similar issue of exercise of writ jurisdiction, had an occasion to consider the said issue in the matter of BANGALORE TURF CLUB vs UNION OF INDIA, MINISTRY OF FINANCE AND 215 OTHERS reported in ILR 2015 KAR 1825 and after referring to catena of judgments referred to thereunder, it came to be held: 20. It is well settled law that when an alternate or efficacious remedy is available to a litigant same should be exhausted before invoking the extraordinary jurisdiction and when such jurisdiction is invoked the existence of adequate alternate remedy will be taken note of before issuing writ or exercising the extraordinary jurisdiction. Where such alternate remedy is available it would be normal to refrain thereof. However, writ Courts would not lose sight of the fact that a writ in the nature of certiorari will issue, provided the requisite grounds exist and mere existence of alternate remedy would not per se act as a barrier to the issuance of such writs. The exercise of extraordinary jurisdiction by the writ Court would depend upon variety of individual facts which is pre-eminently one of discretion. No flexible rule can be laid down or in other words there cannot be any

straight jacket formula in this regard.

111. The Honble Apex Court in *WHIRLPOOL vs REGISTRAR OF TRADE MARKS, MUMBAI AND OTHERS* reported in (1998)8 SCC1 has held, that issue of prerogative writs under Articles 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. It has also been held that having regard to the facts of the case, the High Court has 216 discretion to entertain or not to entertain a writ petition. The availability of an alternate remedy would not operate as a bar to invoke the extraordinary jurisdiction namely, where the writ petition has been filed to enforce the fundamental rights or where there has been violation of fundamental rights or where there has been violation of principles of natural justice or where the order or proceedings is wholly without jurisdiction or the vires of an Act is under challenge. It has been further held: 15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in atleast three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the 217 constitutional law as they still hold the field.

112. A plain reading of Section 5, 8, 26 and 42 of PML Act would indicate that under sub-section (1) of Section 5 the authorities specified thereunder are empowered to pass an order provisionally attaching such property on the reasonable belief that any person is in possession of any proceeds of crime; and such proceeds of crime are likely to be concealed, transferred or dealt with any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime. Every order of attachment made under sub-section (1) of Section 5 shall cease to have effect after the expiry of the period specified in that

said sub-section (180 days) or on the date of an order made under sub-section (2) of Section 8, whichever is earlier. The authorities specified under sub-section (5) of Section 5 are required to file a complaint stating the facts of such attachment before the adjudicating authority. The adjudicating authority on being satisfied and having reason to believe that any person has committed an offence under Section 3 or in 218 possession of proceeds of crime, would serve a notice of not less than 30 days on such person by 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. The adjudicating authority shall thereafter pass an order by recording a finding whether all or any of the properties referred to in the notice under sub-section (1) or involved in money laundering. Thereafter the adjudicating authority would confirm or annul the provisional order of attachment. Thus, on a provisional order of attachment being passed, such person would receive the notice under sub-section (1) of Section 8 to reply to the same and demonstrate before the adjudicating authority as to why the said order of attachment should not be continued or confirmed. After consideration of the reply, the adjudicating authority were to arrive at a conclusion that provisional order of attachment is to be confirmed, it would proceed to confirm the same under Section 8(2). This order of confirmation is appealable before the appellate tribunal under Section 26 of PML Act. In the event of the appellate tribunal were to either confirm, vary, modify or set aside 219 the order of adjudicating authority, the aggrieved person would be at liberty to challenge the same by filing further appeal under Section 42 before this court within sixty days from the date of communication of the decision. Thus, sufficient safeguards protecting the interests of the aggrieved persons including granting of opportunity to file reply to the provisional order of attachment is found in the provisions aforesaid and as such this court is of the considered view that these provisions would provide ample opportunity to the aggrieved person to challenge the order passed by the authorities and as such it cannot be gainsaid, there would be violation of principles of natural justice or on that ground the writ petition would be maintainable.

113. In the writ petitions filed at Sl.No.I, II, III, IV, VI, VIII and IX, the challenge is not only to the provisional order of attachment but also to the confirmation order of attachment, notice issued seeking information from the Banks and financial

institutions, consequential notices issued to comply with the confirmation order of 220 attachment, consequential notice for handing over possession of the properties issued, summons issued under Section 50(3) and the remand application filed before the Special Judge of PMLA Court and as such on the short ground of the petitioners having not availed the remedy provided under Section 8, 26 and 42 of the PML Act, the writ petitions are liable to be dismissed. However, this court desist from doing so for the reason, the grounds urged in some of the writ petitions would touch upon the very jurisdiction of the authority to adjudicate and the procedural aspects alleging violation of principles of natural justice being involved and as such this court has proceeded to adjudicate the writ petitions on merits also. Hence, in the facts obtained in the present case Point No.(v) is answered in the negative. RE. POINT NO.(vi) IN THE MATTER OF W.P.Nos.4215/2017, 6159/2017, 6173/2017 & 8261/2017:

114. In these writ petitions the company as well as former Directors and ex-employees have challenged the communication issued by the Chief Director of 221 Enforcement Directorate to the Chief Executive Officer of the Association of Mutual Funds of India (for short AMFI), contending interalia that it is a colourable exercise of power without jurisdiction and arbitrary.

115. It is the contention of Sri. Uday Holla, learned Senior Counsel appearing on behalf of the petitioners that in W.P.No.6159/2017, there is no provisional order of attachment passed, yet the impugned letter dated 06.01.2017 (Annexure-A) is issued by the Assistant Director, Directorate of Enforcement to AMFI calling upon the noticee to furnish details of investments made by the petitioner-company in mutual funds/fixed maturity plans of various asset management companies, who are members of the noticee. He would draw the attention of the Court to the said communication to contend that AMFI is not a government organization nor an instrumentality of State and it is not a profit organization. He would contend that Section 2(na) of the PML Act deals with investigation to be conducted by the authorities designated thereunder and the impugned communication has been issued by a person 222 other than who is authorized to conduct investigation. He would also draw the attention of the court to Section 54(j) of PML Act to contend that AMFI is not one of the authorities notified thereunder. He would further

contend that reporting entity as defined under Section 2(wa) of the PML Act would not take within its sweep the notice, as it is an association, which is not carrying any profession of banking or being a financial institution or intermediary or a person carrying on a designated business or profession, as indicted thereunder. He would also contend that under Section 17 it is only the Director or Deputy Director who can order for such seizure and the impugned communication which is issued by the Assistant Director is without jurisdiction. He would also contend that Assistant Director has no power to freeze the account except under Section 17(1A) of the PML Act. In substance he would contend that; (i) officer who has issued the impugned communication has no jurisdiction; (ii) AMFI is not a reporting entity nor does it fall within the ambit of Section 54; and, 223 (iii) the officer issuing the impugned communication must have reason to believe that money laundering exists, which is not forthcoming from the impugned communication. He would further contend that petitioners in W.P.Nos.6159/2017, 6173/2017 and 8261/2017 have ceased to be the Directors and employee of the company and their life savings in mutual funds have been frozen and under the guise of investigation which exercise cannot be undertaken. Hence, he has prayed for allowing the writ petitions.

116. At the outset it requires to be noticed that petitioner in W.P.No.4215/2017 has strangely contended that there is no provisional order of attachment having been passed, though such provisional order came to be passed on 27.02.2017 under Section 5(1) of the PML Act. In fact, a show cause notice dated 20.02.2017 under Section 8 of the PML Act has also been issued by the adjudicating authority (PMLA), New Delhi to the petitioner. 224 The provisional order of attachment dated 27.02.2017 as well as the show cause notice dated 20.02.2017 came to be challenged before this court in W.P.No.11544/2017 and said writ petition came to be dismissed vide order dated 06.10.2017. The copy of the said order has been filed by the learned counsel appearing for the respondent along with memo dated 09.11.2017 which discloses this court had held that writ petition filed against a provisional order of attachment is not maintainable. As such contention raised by the learned Senior Counsel appearing for the petitioner with regard to there being no provisional order passed would not hold water and said contention is liable to be rejected. On this short ground alone, this writ petition is liable to be dismissed.

117. By the impugned communication first respondent has called upon second respondent to inform its members to furnish information about any investment having been made by the petitioner-company with the members of the second respondent in mutual funds/other plans and if so to furnish the details thereof. The second 225 respondent has also been informed that such investments should not be redeemed or released until further instructions are issued as per Section 2(na) and Section 54 of the PML Act. Thus, it would be apt and appropriate at this stage to extract Section 2(na) of the PML Act, which reads: 2(na) investigation includes all the proceedings under this Act conducted by the Director or by an authority authorized by the Central Government under this Act for the collection of evidence;

118. A conjoint reading of Section 2(u) and 3 would make it explicitly clear that authorities under the PML Act are empowered to investigate any allegation relating to any activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming the same to be untainted property. Any person who directly or indirectly attempts or indulges or knowingly assists or is a party in such process is said to have committed an offence under PML Act.

119. Investigation as defined under Section 2(na) is an inclusive definition. Chapter III, IV and V of PML Act 226 provide for exercise of powers by the investigation agencies. Sections 16 to 18, Section 20 and 21 of the PML Act provide such authorities the powers to survey, seizure and retention or proceeds of crime or any record or property relating thereto upon recording reasonable belief as postulated under the said provisions. Section 12 and 12A of the PML Act casts duty upon the reporting entities namely, banks and financial institutions to maintain records of transactions, identities of persons, entering into such transactions and report the same to the authorities under the PML Act. Section 19 of the PML Act provides for power to arrest. Sections 5, 8 and 9 of the PML Act provide for attachment of proceeds of crime or records/properties related thereto upon recording reasonable belief thereto and eventual confiscation of such attached/retained properties. Section 54 of the PML Act provides for duty of certain officers and others to assist the authorities for enforcement of the PML Act. Officers of reporting entities i.e., banks and financial institutions would fall in the

aforesaid category. 227

120. Now turning my attention to the issue raised about lack of jurisdiction on the part of first respondent to make request to the second respondent-AMFI for not redeeming/releasing the investments that has been made by the petitioner with the members of AMFI, will have to be examined in the background of Section 2(na), which defines investigation. As already noticed hereinabove, the said definition is an inclusive definition and would empower the investigating agency to take recourse to not only proceedings under the PML Act but also to all incidental and consequential acts that may be necessary for effectively pursuing such proceedings under the Act and to ensure collection of evidence. The investigation commences as soon as the authority decides to take the first step whether by way of seeking evidence or by way of seeking explanation from the person concerned who is said to have indulged in money laundering. It is not necessary that it should commence with the communication of such acquisition to the person concerned. Nor is there any rule of justice or fair play which requires the authority to seek the comments of the 228 person concerned before embarking upon an investigation. The Honble Apex Court in the matter of DIRECTORATE OF ENFORCEMENT VS DEPPAK MAHAJAN reported in AIR 1994 SC1775 has held that the word investigation cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorized officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation. The prime object of an investigation for an offence of money laundering is that the investigating agency must be empowered to take immediate steps so that monies credited in suspicious account are not allowed to be withdrawn and thereby rendering the proceedings to be initiated under the PML Act otiose or infructuous. There may be instances that during the course of such investigation carried out by the authorities under the PML Act, to lay their hands on suspicious transactions and/or go in such of trial of monies in the accounts maintained by 229 any person who is being investigated for the offence under the PML Act. Thus, when this process of investigation has commenced namely, the authorities are attempting to trace, identify and verify the source of such monies

invested or deposited from such accounts, if permitted to be withdrawn, the investigation would lose its purpose and it may become an exercise in futility. It is to prevent such contingencies, the investigating agency must be necessarily held to possess the incidental power to request a reporting entity namely, banking company, financial institution, intermediary or a person carrying on a designated business such information as may be necessary. Thus, the expression investigation as found in the PML Act will have to be necessarily held as an inclusive definition and it would take within its sweep all such incidental and consequential powers, which would be necessary to achieve the ultimate end i.e., collection of evidence and consequently, achieving the object of the Act.

121. In fact, the issue relating to the Assistant Director having issued the impugned communication 230 being without power does not arise, inasmuch as, the notice in question has been issued by the Assistant Director and there is no prohibition under Section 54 of the PML Act for the said authority issuing the impugned communication. In fact, under Section 48 of the PML Act the authorities specified thereunder who would exercise the power under the PML Act includes the Assistant Director.

122. The Director of Enforcement has been appointed vide Notification No.GSR441(E) dated 01.07.2005 by the Government of India, by virtue of the powers conferred under Section 49(1) of the PML Act by authorizing him to exercise the exclusive powers conferred under Sections 5, 8, 16 to 21, 26(1), 45, 50, 57, 58A, 58B, 60, 62 and 63 and therefore, he becomes an authority as indicated under Section 48. The said Director has the exclusive power under Section 5 to authorize officers not below the rank of Deputy Director for the purpose of Section 5 and the Director of Enforcement in his capacity as Director under PML Act has indeed authorized all 231 Deputy Directors of Enforcement to provisionally attach the property in respect of cases registered for investigation in their respective zones in accordance with PML Act and Rules made thereunder vide Notification F.No.T- 1/HQ/03/PMLA/207 dated 07.02.2007. In fact, the Central Government in exercise of its power conferred under Section 49(1) has appointed the Deputy Director under Foreign Exchange Management Act, 1999, as the Deputy Director for the purpose of PMLA vide order S.O.1274(E) in

F.No.6/2/2005-ES which has been duly notified in the Gazette of India Extraordinary, Part-II, Section-3(ii) in No.961 on 13.09.2005.

123. Investigation encompasses the power of the authority to summon or call for documents from the reporting entities. Section 2(wa) defines reporting entity as: (wa) reporting entity means a banking company, financial institution, intermediary or a person carrying on a designated business or profession; (emphasis supplied) 232 124. Section 12 of the PML Act mandates that the reporting entity should maintain records of all its transactions and the details specified in clause (a) to (d) of sub-section (1) should be confidential and to be maintained for a period of five (5) years and insofar as, the record of documents specified in clause (e) of sub-section (1) such records are to be maintained for a period of five (5) years after the business relationship between the client and the reporting entity has ended or the account has been closed, whichever is later. Section 12A empowers the Director to call from reporting entity any of the records referred to in sub-section (1) of Section 12 and additional information as he considers necessary.

125. Under Section 54 of the Act officers specified in clauses (a) to (j) are empowered and required to assist the authorities under PML Act. This Section neither prohibits nor prevents the power of the investigating authority to call for information or records from a banking company, financial institution, intermediary or a person carrying on a business or profession. The acts which are 233 necessary and incidental for exercise of a statutory power are to be inferred by necessary implication, as otherwise, such statutory power would be of no use. The second respondent being an financial institution and also falling within the expression of intermediary would definitely fall within the parameters of reporting entity as defined under Section 2(wa) of the PML Act and as such the contention raised by the learned Senior Counsel appearing for the petitioner cannot be accepted and it is liable to be rejected and accordingly, it stands rejected.

126. A feeble attempt has been made in W.P.No.24444/2015 and few other connected matters that adjudication by single member of the adjudicating authority is bad in law by referring to Section 6(2) of PML Act. Said contention would not stand to rhyme or reason for the simple reason that answer lies in Section 6(5) (a)

& (b), whereunder it is clearly indicated that jurisdiction of the adjudicating authority may be exercised by benches thereof; and, a bench can be constituted by the 234 Chairperson of the adjudicating authority with one or two members, as the Chairperson may deem fit. Hence, this court is of the considered view that constitution of a bench hearing the original complaint or its adjudication thereof consisting of one member cannot be found fault with. It can be further noticed that under sub-section (13) of Section 6, if the vacancy arises in the office of the Chairperson by reason of death, resignation or otherwise, the senior most member would act as the Chairperson and such Chairperson would exercise the power as provided under Section 6 of the PML Act.

127. For the reasons indicated herein above, this Court is of the considered view that contentions raised by the petitioners challenging the action of the respondents in initiating the proceedings under the PML Act cannot be accepted and same stands rejected. RE: W.P.NO.27705/2018:

128. In this writ petition, the order dated 16.12.2016 Annexure-AA passed by respondent No.3 is 235 under challenge, whereunder respondent No.3 has confirmed the attachment of the property i.e., immovable property at Serial No.1 at Table No.1 of the Provisional Order of Attachment dated 30.06.2016.

129. A bare reading of the Provisional Order of Attachment dated 30.06.2016 would disclose that under Schedule-A, movable property was sought to be attached and in the words of authority passing the Provisional Order of Attachment, it would clearly disclose that what was sought to be attached was Amount of Rs.1,21,50,000/- paid as advance by Mr. Dyani Antony Paul (petitioner) to M/s. Prime Housing Development Company, Mangalore for proposed purchase of three flats (bearing No.114, G09 &

313) at Divya Deepa Residency, Shivbagh, Kadri, Mangalore. It is not in dispute that these three flats had never been attached and as such question of confirming attachment of immovable property namely three flats would not arise.

130. The language as found in Section 8(1) when read along with Section 8(3), would clearly disclose that the 236 adjudicating authority would adjudicate the

claim relating to the property attached under sub-section (1) of Section 5 or seized or frozen under Section 17 or Section 18. Expression such property refers to the property which has been attached under Section 5(1) of the Act. Until and unless the property has been attached under Section 5(1), question of confirming the attachment of the property made under sub-section (1) of Section 5 would not arise. In other words, for confirming the attachment, the property requires to be attached under Section 5(1) as otherwise, the adjudicating authority under Section 8 would not get jurisdiction to adjudicate such attachment.

131. In the instant case, as noticed hereinabove, it would clearly disclose what was sought to be attached under Provisional Order of Attachment dated 30.06.2016 (Annexure-V) was the movable property namely a sum of Rs.1,21,50,000/- paid by the writ petitioner to M/s Prime Housing Development Company, Mangalore and not flats bearing Nos.114, G09 & 313 at Divya Deepa Residency, Shivbagh, Kadri, Mangalore which is purported to have 237 been confirmed. In that view of the matter, confirming the order of attachment of immovable property referred to in Serial No.1 of the Provisional Order of Attachment at Schedule-A did not arise. In other words, order of confirmation was an order without jurisdiction. Hence, same is liable to be set aside and accordingly, order of confirmation dated 16.12.2016 (Annexure-AA) passed by third respondent is quashed. However, it requires to be clarified that quashing of confirmation order does not prevent the respondent authorities from proceeding in accordance with law, if they so desire and all contentions of both parties are kept open. For the reasons aforesaid, I proceed to pass the following:

ORDER

(i) W.P.Nos. 38642/2016 C/W159172013, 15918/2013, 39889/2014, 17894/2015, 24444/2015, 19313/2016, 23176/2016, 33740/2016, 42157/2016, 57756/2016, 62102/2016, 4215/2017, 5269/2017, 238 6159/2017, 6173/2017, 8261/2017, 13160/2017, 14158/2017,18557/2017, 36309/2017, 36310/2017, 41176/2017, 46318/2017, 48031/2017, 24480/2018, 27744/2018, 28027/2018, 35991/2018 are dismissed. (ii) W.P.No.27705/2018 is allowed. The order of confirmation dated 16.12.2016 (Annexure-AA) is quashed. Respondents are at liberty to proceed against petitioners in accordance with law, as observed herein above. (iii) No order

as to costs. SD/- JUDGE *sp/DR

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