
(2019) 07 ATPMLA CK 0003

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-3876/GOA/2017, FPA-PMLA-1975, 1976/GOA/2017

Digambar Kamat & Anr

APPELLANT

Vs

Joint Director Directorate Of Enforcement, Goa

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 300A

Prevention Of Money Laundering Act, 2002 — Section 2(1)(u), 2(1)(v), 3, 5, 5(1), 5(1)(a), 5(5), 8, 8(1), 8(2), 8(2)(c), 17, 17(4), 26, 50 Indian Penal Code, 1860 — Section 26, 120B, 201, 420

Prevention Of Corruption Act, 1988 — Section 7, 8, 9, 13

Smugglers And Foreign Exchange Manipulators (Forfeiture Of Property) Act, 1976 — Section 6(1)

Citation : (2019) 07 ATPMLA CK 0003

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Dhruv Mehta, Ninad Laud, Parag Rao, Anupama Dhruve, IVO D"Costa, P.K. Dey, Shilpi Dey, Shreyasi Chakrabarty, Vikas Garg

Final Decision : Partly Allowed

Judgement

“

FPA-PMLA-1976/GOA/2017 & FPA-PMLA-1975/GOA/2017,,

1. By this common order, I propose to decide the above-mentioned two appeals filed under section 26 of the Prevention of Money Laundering Act,,

2002 (hereinafter referred to as “PMLA”) against the impugned order dated 10.08.2017 in O.C. No. 756/2017 passed by the Adjudicating,,

Authority, who under the provision of sec 8(2) of PMLA confirming the Provisional Attachment Order dated 30.03.2017, passed by the Joint Director,,

Respondent herein, under section 5(1) of the PMLA on the following facts and grounds.”,,

2. The brief facts are that in 2010, Japan International Cooperation Agency (JICA) Project Goa was taken up under the Overseas Development",,,

Assistance loan from Govt. of Japan, whereby the Japan Bank of International Co-operation had given a loan of Japanese Yen 22,806,000,000/- and a",,,

tripartite agreement was signed by Japan, Central Govt. and State Govt. of Goa. M/s. Louis Berger International Inc.(â??Louis Bergerâ?) was a part",,,

of a consortium consisting of a total of 4 firms.,,,

3. On 21.07.2015, the Under Secretary(Home), Govt. of Goa filed a complaint bearing no. 27/14/2015-HD(G) before the Director General of Police",,,

Goa alleging there that â??one foreign company namely M/s. Berger International Inc. had allegedly paid an amount of US\$ 9,76,000/- to some",,,

ministers in the Govt. of Goa in the year 2010â?|â?,,

4. It was also alleged in the complaint that some ministers in Goa, conspired with Louis Berger to assist them in obtaining a consultancy contract for",,,

JICA and accepted a bribe of the said amount.,,,

5. Based on the aforesaid complaint, FIR bearing no. 93/2015 dated 21.07.2015 for violation of Section 120B IPC and Section 7, 8, 9 and 13 of the",,,

PCA, 1988 against some ministers and Louis Berger was registered by the Crime Branch of Goa.",,,

6. On the basis of same, ECIR/PJZO/01/2015 was registered on 7.8.2013. It was stated therein that â??Bribery charges involving Louis Berger",,,

International Inc., a New Jersey based company, Goa Ministers during the year 2010 and others came to light after a New Jersey based company told",,,

US Court that its officials/agents/consortium had allegedly bribed Ministers and others in Goa for obtaining consultancy contract for Japan,,

International Corporation Agency water project in 2010â?|â?,,

7. The Respondent during investigation recorded the statement of the Appellants u/s 50 of PMLA wherein the case was set up with regard to 6,,

different properties which are not subject matter of provisional attachment order dated 30.3.2017 and further that he received 4.05 crore in December,,

2009 and 4.08 crore in September 2010. However, the said figures was modified at later stage.",,,

8. The Provisional Attachment Order no. 2 of 2017 was issued in ECIR/PJZO/01/2015 u/s 5(1) of PMLA on 30.03.2017 after recording the statement,,

of various witnesses under Section 50 of the Act. The main allegations against

Digambar Kamat were that he accepted a bribe of Rs. 1.20 Crores,,
 (approx.) in connivance with the then PWD Minister of Goa, Shri Churchill Alemano who received a bribe of Rs. 75 lacs for favouring.",,,

9. The findings of the Enforcement Directorate against him are that with the help of shell companies, Louis Berger had diverted Rs. 2.20 crores and",,,
 used the said amounts in making inappropriate payments of Rs. 1.95 crores to the Appellant no. 1 and Shri Churchill Alemano, the said payments were",,,
 as a result of criminal activity related to scheduled offence, therefore, the Appellant No. 1 was in possession of the proceeds of crime to the tune of",,,
 Rs. 1.20 crores.,,,

10. Original Complaint no. 756/2017 u/s 120B & 420 IPC and u/s 7, 8, 9 & 13 of the PCA filed on 27.04.2017 before the PMLA Adjudicating",,,
 Authority against the appellants and family members. Several movable and immovabale properties were provisionally attached on â??equivalent,,
 valueâ?? of proceeds of crime at both sets of the appellants.,,,

11. Two immovable properties and five Fixed Deposits (â??FDsâ?) of the Appellant No. 1 in appeal no. 1676/2017 have been attached with the,,
 following observation made in the complaint at paragraph 52:,,
 â??52. Sh. Digamber Kamat has an imovable property at plot no. 29 known as â??Copengaleâ? situated at Gogol, Survey under Chalta",,,
 No. 3 of PT Sheet no. 57 of city survey Margoa having an area of 4047 square feet. Shri Digamber Kamat in his election affidavit dated,,
 09.02.2012 declared the market value of the said plot at Rs. 22.95 lakhs. He has a residential building having 3046 square feet of area and,,
 517 square feet of terrace at survey no. 235/1 of Taleigao Village. The said property was acquired in February 2009 and cost of the,,
 property at the time of puchases was Rs. 55.60 lakhs, Sh. Digamber Kamat is having 2 fixed deposit nos. 253100MB00004530 and",,,
 2531ooMB00004521 with Punjab National Bank, Margao branch amounting to Rs. 20.69 lacs. In addition, having 3 fixed deposits bearing",,,
 nos. 253100MB00004460, 223MB00004451 and 2531MB00004479 jointly with his wife SMt. Asha Digamber Kamat with Punjab National",,,
 Bank Margoa amount to Rs. 20.65 lakhs. Shri Digamber Kamat is in possession of proceeds of crime to the tune of Rs. 1.20 Crores. In terms,,
 of Section 2(1)(u) of PMLA, 2002 the aforesaid two immovable properties

together valued at 78.55 lakhs and the Fixed Deposits of Rs.",,,

41.35 lakhs constitute equivalent value of the proceeds of crimeâ?? [Emphasis supplied],,,

12. After the receipt of notice under section 8(1), Digambar Kamat filed a detailed reply dated 29.06.2017 raising inter-alia the issues to the effect that",,,

the attached properties and FDs are acquired prior to the alleged commission of the Scheduled Offences and hence could not qualify as proceeds of,,

crime. A copy of the Reply dated 29.06.2017 filed by the Appellant no. 1 before the Adjudicating Authority is filed with the list of documents. He had,,

also filed details before the Adjudicating Authority explaining the source of the each of the attached properties and which demonstrates that the same,,

were acquired prior to the alleged commission of the Scheduled Offence. A copy of the said Chart is also filed with the list of documents.,,,

13. The Respondent filed a Rejoinder on 21.07.2017. Pertinently, the Respondent No. 1 did not deny that the said assets were acquired prior to the",,,

alleged commission of the Scheduled Offence but asserted that they were of equivalent value to the proceeds of crime. Pertinently, in response to",,,

paragraph 5(iv), the Rejoinder states as follows:",,,

â??Therefore, though there was no direct role for the defendant no. 1 to select the consultants, it cannot be denied that as the Chief",,,

Minister of the State, considerable influence could be exerted by the defendant no. 1 with Project Director or the Executing Agency.â??",,,

[Emphasis Supplied],,,

Churchill Alemano,,

14. The allegations against the other appellant â?" Churchill Alemano are that he has allegedly accepted illegal gratification amounting to Rs 75 lakhs,,

S.No.,Description of Property,Value in Rs.

1,,"Plot no. 29 known as Copangale situated at Gogol

surveyed under chalta no. 14/1",22.95 lakhs

,,"to 14/7 of P.T. sheet no. 80 and chalta no. 3 of P.T.

sheet no. 57 of city survey, Margao having area of

4047 square feet

belonging to Shri Digambar Kamat",

2., "Residential building at village Taleigao Taluka Tiswadi, surveyed under Matriz no. 1258, survey no. 235/1 of Taleigao village belonging to Shri Digamber Kamat", 55.60 lakhs

3., "Fixed Deposit bearing no. 253100MB00004530 in the name of Shri Digamber Kamat maintained with Punjab National Bank, Margao", "10,86,922/-

4., "Fixed Deposit bearing no. 253100MB00004521 in the name of Shri Digamber Kamat maintained with Punjab National Bank, Margao", "9,83,001/-

5., "Fixed Deposit bearing no. 253100MB00004460 jointly in the name of Smt. Asha Digamber Kamat and Shri Digamber Kamat maintained with Punjab National Bank, Margao", "7,31,057/-

6., "Fixed Deposit bearing no. 253100MB00004451 jointly in the name of Smt. Asha Digamber Kamat and Shri Digamber Kamat maintained with Punjab National Bank, Margao", "8,04,335/-

7., "Fixed Deposit bearing no. 253100MB00004451 jointly in the name of Smt. Asha Digamber Kamat and Shri Digamber Kamat maintained with Punjab National Bank, Margao", "5,29,748/-

8., "Flat no. 101, Ground Floor, Building no. 1 under the name and style 'Coconut Grove Residence' situated at Fatrade of Varca Village, Salcete, Goa in the name of Shri Churchill Alemao", 11.50 lakhs

9., "Flat no. 102, Ground Floor, Building no. 1 under the name and style 'Coconut Grove Residence' situated at Fatrade of Varca Village,

Salcete, Goa in the name
of Shri Churchill Alemao",11.50 lakhs
10., "Flat No. 308, 3rd Floor, Building no. 3 under the name
and style â??Coconut Grove Residence? situated at
Fatrade of Varca Village, Salcete, Goa in the name
of Shri Churchill Alemao",9 lakhs
11,"Flat no. 507, 3rd Floor, Building no. 5 under the name
and style â??Coconut Grove Residence? situated at
Fatrade of Varca Village, Salcete, Goa in the name
of Shri Churchill Alemano",9 lakhs
12., "Flat no. 508, 3rd Floor, Building no. 5 under the name
and style â??Coconut Grove Residence? situated at
Fatrade of Varca Village, Salcete, Goa in the name
of Mrs. Maria Fatima Alemao",9 lakhs
13., "Flat no. 502, Ground Floor, Building no.
5 under the name and style â??Coconut Grove
Residence? situated at Fatrade of Varca Village,
Salcete, Goa in the name
of Mrs. Maria Fatima Alemao",11.50 lakhs
14., "Flat no. 201, Ground Floor, Building no.
2 under the name and style â??Coconut Grove
Residence? situated at Fatrade of Varca Village,
Salcete, Goa in the name
of Mrs. Maria Fatima Alemao",11.50 lakhs
15., "Flat no. 607, 3rd Floor, Building no. 6 under the name
and style â??Coconut Grove Residence? situated at
Fatrade of Varca Village, Salcete, Goa in the name
of Mrs. Maria Fatima Alemao",To the extent of Rs. 2 Lakhs.
,Total,194.9 Lakhs
Churchill Alemao.,,

The appellant in their reply filed on 29.06.2017 before the Adjudicating Authority denying that the said properties were acquired from proceeds of,,

crime. The appellant specifically averred that no property was purchased nor any FDR was acquired by the appellants after 2010. A chart detailing,,

how and when the properties and FDRs were acquired was also filed in order to prove the same. A rejoinder was filed on 21.07.2017 by the ED,,

before the Adjudicating Authority wherein it did not deny that the said properties were acquired prior to the alleged commission of crime.,,

24. The case of Churchill Alemao and another in its reply before the Adjudicating Authority was -,,

a) The case of the Appellants as per the notice issued was filed before the Respondent No. 2 in the written Reply. The Appellants submitted that the,,

flats which had been provisionally attached had been obtained in 2007 by the Appellants, where as the alleged scheduled offence has been committed",,,

in 2010. The Appellants also submitted that the property in question had been acquired strictly in accordance with law.,,

b) It is stated on behalf of Appellant No.1 (appeal no. 1975/2017) that he is a senior citizen, a business man and has been in public life since more than",,,

three decades. The Appellant No.2 is the wife of Appellant No.1. The Appellants are running the business of fishing trawlers for the last more than 4,,

decades. The Appellant No.1 devoted his life for the welfare and uplifting of the poor, downtrodden and needy people. The public of his area holds",,,

him in a very high esteem and on account of their love and affection; the Appellant No.1 got elected 2-times as a Member of Parliament and 4-times,,

as a Member of the Legislative Assembly of Goa. The Appellant No.1 was the Chief Minister of Goa in 1990 and was Cabinet Minister from 2007-,,

2012.,,

c) On the face of record, it is evident that the properties in question (attached 8 flats) had already been acquired by the Appellants even before the",,,

contract was signed between the Japan Bank of International Cooperation and the President of India on 14.9.2007 which became effective on,,

28.11.2007 as the Appellant no.1 got the land admeasuring 7975 sq. meters forming the land bearing survey no. 121/7 and 121/4, on which the",,,

attached flats along with several other flats were constructed, by way of a Gift Deed from his aunt way back in 2004.",,,

25. During investigations, the statements and various witnesses were recorded including the statement of Churchill Alemao and Digambar Kamat.",,,

Both have denied having received any bribe/ gratification and ever spoken to Sanjay Jindal or Satyakam Mohanty prior to 2015.,,,

Para 29 - 31 of the impugned order read as under:-,,

â??29. Statement of Shri Churchill Alemao was recorded on 09.06.2016 under section 50 of PMLA. In his statement Shri Alemao stated that,,

he did not receive any money from Louis Berger officials and denied that he had ever spoken to Shri Sanjay Jindal or Shri Satyakam,,

Mohanty prior to 2015. Shri Alemao denied the fact of receiving Rs. 75 lakhs as illegal gratification relating to Goa Project.â??,,

â??30. Statement of Shri Digambar Kamat the then Chief Minister of Goa Government was recorded on 30.06.2016 under section 50 of,,

PMLA 2002. In his statement Shri Digambar Kamat stated that the Goa project was initiated for obtaining a loan from Japan Bank of,,

International Co-operation by the Government of India for implementation of water supply and sewerage project in the state of Goa. He,,

stated that the project implementation unit called for the bids for appointment of project consultants for the JICA project with the prior,,

approval of JICA; that after holding a meeting of preproposal conference on 21.11.2008 under the chairmanship of project director in,,

which 5 bidders participated; that after the approval of JICA the bid evaluation committee headed by project director PWD Government of,,

Goa opened the bids received, evaluated the bids and with approval of JICA selected the highest ranked bid of a consortium headed by",,,

Nihon Suido Consultants Co. Ltd; that he had no role in the entire process of calling the bids, opening the bids, negotiation of bids and",,,

selection of bidders; that he had never met Shri Sanjay or Shri Malladi Shivrama Prasad and that he had never received Rs. 1.2 crore from,,

Louis Bergerâ??s officials relating to Goa Project.â??,,

â??31. Shri Digambar Kamat, the then Chief Minister of Goa vide letter dated 07.10.2015 submitted copies of bank account statements for",,,

the period 2008-09 to 2012-13, copies of the ITRs filed from F.Y. 2008-09 to 2012-13 and details of movable and immovable properties. It is",,,

seen that during the assessment year 2009-10 Shri Digambar Kamat had

declared a gross total income of Rs. 10.90 lakhs, for the",,,
assessment year 2010-11 declared a gross total income of Rs. 8.43 lakhs and for
the assessment year 2011-12 declared a gross total income,,
of Rs. 10.09 lakhs. As per the details given by Shri Kamat, it is seen that he is
having fixed deposits with Punjab National Bank, Margao",,,
and is having plots in the city of Margao and a Row House at Castle Rocl,
Taleigao, Goa.â??",,,

26. Sanjay Jindal in his statement recorded on 9.10.2015 has deposed that he
had no idea about any payment made. Satyakam Mohanty in his,,
statement recorded on 15.10.2015 did not say anything against the Churchill,
except it was stated that he was appointed as the sub-contractor.",,,

27. The statement of other witnesses were recorded on various dates which are
contrary to the statement of appellants in both appeals and other two,,
witnesses. They have supported the case of respondent about the allegations of
bribe made against the two sets of appellants. As far as allegations,,
made in the complaint/FIR, no final conclusion can be drawn as even charges are
not framed against the appellants under schedule offence and even",,,
in the prosecution complaint. The said allegations are to be tested in the eyes of
law and after the result of trial.,,,

28. At present, this Tribunal is only concerned as to whether the attachment
orders are sustainable or not, in view of facts and plea raised. It is matter",,,
of fact that statements recorded under Section-50 before passing the provisional
attachment order are ex-parte proceedings. No opportunity is granted,,
to the party concerned for cross-examination or granting any opportunity for
hearing.,,,

29. After recording the statement, ED in para 52 has come to the following
conclusion with regard to money trail. The said para-52 is reproduced",,,
hereunder:-,,

â??52. It is seen that an amount of Rs.2.20 Crores was diverted from M/s Louis
Berger Inc. through M/s. Gagandeep Tradelink Pvt Ltd.,,,

From M/s. Gagandeep Tradelink Pvt Ltd. The said amount of Rs. 2.20 Crores was
subdivided and diverted to various shell companies.,,,

Thereafter, the money was obtained by officials of Louis Berger in cash and the
same were transferred to Goa from Delhi with the help of a",,,

Hawala Dealer. Thereafter, the inappropriate payments to Sh. Digamber Kamat

and Sh. Churchill Alemao were made in cash. Graphic",,

representation in respect of the money trail is given on page [xxvi] of OC.â??,,

30. In the present appeals, from the pleadings of respondent and from the impugned order, it is admitted that there was no direct role to select the",,

consultants, however, in the impugned order, it was observed that it cannot be denied that the appellants may influence and could be exerted with",,

Project Director or Executing Agency.,,

31. Let me first deal with the case of Churchill Alemao and other appellant who are appellants in appeal no. 1975/2017 whereby eight flats were,,

attached. It is to be examined as to whether the said flats were acquired from the alleged proceed of crime or not. If the answer is â??noâ?, then",,

whether those can be attached under section 5(1) read with section 2(1)(U) of the Act without the reason to believe.,,

32. It has come on record that a company named â??Getmoreâ? was incorporated and the said land was sold to Getmore on 1.3.2006. Thereafter,,

50% shares were transferred to developers, named Handaâ?s for development of the property on 1.3.2006. Subsequently the remaining 50% shares",,

which was with the appellants and their son, were also sold/transferred to the Handaâ?s on 11.9.2007. As final settlement dated 11.9.2007, between",,

the Developers and the Appellants, the Appellants and their son, not only got 11 flats but also received Rs.75 Lac.",,

33. The Adjudicating Authority upon receipt of the complaint u/s 5(5), issued a notice u/s 8 of the PMLA calling upon the Appellants to show cause :",,

â??â?|â?| you are called upon indicate the source of the income, earning or assets out of which or by means of which you have acquired the",,

properties attached under sub-section 1 of section 5 of PMLA Act, 2002â?|â?|â?|â?|â?|..â??",,

34. It has come on record that there are several conveyance (deeds) executed from the date of acquisition of land in question till the transfer of the,,

flats to the Appellants and their son and the same are chronologically detailed as under :,,

a. Gift Deed dated 16.2.2004: This deed was entered into by Flora Alemao e Caldeira, her children and son in law, as the Donor and the Appellant",,

No.1 as the Donee, whereby an area admeasuring 7975 sq. meters forming the land bearing survey no. 121/7 and 121/4 was gifted to the Appellant",,

No.1. A copy of the said gift deed is filed as Annexure F,,

b. Sale Deed dated 1.3.2006: This deed was executed between the Appellant No.1 and Getmore Developers for the sale and development of the,,

aforesaid land bearing number no. 121/7 and 121/4. The directors of Getmore Developers were Ashwin Handa and Madhu Handa. A copy of the said,,

sale deed dated 1.3.2006 is filed as Annexure-G,,

c. Agreement Deed dated 1.3.2006: This agreement Deed was executed between the Appellants and their son of one side and AK Handa, Madhu",,,

Handa and Nitin Handa who are the developers on the other side. Vide this deed of agreement, the development work of the aforementioned land",,,

was to be undertaken by the Handas and both the Appellants, their son and the Handas were equal shareholders of Getmore Developers Pvt. Ltd. A",,,

copy of the said Agreement Deed is filed as as Annexure-H,,

d. Settlement Agreement dated 11.9.2007- this agreement was entered into between the Appellants and their son on the one side and Ashwin Kumar,,

Handa and Madhu Handa, on the other side. Vide this Agreement, an amount of 45 lakhs was to be paid to the Appellants and their son for",,,

reimbursement of the improvement charges of the land and 11 fully furnished flats were given in kind to the Appellants and their son. It was further,,

stipulated that the Appellants and their son were not liable to pay any amount for the said eleven flats. A copy of the said Settlement Agreement is,,

filed as Annexure- I,,

e. Share-purchase Agreement dated 11.9.2007- this agreement was executed between the Appellants and their son as the Vendors and the Ashwin,,

Kumar Handa, Madhu Handa and Nitin Handa as the Purchasers. All the shares of Getmore were purchased by the Handas, and a total consideration",,,

of Rs. 75 lakh was paid to the Appellants and their son. A copy of this deed is filed as Annexure-J,,

f. Transfer Deed dated 13.11.2009 - This deed was executed between the Appellants and their son on the one side and Getmore, represented by",,,

Handa on the other side for the final transfer of the possession of the 11 flats. 4 flats were transferred to each of the Appellants, whereas 3 flats were",,,

transferred to their son. A copy of this deed is filed as Annexure-K (Colly),,,

35. In view of above-said titles and documents on record, it is apparent that the above-referred deeds, it makes clear that the Appellant No.1 got the",,,

land where flats were constructed, from his aunt by way of Gift Deed dated 16.2.2004 and thereafter a company, Getmore Pvt. Ltd. was incorporated",,,

and the Handa's (Developers), were inducted in the company as a 50% shareholder. Subsequently the remaining 50% shares were also sold to",,,

Handa's and the Appellants and their son got 11 flats and received Rs.75 Lac by way of a Settlement Agreement / Share Purchase Agreement,,

dated 11.9.2007. The Handa's constructed several flats from which the Appellants and their son acquired 11 flats.,,,

The above 11 flats which the Appellants and their son got by way of Settlement Deed dated 11.9.2007 has already been reflected in the Tax Return,,

of the Financial Year 2007-2008 as 'Asset' and the amount is shown to be 1.10 Cr. The copy of the Income Tax Return for the Financial Year,,

2007-08 is filed as Annexure-L. The possession of the aforesaid 11 flats were finally got by the Appellants and their son vide Transfer Deed dated,,

13.11.2009 and the same has been reflected in the Income Tax Return of the Assessment Year 2010-11 as capital gain along with the reimbursement,,

of the amount (Rs. 45 lakh) incurred by the Appellants in the development of the land.,,,

36. There is nothing on record to show that any ill-gotten money in the acquisition of the above 11 flats was inverted/used by the Appellants and their,,

son in the year 2007. The acquisition was done as per the mandate of law. The acquisition of the flats was a capital gain and it was reflected in the,,

Income-tax Returns of the Financial Years 2007-08 onwards. The fully furnished 11 flats were transferred to the Appellants and their son by way of,,

the Transfer Deed dated 13.11.2009 in compliance with the Settlement Deed dated 11.9.2007. The Income Tax Returns of the years 2009-10, 2010-,,

11 and 2011-12 are filed as Annexure- M (Colly).,,

37. The other plea of the Respondent is that income of the Appellants (as mentioned in the complaint) that his income in the Assessment Years 2010-,,

11 has increased substantially, therefore the same is proceed of crime.",,,

The income of the Appellant No. 1 in three Assessment Years is as under:,,

Assessment Year 2009-10 Rs.62.80 Lac,,

Assessment Year 2010-11 Rs.1.43 Crore,,

Assessment Year 2011-12 Rs.81.46 Lac,,

38. The increase of income in the Assessment year 2010-11 of about Rs.80 Lacs as stated was also placed before the respondent No.1 by showing,,

the Income-tax Return of the year 2007-08 wherein it was shown that 50 Lac was received from selling of 50% shares of Getmore and Rs.1.10 crore,,

was shown as the value of the 11 flats as a consideration receivable in kind towards the sale of the land under the head "Assets". In the,,

Assessment Year 2010-11, there was a Capital Gain of the 11 flats, which is also reflected in the Income Tax Return of 2010-11.",,

39. The Show Cause Notice under section 8(1) was issued on 2.5.2017 and direction was given to file the reply to the Show Cause Notice. The same,,

was filed. The appellants have denied all allegations having received any bribe.,,

The reasons for issuing the Provisional attachment order as stated in the complaint is :,,

"The provisionally attached properties are proceed of crime in terms of s. 2 (1) (u) of PMLA. There is every reason to believe that,,

attachment of proceed of crime were necessary as there existed a real possibility of transfer of the assets obtained using the proceeds of the,,

crime by the beneficiaries of the proceed of the crime" (para 7(i)),,

40. When notice was issued under Section 8(1) to the appellants, the appellants were asked to show sources of the income as to how these flats were",,

acquired, however, in the impugned order, it was concluded that the said flats were not acquired from proceeds of crime. It is evident that there was",,

no application of mind, when the notice was issued. Even the respondent has not gone through the provisional attachment order as the language of",,

printed notice is contrary to the provisional attachment order. At the first instance, the respondent identified the 8 flats which were provisionally",,

attached as the proceed of crime and attachment order was passed as there was an apprehension that Appellants may dispose of the property",,

however, later on, it has changed its stand. It appears that the proper investigation is missing in the facts of present case.",,

41. It is also a matter of fact that in the complaint as well as the FIR registered by the Crime Branch, North Goa in the year 2010, the names of the",,

appellants were not mentioned. The FIR No. 93/2015 was registered on a complaint filed on 21.7.2015 which stated that bribe was paid to some,,

ministers in the Goa Govt. in the year 2010.,,

42. It is stated by the appellants that, despite the case was registered against the appellants on the basis of mere apprehension that the flats must have",,,
 been purchased from the alleged proceeds of crime and even income is enhanced, however, such apprehension is without any basis pertaining to",,,
 acquiring of flats. No doubt, against the above-said appellants, the Charge sheet was filed on dated 25.9.2016. The allegation in the charge-sheet is",,,
 denied by the appellants. It is also denied that Chaurchill had received Rs. 75 lakhs from M/s Louis Berger International Inc as gratification. In his,,
 statement recorded under section 50 of PMLA, 2002, the appellant has denied having received even single rupee as bribe from anyone.",,

43. It is also a matter of record that the agreement dated 14.9.2007 pertains to a loan agreement between the Japan Bank for International,,
 Cooperation and the President of India. In this agreement, under Article III 4 (1) and (2), PWD, Government of Goa was authorized to implement the",,,
 project and employ consultants for the implementation of the project. This agreement does not mention the name of the Appellants. In fact, a perusal",,,
 of the said loan agreement shows that on behalf of the PWD Govt. of Goa, Mr. Anand Wachasunder had signed the agreement. Further, this loan",,,
 agreement dated 14.9.2007 was after the property (8 flats) was already transferred to the Appellants on 11.9.2007.,,,

44. It has come on record and material available that the properties of the appellants which were attached in appeal no. 1975/2017, were acquired",,,
 prior to the alleged commission of the Scheduled Offences, therefore, those cannot qualify as "proceeds of crime" under Section 2(u) of the",,,
 PMLA, 2002.",,

45. When it was pointed out to the learned counsel appearing on behalf of respondent and asked him to produce the copy of reason to believe before,,
 passing the order of attachment, the counsel for respondent submitted that the same were not recorded separately or before passing the provisional",,,
 attachment order. It is stated by him that Reason to believe is incorporated in the provisional attachment order itself.,,,

46. According to him that there is no requirement to record the reason to believe at the stage of Section 5(1) of the Act separately or prior to the,,
 passing of the attachment order. The Adjudicating Authority, after examining the materials, attached the flats "equivalent value of the proceeds of",,,

crimeâ?. However, the appellants were asked to produce the proof as to how acquired these flats as indicated in the notice issued under section 8(1)",,,

of the Act. In fact, in the rejoinder filed before the Adjudicating Authority, the respondent had admitted alleged that the properties/flats have been",,,

acquired prior to the alleged commission of the Scheduled Offences.,,,

47. Let me now discuss the issue raised by the counsel for appellants and the submission made by the learned counsel for the respondent.,,,

48. Section 5 of PMLA, 2002 reads as under:-",,,

â??5. Attachment of property involved in money Laundering.-,,

(1) Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section,",,,

has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-",,,

(a) any person is in possession of any proceeds of crime;,,,

and,,,

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any",,,

proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such",,,

property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:",,,

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a",,,

Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to",,,

investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case",,,

may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:",,,

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if",,,

the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to,,

believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in",,,

money laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding",,

under this Act:,,

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under",,

this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation",,

of such stay order shall be counted],,,

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1),",,

forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a",,

sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period",,

as may be prescribed.,,

(3) Every order of attachment made under subsection (1) shall cease to have effect after the expiry of the period specified in that sub-section,,

or on the date of an order made under sub-section (3) of section 8, whichever is earlier.",,

(4) Nothing in this section shall prevent the â??person interested,â? in the enjoyment of the immovable property attached under sub-section",,

(1) from such enjoyment.,,

Explanation.- For the purposes of this sub-section, â??person interestedâ?, in relation to any immovable property, includes all persons",,

claiming or entitled to claim any interest in the property.,,

(5) The Director or any other officer who provisionally attaches any property under sub-section (1), shall, within a period of thirty days from",,

such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.",,

49. Section 5 of the PMLA mandates that the concerned authority, before passing the Provisional Attachment Order, has reasons to believe and the",,

reasons for such belief to be recorded in writing, i.e. â?? (i) any person is in possession of proceed of crime and (ii) such proceed of the crime are",,

likely to be concealed, transferred or dealt with in any manner which may result in frustrating the proceedingsâ?|..â??",,

Section 5(1) imposes a stringent duty upon the officer concerned that, before passing the provisional attachment order and depriving a person of his",,,

property, which is a constitutional right envisaged under Article 300-A of the Constitution of India, cogent and coherent reasons are required to be",,,

given and those reasons are to be recorded in writing.,,,

50. Therefore, the language of Sec. 5(1) PMLA is clear that before passing the Provisional Attachment Order, the authority has to fulfill the twin",,,

conditions as mentioned therein. The words mentioned after clause (a) and (b) "he may, by order in writing provisionally attach such",,,

property" is very essential which the Legislature put the condition that, before passing the attachment order, the conditions mentioned in (a) and",,,

(b) has to be fulfilled and if the provisional attachment order was passed without prior satisfaction as per the requirement of Sec. 5(1) PMLA, the",,,

order would be without jurisdiction. On behalf of appellant, it was argued that the respondent passed the provisional attachment order without",,,

following the mandate of Sec. 5(1). there is no procedure for reply, cross-examination of complainant and hearing before passing the provisional",,,

attachment orders. The said proceedings are virtually ex-parte. The aggrieved party would only come to know about the provisional attachment orders,,

once they receive notice under section 8(1) of the Act for confirmation of attachment.,,,

51. It is also a settled law that the authority cannot travel beyond the statutory provisions. In the present case, admittedly, officer concerned has not",,,

recorded the reason to believe separately prior to passing of attachment. There are twin conditions in Section 5(1) is the sine qua non or the condition,,

precedent for the assumption or acquisition of the jurisdiction to pass the attachment order.,,,

52. The law is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way, or not at all and",,,

other methods of performance are necessarily forbidden. This rule was adopted in Taylor v. Taylor in the 19th Century and the Honâ?ble Apex Court,,

has approved and applied this principle in several decisions.,,,

53. Reason to believe,,

The guidelines of recording the reason to believe have been laid down in various judgements of Apex Court and High Courts. It is held time and again,,

by the said Honâ?ble Courts directing that the approach should be not the subjective satisfaction of the officer concerned. Such power given to the,, officer concerned is not an arbitrary power and has to be exercised in accordance with the restraints imposed by law. The belief must be that of an,, honest and reasonable person based upon reasonable grounds, the officer concerned may act on direct or circumstantial evidence but not on mere",,, suspicion or the allegations mentioned in the FIR or charge-sheet so that the same can be scrutinized in order to verify whether they are relevant and,, germane or not.,,

Reasons in support of decisions must be cogent, clear and succinct. The officer authorized must give the details of basis of information in his",,, possession while recording the reason to believe. He cannot proceed further on the basis of opinion already formed by someone else. The officer who,, is supposed to write down his reasons to believe independently applying his mind in every case. It should not be merely a mechanical reproduction of,, the words mentioned in the statute in order to complete the formality as PMLA cases (being independent proceeding) as submitted on behalf of the,, respondent. If the person concerned are more than one, the officer authorized is to record the independent/separate, reasonsto believe for each",,, â??person concernedâ??.,,

54. If no valid reasons to believe are recorded, the issuance of notice to the â?? person concernedâ?or without going into the material and non-",,, application of mind, the same would be considered as valid notice. It is settled law that if the Show-Cause notice fails to fulfil the basic ingredients as",,, laid down by a Constitutional Bench of the Honâ?ble Supreme Court inK hem Chand v. Union of India [AIR 1958 SC 300,] the Show-Cause Notice",,, itself is bad in law. Thus, it is vitiating the proceedings. Also see another judgement in the case of Aslam Mohammad Merchant v. Competent",,, Authority [2008 (14) SCC 186] in this regard.,,

55. In the case of C.B.Gautam vs. Union of India (1993(1) SCC 78) ,a Constitution Bench of the Hon'ble Supreme Court of India held that the",,, reasons to be recorded in writing shall not only be incorporated in the order but also shall be communicated to the affected parties. The relevant,, extract from the judgement is as under:,,

â??Sec. 269UD(1), in express terminology, provides that the appropriate

authority may make an order for the purchase of the property for",,

reasons to be recorded in writingâ?. Sec. 269UD(2) casts an obligation on the authority that it ""shall cause a copy of its order under sub-s.",,

(1) in respect of any immovable property to be served on the transferor"". It is, therefore, inconceivable that the order which is required to",,

be served by the appropriate authority under sub-s. (2) would be the one which does not contain the reasons for the passing of the order or,,

is not accompanied by the reasons recorded in writing. It may be permissible to record reasons separately but the order would be an,,

incomplete order unless either the reasons are incorporated therein or are served separately along with the order on the affected party.,,

Reasons for the order must be communicated to the affected party.â??[,,

56. The above referred to decision has been followed in many subsequent judgments by various High Courts as well the Hon'ble Supreme Court of,,

India.,,

57. Few decisions referred on behalf of appellants are:-,,

i) In *Kranti Associates v. Masood Ahmed Khan* (2010) 9 SCC 496, the legal position was summarized as under:-",,

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone",,

prejudicially.,,

b. A quasi-judicial authority must record reasons in support of its conclusions.,,

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to,,

be done as well.,,

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even,,

administrative power.,,

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous,,

considerations.,,

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by,,

judicial, quasi-judicial and even by administrative bodies.",,

g. Reasons facilitate the process of judicial review by superior Courts.,,

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions,,
 based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i.,,
 Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions,,
 serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important,,
 for sustaining the litigants' faith in the justice delivery system.,,

j. Insistence on reason is a requirement for both judicial accountability and transparency.,,

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether,,
 the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.,,

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated",,
 with a valid decision making process.,,

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not,,
 only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in,,
 Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).,,

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now",,
 virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and",,
 Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights",,
 which requires, ""adequate and intelligent reasons must be given for judicial decisions"".",,

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law",,
 requirement of giving reasons for the decision is of the essence and is virtually a

part of "Due Process".",,,

ii) In Income Tax Officer v. LakhmaniMewaldas 1976 (3) SCR 956, the Supreme Court held that there should be a live link or close nexus? between",,,

the material before the ITO and the formation of his belief that income had escaped assessment. More recently, in Aslam Mohd Merchant v.",,,

Competent Authority (2008) 14 SCC 186, the entire legal position has been explained elaborately by the Supreme Court as under:",,,

28. It is, however, beyond any doubt or dispute that a proper application of mind on the part of the competent authority is imperative before",,,

a show cause notice is issued. Section 68-H of the Act provides for two statutory requirements on the part of the authority viz: (i) he has to,,

form an opinion in regard to his `reason to believe'; and (ii) he must record reasons therefor. Both the statutory elements, namely, `reason",,,

to believe' and `recording of reasons' must be premised on the materials produced before him. Such materials must have been gathered,,

during the investigation carried out in terms of Section 68-E or otherwise. Indisputably therefore, he must have some materials before him.",,,

If no such material had been placed before him, he cannot initiate a proceeding. He cannot issue a show cause notice on his own ipse dixit.",,,

A roving enquiry is not contemplated under the said Act as properties sought to be forfeited must have a direct nexus with the properties,,

illegally acquired.,,,

29. It is now a trite law that whenever a statute provides for `reason to believe', either the reasons should appear on the face of the notice",,,

or they must be available on the materials which had been placed before him. We have noticed hereinbefore that when the authority was,,

called upon to disclose the reasons, it was stated that all the reasons were contained in the show cause notices themselves. They, however,",,,

in our opinion, do not contain any reason so as to satisfy the requirements of sub-section (1) of Section 68H of the Act.",,,

iii) In Joti Parshad Vs. State of Haryana [1993 Supp (2) SCC 497,]the Honâ?ble Supreme Court observed that â??suspicionâ? and â??reason to",,,

believeâ? are not the same thing. â??Reason to believeâ? is a higher level of state of mind and there must exist reason to believe. The following,,

observations are relevant in this regard-,,

5. We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on,,

the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to,,

believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to,,

believe" is a higher level of state of mind. Likewise, "knowledge" will be slightly on a higher plane than "reason to believe". A",,,

person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has,,

sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:,,

26. Reason to believe "A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing and not",,,

otherwise.",,,

iv) In paras 74 to 77, the Double Bench of Hon'ble High Court of Delhi in its judgementJ . Sekar v. Union of India and Ors. 2018 SCC Online Del",,,

6523, has held that:",,,

74. The Court, therefore, holds as under as regards the submissions of the learned counsel for the Petitioners with regard to the",,,

constitutionality of the second proviso to Section 5(1) PMLA:,,

(i) Although the second proviso to Section 5(1) states that the property has to be "involved in money-laundering" and section,,

5(1) states that mere possession of proceeds of crime is sufficient, the Court does not see any conflict in these expressions. When the",,,

definition in Section 3 PMLA is read with Section 2(1)(v) and the Explanation thereto, it becomes clear that the property which constitutes",,,

"proceeds of crime" is the property involved in money-laundering.,,,

(ii) The reasons to believe at every stage must be noted down by the officer in the file.,,,

(iii) While the reasons to believe recorded at the stage of passing the order of provisional attachment under Section 5(1) PMLA may not be,,

forthwith at that stage communicated to the person adversely affected thereby, the reasons as recorded in the file have to accompany the",,,

complaint filed by such officer within 30 days before the AA under Section 5(5)

PMLA.,,

(iv) A copy of such complaint accompanied by the reasons, as found in the file, must be served by the AA upon the person affected by such",,,

attachment after the AA adds its own reasons why he prima facie thinks that the provisional attachment should continue.,,

75. There are two reasons to believe. One recorded by the officer passing the order under Section 5(1) PMLA and the other recorded by the,,

AA under Section 8(1) PMLA. Both these reasons to believe should be made available to the person to whom notice is issued by the AA,,

under Section 8(1) PMLA. The failure to disclose, right at the beginning, the aforementioned reasons to believe to the noticee under section",,,

8(1) PMLA would not be a mere irregularity but an illegality. A violation thereof would vitiate the entire proceedings and cause the order of,,

provisional attachment to be rendered illegal.,,

76. The Court disagrees with the learned counsel for the Union of India that there is no mandatory requirement, under section 8(1) PMLA,",,

to communicate to the noticee the reason to believe. On a collective reading of Section 5(1) PMLA and Section 8(1) PMLA, such an",,,

interpretation is contraindicated and cannot satisfy the requirement of what the AA is supposed to do under Section 8(2) PMLA, viz. to",,,

consider the reply of the noticee, give them and the Director a hearing and â?? take into accountâ?? all relevant materials placed on record.",,

77. Although at the stage of issuance of notice under Section 8(1) PMLA all the relevant material on record which constituted the basis for,,

reasons to believe may not be made available, if the noticee demands to see those materials on record, the AA is bound to make available all",,,

those materials on record to them. It is most likely that without such access to such material on record, the noticee will be unable to file an",,,

effective reply. Therefore, there cannot be any denial of access to the noticee of the materials on record. If there is any sensitive material, it",,,

can probably be redacted before issuing copies thereof, after noting the reasons for such redaction in writing in the file. But even such",,,

redacted material will have to be nevertheless shown to the noticee.,,

58. Though the operation of the aforesaid judgment has been stayed by the Honâ??ble Supreme Court, the above dicta cannot cease to be law of",,,

precedential value and binding in other matters i.e. third parties, in view of settled law. One of such decision reported as vide Shree Chamundi Mopeds",,,

Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1 (para 10).",,,

A division bench of the Honâ?ble Calcutta High Court in Niranjana Chatterjee v. State of West Bengal &Ors., 2007 SCC OnLine Cal 283 after relying",,,

on the aforesaid decision has held that:,,

â?17. After hearing the learned Counsel for the parties and after going through the aforesaid position of fact, we find that the Supreme",,,

Court by those interim order has, no doubt, stayed the operation of the order of the Division Bench of this Court by directing the parties to",,,

maintain status quo but at the same time, has even restrained the State from inducting the third parties on the lands which were the subject",,,

matters before the Apex Court. Such interim order is binding upon the parties to the proceedings but the law is equally settled that by mere",,,

passing of an interim order staying the operation of a judgment with certain further conditions, the existence of the said judgment is not",,,

wiped out and at the same time, for such interim order inter parties, the authority of a decision as a precedent is never undermined. Unless a",,,

decision is set aside by the Superior Court, the said decision remains effective as a precedent though may not be binding upon the parties to",,,

the proceeding where the superior Court has granted interim order.,,,

20. Therefore, the effect of the order of stay in a pending appeal before the Apex Court does not amount to â?any declaration of lawâ?",,,

but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of",,,

the judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no occasion to lay down any",,,

proposition of law inconsistent with the one declared by the High Court which is impugned.â?,,

[Emphasis Supplied],,,

59. In the present case, admittedly, no separate reason to believe are recorded. From the provisional attachment order, it is evident that in the said",,,

order, the reason to believe are not recorded as per law laid down by the Supreme Court and High Courts. The authorized officer has mainly recorded",,,

the contents of charge-sheet, statement of the witnesses recorded under

section-50 of the Act, then reproduced the language of section 5(1). The",,,

officer was not sure as to whether proposed attachment of movable and immovable properties were acquired from proceed of crime or not.,,,

60. The next issue is to whether, the aggrieved party is entitled to receive the copy of reason to believe, if those are recorded before issuance of",,,

notice under section 8(1) of the Act.,,,

61. Section 8 of the PMLA provides for procedure for adjudication by the Adjudicating Authority. The relevant extract of Section 8 of the PMLA is,,

set out below:-,,

â??8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section",,,

17 or under sub-section (10) of Section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence",,,

under Section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to",,,

indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-",,,

section (1) of Section 5, or, seized or frozen under Section 17 or Section 18, the evidence on which he relies and other relevant information",,,

and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-",,,

laundering and confiscated by the Central Government:,,

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of",,,

such notice shall also be served upon such other person:,,

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

property.,,,

(2) The Adjudicating Authority shall, after-",,,

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

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and,,

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties",,,

referred to in the notice issued under sub-section (1) are involved in money-laundering:,,

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given",,,

an opportunity of being heard to prove that the property is not involved in money laundering.,,,

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order",,,

in writing, confirm the attachment of the property made under sub-section (1) of Section 5 or retention of property or record seized or frozen",,,

under Section 17 or Section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or",,,

frozen property or record shall-,,

(a) continue during investigation for a period not exceeding ninety days or the pendency of the proceedings relating to 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; and,,

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section,,

(2-A) of section 60 by the Special Court.,,,

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the",,,

Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5 or,,

frozen under sub-section (IA) of Section 17, in such manner as may be prescribed:",,,

Provided that if it is not practicable to take possession of a property frozen under sub-section (IA) of section 17, the order of confiscation",,,

shall have the same effect as if the property had been taken possession of.,,,

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been",,,

committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of",,,

money laundering shall stand confiscated to the Central Government.,,,

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the",,,

property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.",,,

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed,,

offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the",,,

Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of,,

Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offences of money",,,

laundering after having regard to the material before it.,,,

(8) where a property stands confiscated to the Central Government under sub-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 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.,,,

62. In terms of Section 8(1) of the PMLA, the Adjudicating Authority is required to examine the complaint filed under Section 5(5) of the PMLA or",,,

an application made under Section 17(4) of the PMLA. If on receipt of such complaint or application, the adjudicating authority has reason to believe",,,

that a person has committed an offence of money laundering or is in possession of the proceeds of crime, he is required to serve a notice of not less",,,

than thirty days on such person calling upon him to indicate the sources of his income, earning or assets or the means with which he has acquired the",,,

property which is provisionally attached under Section 5(1) of the Act or seized

or frozen under Section 17 of the PMLA.,,

63. The mandate of Section 8(2) (c) cast a stringent duty upon the Respondent No. 1 which is as under ,â??â? taking into account all the relevant",,

materials placed on record before him, by an order record a finding whether all or any of the properties referred to in the notice under sub",,

section 1 are involved in money launderingâ?â?.,,

64. The main purpose of using the expression of reason to believe in Section 8(1) was intended to re-assess the entire matter by the independent,,

Authority in view of seriousness of the action before taking the possession of the properties sought by ED before the trial and final decision of,,

complaint under schedule offense, as against it is guaranteed under article 300 A of constitution of India.",,

65. In case the language of Section 8(1) is read in meaningful manner, no doubt, it is not mandated that the reason to believe must be recorded in",,

writing, but if the Adjudicating Authority, as per the latest decisions of High Court under this Act, has chosen to record the same in view of said",,

decision, it is necessary to serve the copy of the same to the aggrieved party, so that the aggrieved party may defend himself after going through the",,

same.,,

66. The Respondent in the above-said appeal no. 1975/2017 served the notice u/s 8(1) PMLA to the Churchill Alemeo asking him to show cause as to,,

the source of the income of the attached 8 flats. The same was duly explained and demonstrated by the Appellants before the Respondent No. 1.,,

67. The Adjudicating Authority did not follow the mandate of Section 8(2) (c) and the finding was given only in 7 lines. In the case of Churchill,,

Alemao, when the Adjudicating Authority issued the notice u/s 8(1) to show cause, it was ordered to him about the source of income or earning of the",,

attached 8 flats and as per this principle, the Appellant is required to explain the acquisition of the 8 flats which he has explained elaborately and",,

succinctly, supported with registered documents, though it was the admitted position that the said flats were not acquired from proceed of crime.",,

68. The Honâ?ble Supreme Court in the case of â??P.P. Abdulla v. Competent Authorityâ? (2007) 2 SCC 510, while considering an order of",,

confiscation under the SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976 has held:",,

7. Learned counsel submitted that it has been expressly stated in Section 6(1) that the reason to believe of the competent authority must,,
be recorded in writing. In the counter-affidavit it has also been stated in para 8 that the reasons in the notice under Section 6(1) were,,
recorded in writing. In our opinion this is not sufficient. Whenever the statute requires reasons to be recorded in writing, then in our",,,
opinion it is incumbent on the respondents to produce the said reasons before the court so that the same can be scrutinised in order to,,
verify whether they are relevant and germane or not. This can be done either by annexing the copy of the reasons along with the counter-,,
affidavit or by quoting the reasons somewhere in the counter-affidavit. Alternatively, if the notice itself contains the reason of belief, that",,,
notice can be annexed to the counter-affidavit or quoted in it. However, all that has not been done in this case.â??"",,,

69. These provisions and decision of Supreme Court are read together, even the Supreme Court in para-7 clearly mandated that it can be done either",,,
by annexing the copy of reasons along with the counter-statement. Alternatively, it should contain the reason to believe in the notice itself.",,,
The purpose of such findings were that the aggrieved party must receive the copy of counter-affidavit annexing reasons or in the notice to be issued,,
under Section 8(1) of the Act.,,,

70. The Article 141 of the Constitution of India provides that that the law declared by the Supreme Court shall be binding on all Courts within the,,
territory of India. The Apex Court interpreted that â??"all courtsâ??" includes Tribunal and even the authorities. It is immaterial whether the law,,
declared by the Honâ?ble Supreme Court is in one enactment or the other enactment, but the ratio of that judgment, whether passed in any of the",,,
enactments is binding. Hence, the material aspect is the declaration of the law on a particular point or issue, and not the enactment in which the law",,,
was declared.,,,

71. Level playing field,,

The word â??"Adjudicationâ??" means a legal process reasoning set by the opposing party to come to a decision which determines right and obligations,,
between the parties. It is known that the parties in every case are entitled to apply the principle of equal opportunity to address his case regardless of,,

any stringent law. A level playing field is a concept of fairness. Transparency in decision making is not merely essential, but it is also important for",,,

sustaining the litigantsâ?? faith in the justice delivery system and quasi-judicial. Thus, justice must not only be done, it must also appear to be done.",,,

72. In the case of BRIZO REALITY CO. vs. ADITYA BIRLA FINANCE passed on 20.6.2014 by the High Court in WP(L) no. 1575/2014, which",,,

is being referred by the respondent in order to give reply. The said decision is on different facts as the petitioner filed the writ petition to quash the,,

provisional attachment order dated 31.1.2014 after issuance of show cause notice issued dated 29.4.2014 by the Adjudicating Authority. The,,

Honâ?ble High Court after discussing Section 8(1) of the PMLA,2002 rejected the writ petition mainly on the reason that the Adjudicating Authority",,,

along with the notice has sent the copy of complaint and copy of provisional attachment order who has yet to consider the material placed on record,,

and after hearing of both parties, it is to be decided as to whether the provisional attachment is to be confirmed or not. Therefore, merely on the basis",,,

of averments that the notice u/s 8(1) does not contain the reason to believe, the prayer for quashing of proceedings cannot be allowed as it was pre-",,,

matured petition. However, in the present case, the plea was raised after confirmation of provisional attachment order. Admittedly, reasons to believe",,,

were not recorded separately. The decision of Honâ?ble Supreme Court in the case of â??P.P. Abdulla v. Competent Authorityâ?? (Supra) has not,,

been referred or discussed as well as other decisions passed by the High Court and Supreme Court. Honâ?ble High Court has rightly dismissed the,,

petition which was filed at the initial stage where the objection of the aggrieved party is yet to be decided, however, in the present case, the said issue",,,

is raised after passing the final judgement particularly at the stage of taking the possession of the properties when the valid reason to believe is missing.,,,

Thus, this Tribunal is of the view that if the Adjudicating Authority has chosen to record the reason in writing, the respondent must be served the copy",,,

to the person concerned along with notice under section 8(1) of the Act.,,,

73. Section 2(u) of the PMLA, 2002, defines â??proceeds of crimeâ?? as follows:",,,

â??(u) â??proceeds of crimeâ? means any property derived or obtained, directly or indirectly, by any person as a result of criminal",,,

activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then",,

the property equivalent in value held within the country.â??,,

74. The word â??suchâ? in the definition of proceeds of crime prior to property means that it is only the property which has been acquired using the,,

proceeds of crime and not any other property. In this regard, a reference can be made to the judgement of the Honâ?ble Supreme Couert in",,

â??Central Bank of India v. Ravindra, (2002) I SCC 367â??, wherein while explaining the meaning of the word â??suchâ?? it has held:",,

â??â?|..generally speaking, the use ofth word â??suchâ? as an adjective prefixed to a noun is indicative of the draftsmanâ??s intention",,

that he is assigning the same meaning or characteristic to the noun as has been previously indicated or that he is referring to something,,

which has been said before. This principle has all the more vibgorous application when the two places employing the same expression, at the",,

earlier place the expression having been defined or characterized and at the latter place having been qualified by use of the word,,

â??suchâ??, are situated in close proximity.â??",,

[Emphasis supplied],,

75. In the Impugned Order, it was held that â??or the value of any such propertyâ? canbe invoked in the facts of the instant case and holds in para 42",,

of the Impugned Order that: â??â?|..if the accused is successful in concealing the original property, he cannot be given benefit any other property on",,

which authorities can lay their hands on can be attached.â??,,

76. As per provision,the purpose of attachment of property when it is held within the country and where property is taken or held outside the",,

country.Where the property is taken or held outside the country,â?property equivalent in valueâ? can be attached. However, where the property is",,

held within the country , then only the â??value of any such propertyâ? can only be attached after proper investigation and report that the proceed of",,

crime amount has been vanished, spent, destroyed by the accused intentionally or otherwise and the officer concerned is unable to recover the same",,

despite of best efforts. The said investigation report must be in writing or the proceed of crime amount if transferred to third party who is not,,

accused,the same can be attached within the meaning of Section 5(1) (a) of the

Act.",,,

77. The Adjudicating Authority has failed to notice that it is only the property which has been acquired as a result of criminal activity which can,,

be attached and no other property, unless the proper investigation is done and the officer concerned must come to the conclusion that what efforts has,,

been made out to trace the properties which were acquired from the proceeds of crime, Only guess work cannot work. Unless complete efforts are,,

made to investigate the party in order to trace out the proceeds of crime and specific findings in the reason to believe, the property cannot be attached",,,

equivalent value as the expression "VALUE OF SUCH PROPERTY" can only include monies constituting proceeds of crime and not immovable,,

property of an equivalent value. This Tribunal is of the opinion that unless it is recorded in the reason to believe after proper investigation.,,,

78. Therefore, the properties attached in the matter are liable to be released in the light of reasons stated in earlier paras . However, it is also a matter",,,

of fact that there are allegations by the CBI against the appellants, who are facing trial in the complaint of schedule offence and the complaint under",,,

PML Act, thus, till the final order is passed, the alleged proceed of crime is to be secured by striking the balance.",,,

79. Under these circumstances, the following directions are passed by modifying the impugned order:-",,,

(a) With regard to movable properties of the appellants in appeal no. 1976/2017 are concerned, the said attachment shall continue till the final order is",,,

passed.,,,

(b) Pertaining to immovable properties, it has come on record that the said properties were not acquired from proceed of crime. They were purchased",,,

much prior to the date of alleged offence. No valid reasons were recorded. The notice issued under Section 8(1) was defective notice. It is evident,,

that while issuance of notice, the materials available were not properly discussed. The major part of reply has been ignored by the Adjudicating",,,

Authority. The charges have not been framed as informed by both parties. The witnesses have made contrary-statements to each other under Section,,

50 of PML Act. Thus, the immovable properties are released forthwith as no case is made out by the respondent. However, in order to strike the",,,

balance, Digambar Kamat and Churchill Alemano shall furnish the Indemnity

Bonds in favour of respondent within eight weeks for sum of Rs.78.55",,
lakhs and Rs.75.00 lakhs, respectively, and also give an undertaking that if after
trial, at the time of passing the final order, the matter is decided",,

against them, then they shall deposit the said amount with the respondent
without any protest.",,

80. For the aforesaid reasons, the appeals are partly allowed by modifying the
impugned order as well as the provisional attachment order. It is",,

clarified that the above order is being passed only pertaining to PMLA
proceeding. The same shall have no bearing when the matter will be decided,,

on merit on the basis of allegations of CBI.,,

81. No costs.,,