

(2025) 11 DEL CK 1803

In the Delhi High Court

Case No : Letter Patent Appeal No.102 Of 2023

Directorate Of Enforcement

APPELLANT

Vs

M/s Prakash Industries Ltd

RESPONDENT

Date of Decision : 03-11-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 20(1), 21, 136, 142, 226, 227, 300
Code of Criminal Procedure, 1973 — Section 173
Indian Penal Code, 1860 — Section 120B, 415, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Prevention of Money Laundering Act, 2002 — Section 2(1)(u), 2(1)(v), 3, 5, 5(1), 5(5), 8, 8(1), 8(2), 8(3), 8(3)(a), 26, 42, 45, 66, 66(2)
Evidence Act, 1872 — Section 3
Companies Act, 1956 — Section 81

Citation : (2025) 11 DEL CK 1803

Hon'ble Judges : Anil Kshetarpal, J; Harish Vaidyanathan Shankar, J

Bench : Division Bench

Advocate : Zoheb Hossain, Vivek Gurnani, Pranjal Tripathi, Kartik Sabharwal, Sheikh Raqueeb, Dayan Krishnan, Ankur Chawla, Chander B. Bansal, Gurpreet Singh, Jatin S. Sethi, Bukul Jain, Kunal Aggarwal, Shivam Bansal, Yash Pandey

Final Decision : Disposed Of

Judgement

Anil Kshetarpal, J

1. Through the present Appeals, the Appellant assails the correctness of the Judgment and Order dated 24.01.2023 [hereinafter referred to as 'IJ'] passed by the learned Single Judge [hereinafter referred to as 'LSJ'] in Writ Petitions which raised substantially similar challenges. Since, both the Appeals before this Court emanate from a similar dispute involving substantially similar questions of fact and law, they are, with the consent of learned counsel for the parties, being disposed of by this consolidated judgment. Nevertheless, for the ease of reference and with the consent of the parties, LPA 102/2023 is being treated as the lead case.

BRIEF BACKGROUND:

2. The dispute between the parties arises from the allocation of Fatehpur Coal Block in favour of M/s Prakash Industries Limited [hereinafter referred to as 'PIL']. The primary allegations against PIL are two-fold. Firstly, it is alleged that PIL obtained the allocation of coal block, through fraudulent means; and secondly, prior to actual and formal allocation made in favour of PIL, it allegedly misrepresented before Bombay Stock Exchange [hereinafter referred to as 'BSE'] that it had already received the allocation. This misrepresentation made by PIL before BSE purportedly caused an artificial rise in the share price of PIL, following which shares were sold on a preferential basis, thereby generating alleged proceeds of crime.

3. The present round of litigation traces its genesis to an application dated 12.01.2007, submitted by PIL to the Ministry of Coal for allocation of Fatehpur Coal Block for setting up a power plant, pursuant to a newspaper advertisement. While submitting the said application, PIL misrepresented its net worth as Rs.532 crores as on 31.03.2006, whereas, as per the Directorate and CBI, its actual net worth was (-) Rs.144.16 crores at the relevant time.

4. In response to the said application made by PIL, the concerned Ministry issued a letter for contemplation in its favour on 06.11.2007, whereas the actual and formal allocation letter came to be issued in favour of PIL and its joint venture partner M/s S.K.S Ispat and Energy Ltd. only on 06.02.2008. However, as per the Appellant/Directorate of Enforcement [hereinafter referred to as 'Directorate'], PIL, prior to the actual and formal allocation, on 19.11.2007, informed the BSE that it had already been allotted the coal block in Chhattisgarh. Accordingly, this misinformation on behest of PIL, precipitated an artificial inflation in the market price of PIL's equity during the intervening period of 02.04.2007 to 01.01.2008, propelling the price from Rs.31/-per share on 02.04.2007 to Rs.254.60/- per share on 01.01.2008.

5. Consequently, on 03.01.2008, PIL and its promoter sold 62,50,000 equity shares issued on a preferential basis, resulting in an alleged undue gain of Rs.118.75 crores to PIL. According to the Directorate, the foregoing series of events forms the substratum of the alleged fraudulent procurement of coal block allocation and the subsequent generation of proceeds of crime. However, it is to note that the allocation made in favour of PIL stands cancelled by the Supreme Court via its judgment in W.P.(CrI) 120/2012 captioned Manohar Lal Sharma v. Union of India [hereinafter referred to as 'ML Sharma'].

Action initiated by CBI and ED against PIL

6. Subsequently, Central Bureau of Investigation [hereinafter referred to as 'CBI'] registered a FIR bearing No. RC 219/2014 E 002 on 26.03.2014, against PIL for offences under Sections 120B and 420 of Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'PC Act'], alleging

misdeclaration of net worth. Pursuant to the registration of the FIR, a closure report dated 30.08.2014 was filed by CBI before the competent court; however, owing to a protest petition filed by the Complainants, the report did not reach to its conclusion. Consequentially, a chargesheet was filed by CBI on 17.11.2021, leading to issuance of summons by the competent court. This order then came to be challenged by PIL before the Supreme Court by way of SLP (CrI) Nos. 656-657/2022 captioned M/S Prakash Industries Ltd. v. CBI and SLP (CrI) No. 3360/2022, whereby the Supreme Court vide Orders dated 06.05.2022 and 13.05.2022, stayed the proceedings before the Special Court and the same is operational till date.

7. Parallely, the Directorate also registered an ECIR bearing no. ECIR/03/CDZO/2014 on 30.08.2014 against PIL. Pursuant thereto, an investigation was initiated on 23.11.2016, during which jewellery worth Rs.1.66 crores, along with related records, was seized. Accordingly, a complaint under Section 5 of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'] was filed before the Adjudicating Authority and allowed on 05.04.2017. The aforesaid order was challenged by PIL before the Appellate Tribunal under PMLA, whereby, the Tribunal vide order dated 18.07.2019, while allowing the retention of seized documents, directed for release of the seized jewellery. Thereafter, the order of the Tribunal was assailed by both the parties, while the Directorate assailed the correctness of the order before the Punjab & Haryana High Court, PIL impugned the said order before this Court.

8. In the meantime, on 17.07.2018, the Directorate filed a prosecution complaint in relation to the ECIR and subsequently, on 29.11.2018, a Provisional Attachment Order [hereinafter referred to as 'PAO'] was issued, attaching properties valued at Rs.122.74 crores, on the premise that the undue financial gains, obtained by PIL, arising from the sale of preferential shares constituted proceeds of crime. Aggrieved by the issuance of the PAO, PIL challenged its correctness by way of a Writ Petition before this Court.

9. The LSJ, while setting aside the PAO, held that since the issuance of preferential share did not form part of either the FIR, chargesheet or ECIR, the Directorate lacked the power and jurisdiction to issue the PAO, further holding that the power of the Directorate is restrictive in nature, since its power is circumscribed by and is a derivative of the aforementioned documents. Additionally, it was also observed by the LSJ that given that the allotment of shares was not reflected in the FIR, chargesheet, and ECIR, the Directorate was under an obligation to comply with the mandate of Section 66(2) of PMLA by sharing the relevant information with the jurisdictional police before invoking its power of attachment under second proviso to Section 5 of PMLA, which it failed to do rendering its action infructuous.

10. The Directorate has now approached this Court in Appeal, seeking to challenge the correctness of the judgment rendered by the LSJ.

11. This Court has heard the learned counsel for the parties at length and with their able assistance perused the paper book.

12. Learned counsel for the parties have filed their respective written submissions and have relied upon judgments thereof. The contentions of the parties are examined hereinafter.

13. The submissions advanced by the learned counsel for the parties pertain to both the procedural aspects including a preliminary objection regarding the maintainability of the Appeal as well as the substantive merits of the case. Therefore, this Court deems it appropriate to bifurcate the submissions under two distinct heads:

I. Submissions relating to maintainability of the Appeal; and

II. Submissions concerning the merits of the case.

I. SUBMISSION ON BEHALF OF THE PARTIES ON MAINTAINABILITY OF THE APPEAL

Preliminary objection on maintainability by the learned senior counsel for PIL

14. Learned senior counsel for PIL, while raising a preliminary objection on the maintainability of the present Appeal, has submitted that he wishes to adopt the arguments advanced by him in a similar batch of Appeals namely LPA 588/2022 and the connected matter, which were heard alongside the present Appeals. Accordingly, this Court permits PIL to adopt the submissions made therein in the present batch since the issues involved are similar in nature. The following submissions were made by PIL which are reproduced hereinbelow-

"13.5 With respect to ML Sharma (Supra), it is contended that the bar imposed in the said judgement pertains solely to criminal proceedings. If the reliance placed by the Directorate on ML Sharma is accepted, it would imply that once a PAO is issued under Section 5(1) of PMLA, the only available remedy against it would be to approach the Supreme Court under Article 136 of the COI.

13.6 The aforesaid interpretation is argued to effectively leave the Adjudicating Authority with no discretion to reject the confirmation of the attachment. It would render the confirmation process under Section 5(1) of the PMLA a mere formality, thereby mandating automatic confirmation of the PAO. This would result in the conferment of unchecked and unregulated power on an executive authority, which is impermissible in law and would also be in violation of Article 14 of the COI, which could never have been the intent and purpose of the Supreme Court while rendering its decision in ML Sharma judgment under Article 142 of the COI."

Response on behalf of the learned counsel for the Directorate to the Preliminary Objection on maintainability of the present appeal

15. Per contra, in support of his case, learned counsel for Directorate has made

following submissions:

15.1 It is contended that the observations of the LSJ in Paragraph Nos.16 to 23 of the IJ, are contrary to the actual submissions advanced by the Directorate before the LSJ and as such the findings in the IJ are based on a misconceived notion. In this regard, reference has been made to Paragraph No.16 of the IJ, which records the submissions advanced by the Directorate, placing reliance on the aforesaid, it is contended that the counsel for the Directorate, while relying upon the judgment of the Supreme Court in ML Sharma, intended to submit that only Supreme Court has the power to exercise any prayer for stay or impeding progress in investigation or trial in coal block matters. However, the same has been misconstrued by the LSJ to understand that a prayer for stay or any order impeding the progress of investigation can only be made before the Special Court and not before any other court. Accordingly, the observation of the LSJ at Paragraph Nos.17 to 23 is stated to be misconceived.

15.2 Further, reference has also been made to the findings rendered by the LSJ under Paragraph No.20 of the IJ to state that the direction contained therein for transfer of pending cases is based on a misconceived understanding of the ML Sharma judgment as elaborated in the preceding paragraph. It is contended that by doing so, the LSJ has erred in deciding the issue of maintainability of the petition and has acted contrary to the direction issued by the Supreme Court under Article 142 of the Constitution of India [hereinafter referred to as 'COI'].

15.3 The next leg of the argument is to the effect that the petition before the LSJ was filed on a jurisdictional ground, namely, that since a closure report had been filed by the CBI, no proceeds of crime could be said to exist in the absence of a scheduled offence. Against this backdrop, it is submitted that the aforesaid ground was rendered infructuous upon the subsequent filing of a chargesheet by the CBI, thereby divesting the LSJ of the competence to exercise its jurisdiction.

15.4 Further, it is the case of the Directorate that the PAO was pending confirmation before the Adjudicating Authority at the relevant time. Therefore, the LSJ ought not to have interfered especially when Section 8 of the PMLA provides a complete statutory mechanism for adjudication of such orders.

II. SUBMISSIONS BY THE PARTIES ON THE MERITS OF THE CASE

Submissions on behalf of the Directorate

16. On the merits of the case, learned Counsel for the Directorate has made his submissions under two limbs, (i) erroneous questions framed by LSJ for its consideration; and (ii) the incorrect interpretation of the provisions of the PMLA.

i. Erroneous questions framed by the LSJ

16.1 It is the case of the Directorate that the first question framed by the LSJ under Part-A titled Prologue, which forms the foundation of IJ, is factually incorrect. The question reads as follows:

"An important question relating to the powers of the ED to provisionally attach properties under Section 5 of the PMLA, even though no proceedings relating to the predicate offense may have been initiated by the competent agency functioning under an independent statute and in terms of which the scheduled offense stands created."

Learned counsel for the Directorate submits that the latter part of the above question proceeds on an erroneous assumption, since the predicate offence in the present case already stands registered by the CBI vide its chargesheet dated 17.11.2021, upon which the CBI Court has already taken cognizance. Accordingly, the very basis of the LSJ's finding is factually flawed.

16.2 It is further submitted that the proceeds of crime attached by the Directorate, constitute property derived or obtained, indirectly through criminal activity relating to the scheduled offence. Further, reliance has been placed on supplementary chargesheet filed by the CBI and the order dated 31.01.2022 passed by the CBI Court to state that the IJ was based on a false premise of absence of a predicate offence. The Directorate asserts that PIL committed the scheduled offences of criminal conspiracy u/s 120B of IPC and cheating u/s 420 of IPC by making false and fraudulent representations in its application dated 12.01.2007 to the Ministry of Coal.

16.3 The Directorate has also challenged the second question framed by the LSJ, which is reproduced hereunder:

"Whether the ED could be recognised to have the jurisdiction to enforce the measures contemplated in Section 5 of PMLA solely upon it being of the opinion that the material gathered in the course of an investigation or enquiry evidences the commission of a predicate offense."

Relying on the foregoing, it is submitted that the framing of a wrong question has led to an erroneous finding. Whereas, while disputing the interpretation of Section 2(1)(u) and Section 3 of the PMLA given thereof by the LSJ, it is contended that such interpretation if adopted and effectuated, would render the PMLA otiose.

ii. Erroneous interpretation of the provisions of the PMLA

16.4 It is the case of the Directorate that the interpretation of the LSJ, that trading in shares does not constitute a criminal activity or a scheduled offence, and the gains arising therefrom would not fall within the meaning of proceeds of crime, is contradictory of the expansive definition of offence of money laundering as established in *Vijay Madanlal Choudhary & Ors. v. UOI & Ors.* 2022 SCC OnLine SC 929, wherein the Supreme Court held that the offence under Section 3 of the PMLA is of a 'wider reach'. It is contended that such interpretation defeats the purpose of Section 3 of PMLA, enabling accused persons to legitimise tainted money through ostensibly legal transactions.

16.5 It is argued by the learned counsel for the Directorate that the LSJ has

disregarded the significance of the term 'process' under Section 3 of PMLA, which means "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result." Therefore, any process or activity connected with or leading to the generation of proceeds of crime falls within the ambit of Section 3 of the PMLA. Consequently, it is submitted that the issuance and premium allotment of preference shares having a direct nexus with the fraudulent coal block allocation, clearly falls under the meaning and ambit of the term "process".

16.6 Learned counsel for the Directorate also draws attention of this Court to the false declaration made by PIL before BSE on 19.11.2007, to submit that, the false claim made by PIL regarding the coal block allocation even prior to its actual and formal grant, constitutes a relevant fact under Section 3 of Indian Evidence Act, 1872, since it is indicative of preparation for the generation of proceeds of crime through the sale of preferential shares. It is contended that, such misdeclaration also forms a part of the process connected with the offence of money laundering, and since mens rea is a matter for trial, the LSJ could not have quashed the PAO at this stage. Moreover, it is submitted that the findings of CBI that PIL misdeclared its net worth as Rs.532 crores remain unchallenged till date.

16.7 Controverting the findings of the LSJ at Paragraph No.53 of the IJ, it is submitted that the LSJ has committed a factual error in the said paragraph since both the complaints under Section 5(5) of the PMLA and the prosecution complaint under Section 45 of the PMLA, explicitly record the illegal gains of Rs.118.75 crores, derived from the preferential allotment of shares which was a result of misrepresentation made by PIL in its application for coal block allotment followed by a false declaration made before the BSE. In this regard, reference has also been made to Paragraph No.14, wherein the LSJ goes on to record that the complaint was not placed on record before the LSJ, nevertheless a reference has been made in Paragraph No.53 that the said complaint does not travel beyond the allegations comprised in the FIR and the chargesheet.

16.8 It has been contended by the learned counsel for the Directorate that the LSJ at Paragraph No.68 of the IJ, notes that the action under Section 5 of the PMLA may be taken even without the registration of a scheduled offence and such information may than be sent to the jurisdictional police under Section 66(2) of the PMLA. Whereas, at Paragraph No.74, a reliance has been placed by the LSJ on the findings of the judgment in W.P.(C) 14999/2021 captioned Prakash Industries Ltd. v. Directorate of Enforcement [hereinafter referred to as Prakash Industries-I] to hold that a coal block allocation would not constitute proceeds of crime unless utilized for mining and extraction of minerals. However, the said judgment, presently under challenge in an appeal, is stated to be based on an erroneous understanding of the definition of "property" under Section 2(1) (v) of the PMLA.

16.9 Learned Counsel for the Directorate has also raised an objection on the

findings of the LSJ at Paragraph Nos.84 and 85 of the IJ, wherein the LSJ erroneously recorded that the Directorate does not have the power to initiate action under PMLA on its own motion or based on its opinion that a particular set of facts evidences a commission of scheduled offence. However, it is the case of the Directorate that the scheduled offences under Sections 120B and 420 of IPC were already investigated by CBI and a chargesheet to that effect has already been filed. Therefore, the actions of the Directorate are stated to be based on established facts and not on its own surmise.

16.10 Controverting the position recorded at Paragraph No.90 by the LSJ, it has been contended that the LSJ erroneously records that the allocation of preference shares and the proceeds therefrom should have been investigated separately by the predicate agency. On the contrary, it is submitted that to attract Section 3 of the PMLA, it is not necessary for the process itself to be a criminal activity; rather, it is the underlying action leading to the generation of proceeds of crime which constitutes the offence.

16.11. On the aforesaid premise, it is further submitted that the LSJ wrongly equated "activity" under Section 3 of the PMLA with "criminal activity" under Section 2(1)(u) of the PMLA, while disregarding the clear evidence that illegal gains from rise in share prices are directly linked to the scheduled offences of criminal conspiracy and fraudulent coal block allocation. Further, it is also the case of the Directorate that the allocation of the coal block qualifies as "property" under Section 2(1)(v) of the PMLA.

16.12. It is submitted that the observation made by the LSJ in Paragraph No.93, is contrary to the scheme of the Act, more so owing to the reason that the PMLA does not impose any statutory limitation on issuing a PAO years after the generation of proceeds, since Section 2(1)(u) of the PMLA allows attachment even when the tainted property is not immediately available.

Submissions on behalf of learned senior counsel for PIL

17. Per contra, the learned senior counsel for PIL, in response to the submissions advanced by the learned counsel for the Directorate, has made the following submissions:

17.1 It is submitted by the learned senior counsel for PIL that the case of the Directorate is unsustainable since its scope and ambit of investigation is restricted to generation of proceeds of crime arising from a predicate offence, whereas in the absence of the same, the action of the Directorate will not survive. Against this backdrop, it is submitted that in the present case, neither the declaration made to BSE on 17.11.2017, followed by the allotment of preferential shares made by PIL on 03.01.2008 nor the generation of money from sale of the said shares, admittedly prior to the actual and formal date of allocation, i.e., 06.02.2008, form a part of the investigation report filed in the scheduled offence. As such the PAO is stated to be issued by the Directorate without jurisdiction and authority of law on the basis of independent set of facts

and actions unrelated to the predicate offence. To substantiate its argument, PIL has placed reliance on *Vijay Madanlal Choudhary v UOI* 2022 SCC Online SC 929.

17.2 It is the case of PIL that the submission of a letter to the BSE cannot be categorized as a scheduled offence as such and the Directorate has failed to establish any connection between the alleged proceeds of crime and the properties subjected to attachment. It is contended that power under Section 5 of the PMLA could have only been exercised if it was formed on the basis of action or omission of a predicate offence, which in the present case is the misinformation by PIL vide its application dated 06.02.2007. However, the Directorate has issued PAO on the basis of the misdeclaration of the net worth made by PIL before BSE.

17.3 Further, reliance has been placed on the definition of "offence" under Section 2(n) of the Code of Criminal Procedure, 1973, to contend that Section 5 of the PMLA can only be invoked when the proceeds of crime attached by the Directorate relate to the facts and actions/omission constituting a registered predicate offence being investigated/prosecuted by a predicate agency. In the absence of the aforesaid, any income/asset derived cannot be termed as proceeds of crime. In the present case, the predicate offence is stated to be the misinformation of net worth by PIL in its application, whereas the PAO is based on the disclosure made by PIL before BSE; actions not covered under final report filed by CBI on 17.11.2021 or the summoning order dated 31.01.2021.

17.4 It is contended that the investment made by PIL by way of allotment of preferential shares to the investors can never be termed as proceeds of crime in view of the law laid down in *Himachal EMTA Power Limited v Union of India & Others* 2018 SCC OnLine Del 11078, the relevant paragraphs is as follows-

"18. A plain reading of the impugned order indicates that there is no material whatsoever on the basis of which the ED could have possibly concluded that the investments made by HEPL were 'derived or obtained' as a result of any criminal activity relating to a scheduled offence. In the impugned order, the ED has elaborately discussed the allegation made against HEPL. It is also recorded that at the time of filing of the application for allocation of coal block, the capital of HEPL was Rs. 5 lakhs which had swelled upto Rs. 7.91 crores after filing application for a coal block. The investment made by joint venture constituents of HEPL, namely, Himachal Pradesh Power Corporation Ltd. and EMTA, were further invested by HEPL; including in subscribing to the shares of CGL. The same cannot by any stretch be held to be proceeds of crime. The ED has, essentially sought to attach the investments made in HEPL on the allegation that the same have been used in commission of a scheduled offence. This is apparent from paragraphs 7 and 16 of the impugned order which are set out below:

"7. AND WHEREAS, the investment of Rs. 7.91,00,000/- was made after filing for allocation of Coal Block, and the same has been used in commission of scheduled offence. i.e. the allocation of coal block by fraudulent means and to further

obtain mining lease on the basis of said allocation. Further, there is a balance of Rs. 1,33,700/- lying in the bank accounts as mentioned at Para 5(xiv) and the fixed deposit No. 015340100288/8 dated 4.7.2017 amounting to Rs.11,86,710/-.

16. AND WHEREAS, the following amounts have been used in the commission of scheduled offence and are proceeds crime in terms of Section 2 (u) and 2 (v) of PMLA, 2002:—

S.No.

Amount in Rs.

Remaks

1.

2,45,00,000

Investment in M/s GCL By M/s HEPL and lying in Corporation Bank, Bhowanipur Branch, Kolkata A/c No. 510101003473693 of M/s GCL.

2.

11,86,710

Lying as fixed deposits No. 015340100288/8 dated 04.07.2017

3.

1,26,540

Lying in A/c No. 0153201100424

4.

7,160

Lying in A/c No. 0153201002578

Total

2,58,20,410

17.5 In addition, it is submitted that the information furnished before BSE was only in compliance of the terms of Securities and Exchange Board of India (Listing Obligations and disclosures requirements) Regulations, 2015, which have been in force at all material times. Furthermore, the fixation of premium at Rs.180/- share was undertaken in accordance with SEBI guidelines governing preferential issues.

17.6 Learned senior counsel for PIL has drawn the attention of this Court to Paragraph No.5.3 of the PAO to state that holding of an extraordinary meeting of the General Body for approval of price of preferential shares was alleged to be a part of conspiracy. However, on the contrary, it is a mandatory statutory

requirement under Section 81 of the Companies Act, 1956 and was undertaken in compliance of Chapter XIII of SEBI guidelines.

17.7 It is submitted that the Directorate, even before the completion of investigation, filed a prosecution complaint under Section 45 of PMLA, and that too, prior to the date of issuance of PAO; however, the Special Judge has not taken cognizance of the said complaint. Reliance in this regard has been placed on the order of 17.07.2018 by the Special Judge, wherein it has been recorded that the complaint was only filed to circumvent the rigors of amended Section 8 of PMLA.

17.8 Moreover, it has been argued by PIL that the chain of actions of the Directorate is violative of Articles 21 and 300 of the COI, since, till date, it has not been able to complete the investigation. It is vehemently argued that, by doing so, the Directorate has committed fraud on the statute by assuming that filing a complaint on the basis of an incomplete investigation would fulfil the requirements of "pendency of proceedings relating to any offence under this act" envisaged under Section 8(3)(a) of the PMLA, notwithstanding that the investigation continues indefinitely.

17.9 Learned senior counsel for PIL during the course of his arguments, placed reliance upon the definition of "cheating" as provided under Section 415 of IPC, and contended that the offence contemplated under the said provision has not been made out in the present case, since the essential ingredients provided thereunder have not been satisfied. On the basis of this contention, it has been argued that since the PAO has been issued on the premise of the commission of a scheduled offence, and the essential elements of such offence are not fulfilled, therefore the Directorate could not have attached the property in the absence of a scheduled offence.

17.10 Controverting the submissions advanced by the learned counsel for the Directorate, wherein reliance was placed on the judgment of Vijay Madanlal to contend that a compliance of Section 66 of the PMLA can be made after the proceedings have been initiated under Section 5 of the PMLA, it has been submitted that the ECIR was registered in 2014 whereas the PAO only came to be issued in 2018, thereby proving the absence of emergency contemplated by the Supreme Court in Vijay Madanlal. Moreover, it has also been argued that, despite the issuance of PAO, no action or proceeding under Section 66 of the PMLA has been initiated by the Directorate till date; resultantly, no predicate offence has been registered.

17.11 It is further contended on behalf of PIL, that there can be no proceeds of crime unless an actual offence as defined under Section 2(n) of the Code of Criminal Procedure, 1973 has been committed, a mere attempt to commit a crime without its completion thereof, cannot give rise to proceeds of crime. As such, in the present case, the letter to BSE cannot be termed as a scheduled offence since it is an admitted fact that no coal was extracted. Furthermore, it is

contended that the Directorate has failed to establish any connection between the alleged proceeds and the attached assets.

17.12 Learned senior counsel for PIL, while invoking Article 20(1) of the COI, has contended that no person can be convicted or punished under an ex post-facto law. Reliance is in this regard is placed upon the judgment passed by the Supreme Court in Rao Shiv Bahadur Singh & Anr. v. State of Vindhya Pradesh AIR 1953 SC 394, wherein it was held that if the acts charged as offences became punishable only by virtue of a law enacted after their commission, the accused is entitled to protection under Article 20(1) of the COI. In the present case, while referring to the ECIR and FIR, it has been submitted that both these reports indicate that the alleged scheduled offences occurred during 2007-2008, whereas Sections 420 and 120B of IPC were designated as scheduled offences under the PMLA only on 01.06.2009. On the basis of the aforestated, it is contended that no person can be convicted or punished under a law enacted after the commission of the acts.

ANALYSIS & FINDINGS

18. Having heard the rival submissions advanced by the learned counsel for the parties and upon careful consideration of the record, this Bench deems it appropriate to deal with the dispute at hand under three primary issues:

A. Maintainability: Preliminary Objection regarding the present Appeal.

B. Linkage or nexus between a predicate offence and the properties attached thereof.

C. Power of Provisional Attachment under Section 5 of the PMLA: Whether independent from Section 66(2) of the PMLA?

A. MAINTAINABILITY: PRELIMINARY OBJECTION REGARDING THE PRESENT APPEAL

19. Before examining the arguments advanced by the parties with respect to the maintainability of the present Appeal, this Court deems it appropriate to reproduce the prayer clause of the writ petition, which is as follows:

"In the circumstances mentioned hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(a) Pass necessary orders and directions to the Respondent No 2 to supply to the Petitioner the copy of the Provisional Attachment Order passed by the Respondent No 2 w.r.t. properties worth approx. 117 crores, in relation to ECIR/03/CDZO/2014 dated 29.12.2014.

(b) Issue appropriate writ, order or direction especially in the nature of Certiorari or Mandamus thereby:

(i) Quashing the Provisional Attachment Order passed by Respondent No 2 under section 5(1) of the PMLA, 2002, to the tune of Rs.117 crores in relation to

ECIR/03(illegible)/2014 dated 29.12.2014, in which closure report w.r.t. scheduled offence has already been filed by CBI on 26.03.2014.

(ii) Pass any other or further orders which this Hon'ble Court may deem fit and proper in the interest of justice."

20. At the very outset, this Court deems it appropriate to address the question pertaining to the maintainability of the present Appeal, which arises from the argument advanced by PIL concerning whether the LSJ rightly exercised jurisdiction under Article 226 of the COI or Article 227 of the COI. In this regard, it becomes imperative to examine the substratum upon which the writ petition was filed by PIL, the avowed purpose of which was restricted only to quashing of the PAO issued by the Directorate, whereby the properties of PIL were subject to attachment. Since, the present Appeal, in pari materia with the writ petition, impugns the validity and legality of the PAO, it is important to note that a perusal of the prayer clause in the writ petition reveals that PIL only sought quashing of the impugned PAO issued by the executive authority and no grievance pertaining to challenge against a judicial order was raised before or adjudicated by the LSJ. Consequently, it is manifest that the LSJ exercised the power under Article 226 of the COI, thereby rendering the present Appeal maintainable.

21. Having examined the foregoing, this Court deems it essential to delineate the contours of jurisdiction exercisable by the Court under Article 226 of the COI, notwithstanding the existence of an alternative efficacious remedy, as enunciated by the Supreme Court in *Whirlpool Corporation v Registrar of Trademarks* (1998) 8 SCC 1. The Supreme Court in the aforementioned judgment, has authoritatively laid down three contingencies, the existence of either of which would enable the Court to exercise its writ jurisdiction vested under Article 226 of the COI; firstly, when the petition is filed for the enforcement of Fundamental Rights; secondly, where there has been a violation of the principles of natural justice; or thirdly, where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge.

22. In addition to the foregoing, it is also imperative to observe that the rule of availability of an efficacious alternate remedy, is not a technical bar rather, it is a rule of prudence and self-restraint, invoked with the intent of ensuring that the concerned parties resort to the rights and remedies created by or within the relevant statutory framework before invoking the extraordinary and discretionary remedy of Article 226 of the COI.

23. Proceeding now to examine the facts and circumstances of the present case in light of the aforementioned contingencies, it is, at the outset, evident that no situation pertaining to the infringement of any Fundamental Right of PIL has either been pleaded or established in the petition before the LSJ.

24. Further, with regard to the second contingency, which contemplates the exercise of writ jurisdiction in cases involving violation of principles of natural justice, it is deemed apposite to outline that the statute of PMLA is a self-

contained and comprehensive statute providing a complete procedural mechanism to challenge the PAO prior to its confirmation. Primarily, upon issuance of a PAO under Section 5(1) of the PMLA and registration of complaint under Section 5(5) of the PMLA, the Adjudicating Authority follows the recourse of Section 8 of the PMLA.

25. Under Section 8(1) of the PMLA, the Adjudicating Authority is empowered to issue a notice to the concerned person(s) on the basis of "reason to believe" calling them to submit response(s) and participate in the proceedings before confirmation of the attachment. Thereafter, Section 8(2) further mandates upon the Adjudicating Authority to consider the reply and other material placed before it and affording hearing opportunity to take a final decision and only thereafter the mandate of Section 8(3) would apply in particular case. These provisions ensure that before the PAO attains finality in any form, the affected party is accorded a fair and reasonable opportunity to present its case and assist the authority in the adjudicatory process.

26. Moreover, the statute under Section 26 provides a remedy of appeal before the Appellate Authority against the order of the Adjudicating Authority. Section 42 of the PMLA further enables a statutory appeal before the competent High Court. To put it succinctly, the statutory scheme under the PMLA incorporates a robust and multi-tiered mechanism ensuring adherence to the principles of audi alteram partem and natural justice at every stage, beginning from the issuance of notice, adjudication and confirmation to appellate remedies.

27. In the present case, the order of the Appellate Tribunal was already under challenge before this Court by PIL, in the year 2019, by W.P.(C) 9063/2019 titled as M/s Prakash Industries Ltd v Directorate of Enforcement. This Court vide its Order dated 21.09.2022, observed that the parties were ad idem that the nature of the order being challenged, forms an appeal under Section 42 of the PMLA, therefore the nomenclature after being changed can be placed for adjudication before a separate Bench designated to deal the matter in nature of appeal under the said provision, the relevant part of the said order is reproduced hereunder:

"Learned counsels for parties are ad idem that although the instant matter has been titled as a writ petition, it is essentially an appeal under Section 42 of the Prevention of Money Laundering Act, 2002.

In view of the aforesaid, the Court grants liberty to Mr. Chawla to amend the cause title. Let an amended cause title be placed on the record within a period of 48 hours. The matter may thereafter be placed before the appropriate Court on 11.10.2022, subject to orders of Hon'ble the Chief Justice."

In view of the aforesaid, the Learned Single Judge ought not to have interfered in the present dispute, particularly since an appeal arising from the very same order of the Appellate Tribunal was already pending adjudication before this Court. Entertaining a writ petition in such circumstances resulted in two parallel proceedings concerning the same issue, which is not permissible in law.

28. Adverting now to the third contingency, namely, whether the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge, this Court deems it apposite to bifurcate the said contingency into two parts for clarity. Examining the first limb, concerning lack of jurisdiction, it is observed that although PIL assailed the validity of PAO before the LSJ, no challenge was made on the competence or authority of the Directorate to issue such PAO under Section 5 of the PMLA. It is further pertinent to note that the arguments advanced by PIL, questioning the validity of PAO, found its genesis on the existence or non-existence of a scheduled offence and the factual matrix surrounding the same, which are issues inherently involving adjudication of disputed questions of fact. Such factual determinations fall outside the plenary writ jurisdiction of Article 226 of the COI, which is confined only to questions of law and instances of patent illegality or jurisdictional error. As regards, the second limb of this contingency, it is evident that the vires of the PMLA has not been challenged before the LSJ.

29. Therefore, in view of the foregoing analysis, since neither of the three parameters provided by the Supreme Court in Whirlpool (Supra) stand attracted in the facts of the present case, this Court is of the considered view that it was not appropriate for the LSJ to interfere with the issuance of the PAO. This conclusion is fortified for two reasons: firstly, there was no infraction of the principles of natural justice, in view of the comprehensive procedural safeguards incorporated within the PMLA; and secondly, the PAO, though issued, constitutes only a provisional measure pending adjudication, and does not culminate in any final determination of rights.

30. Against the said backdrop, this Court deems it relevant and necessary to underscore that the recurring practice of invoking the extraordinary writ jurisdiction under Article 226 of the COI to challenge the validity of a PAO at every other opportunity is wholly unwarranted amounting to an abuse of the process of law. In addition to the aforestated, it is also to note that when a special statute, such as the PMLA, provides a detailed hierarchy of forums and a complete adjudicatory mechanism for redressal of grievances, bypassing such remedies by directly approaching the writ court not only clogs the judicial system but also defeats the legislative intent behind creating a specialized adjudicatory mechanism under the PMLA. Accordingly, the jurisdiction under Article 226 of the COI, being discretionary and equitable in nature, ought not to be exercised to supplant the statutory remedies specifically envisaged under the relevant statute.

31. Additionally, even otherwise, the issue concerning the maintainability of the Letter Patents Appeal has already been dealt with comprehensively by this Court in Prakash Industries I, wherein this Bench conclusively upheld the maintainability of the Appeal. Therefore, in light of the settled position of law established by this Bench via the aforesaid precedent, this Court does not deem it necessary to re-examine the issues, which have already attained finality.

B. LINKAGE OR NEXUS BETWEEN A PREDICATE OFFENCE AND THE PROPERTIES

ATTACHED THEREOF

32. Before moving towards the examination of the merits of the present case, it is important to reproduce the relevant provisions of the PMLA, which are as follows:

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];

[Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence;]

(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

[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;]

3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 1[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]

5. Attachment of property involved in money-laundering.— [(1)Where the Director or any other officer not below the rank of Deputy Director authorised by 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 1[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 sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under 3[sub-section (3)] of section 8, whichever is earlier.

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

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

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

66. Disclosure of information.—[(1)] The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

[(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.]”

33. Before proceeding to establish the requisite nexus between the alleged acts of misinformation by PIL before BSE regarding the allocation of coal block; which purportedly led to an artificial rise in share prices; and the subsequent utilization of such elevated share valuations by PIL to secure undue advantage in the form of proceeds of crime through preferential allotment of shares at inflated rates, culminating in the attachment proceedings initiated by the Directorate, this Bench deems it appropriate to delineate the legal framework under PMLA.

Such examination is necessitated to comprehensively examine the elements that give rise to the offence of money laundering under the statutory scheme of the PMLA, particularly the definitions of “property”, “proceeds of crime” and the process or activity that constitutes the offence under Section 3 of the PMLA thereof.

34. In view of the aforesaid, it bears importance that this Bench has previously examined similar questions of law in *Prakash Industries-I*, wherein it was conclusively determined that the allocation of a coal block constitutes “property” within the meaning of Section 2(1)(v) of the PMLA. Further, it was also determined that any undue advantage, benefit, or economic gain derived or obtained, directly or indirectly, through utilisation of such property would constitute “proceeds of crime” as defined under Section 2(1)(u) of the PMLA, thereby rendering PIL, prima facie, liable for the offence of money laundering under Section 3 of the PMLA. In order to facilitate a comprehensive understanding of the aforestated legal principles adjudicated by this Bench as also applicable to the present controversy, the relevant paragraphs from *Prakash Industries-I* are reproduced hereinbelow:

“B. SECTION 2(1)(V) OF THE PMLA: WHETHER THE ALLOCATION LETTER CONSTRUES AS ‘PROPERTY’?”

31. The word ‘property’ has been defined under Black’s Law Dictionary, as, “one which is peculiar or proper to any person; which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government.” It also goes on to define it as, “the word commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest and includes real and personal property, easements, franchises and incorporeal hereditaments”.

32. The definition of ‘property’ as provided under Section 2(1)(v) of the PMLA, is inclusive and expansive, broadly including every description of asset provided thereunder, in form of a deed or instrument evidencing title or interest in such assets. To put it simply, the definition of ‘property’ as provided under the PMLA is broad and inclusive in its approach towards what constitutes as property within the contours of the Act. This statutory definition is further supported by the constitutional jurisprudence of India, reiterating the understanding of what constitutes as property in India under Article 300A of the COI, which recognizes property as inclusive of intangible interests and rights created through incorporeal assets.

33. Additionally, it is apposite to note that, in the contemporary world, dominated by a commercial landscape where economic transactions are shaped by intangible rights and digital assets, to construe the definition of ‘property’ in a

narrow or traditional sense, would not only amount to restricting the approach of the Court to the innovative nuances of the modern commercial world but also create an impediment for the judiciary to keep up its pace with the evolving jurisprudence. Therefore, it becomes essential to embrace a broader and more dynamic understanding of what constitutes 'property'.

34. In the modern era, as also evidenced by the usage of terms to define property under Section 2(1)(v) of the PMLA, intangible property has assumed immense legal and commercial significance. The evolution of Intellectual Property laws now comprehends rights such as copyrights, trademarks, design rights, patents, licenses, digital assets and contractual entitlements, all of which are firmly recognised as valuable forms of property within the framework of common law.

35. In view of the aforesaid, an allocation letter, especially when it confers upon the beneficiary an exclusive right to gain commercial advantage, enabling the beneficiary to derive economic gains, must be examined through this widened legal lens.

39. It is pertinent to note that, the act of allocation, in itself, may not constitute a complete offence; rather, it is the first step in a chain of subsequent events, carrying a cascading effect. These events begin with the procurement of the allocation, which is then followed by the actual extraction of coal, an act, if done on the basis of an unauthorised allocation, constitutes a separate illegal act. The allocation sets in motion the process through which the State Government is expected to act upon the recommendation made by the Central Government and facilitate the formalities flowing therefrom. This process leads to an initiation of series of administrative actions, which, if found to be tainted by criminality at the origin, ultimately results in usurpation of a public resource, which otherwise would rightfully vest in the State as a natural resource belonging to the general public at large."

C. SECTION 2(1)(U) AND SECTION 3 OF THE PMLA: WHETHER MISREPRESENTATION IN ALLOCATION OF COAL BLOCK LEADS TO PROCEEDS OF CRIME MAKING IT AN OFFENCE OF MONEY LAUNDERING?

40. Section 2(1)(u) of the PMLA covers any property derived or obtained, directly or indirectly, by any person as a result of any criminal activity in relation to a scheduled offence and includes within its meaning, the 'value of such property'. As explained in the preceding paragraphs under Part B of this judgement, the definition of 'property' is broad, which includes the tangible and intangible property and the property used in the commission of a scheduled offence.

41. Section 3 of the PMLA defines the offence of money laundering as an involvement in any process or activity connected with the proceeds of crime, including concealment, possession, acquisition, use and its projection as untainted or to claim it as untainted. Whereas, explanation (ii) of the said provision highlights that such process or activity connected with the proceeds of

crime is a continued activity and continues till such time a person enjoys such proceeds by concealing or being in possession or acquiring or using or projecting or claiming it as an untainted property.

42. The Statement of Objects and Reasons of the PMLA also highlights certain important recommendations made by the Financial Task Force held in Paris in 1989, which also forms the foundation of the present-day legislation of PMLA dealing with offence of money laundering in India, which are: ?

(i) declaration of laundering of monies carried through serious crimes as criminal offence;

xxxx xxxx xxxx xxxx xxxx

(iii) confiscation of the proceeds of crime;

43. These two recommendations forming part of the objects of the PMLA when read together, reveal the legislative intent behind the Act. It means that the offence of money laundering as envisaged under Section 3 of the PMLA is a stand-alone offence and not just a by-product of crimes; rather it is a crime in itself and the illicit financial gains arising from the criminal activities forming a part of money laundering is subject to confiscation. To put it succinctly, the intent of the Act is not only to punish the accused found to be guilty under the offence of money laundering, but also to deprive them of the illegal financial gains. The PMLA not only recognizes the illegal financial gains but also sustainably targets the conduct, in the form of serious economic offences, that results in the generation of such illegal financial gains.

44. The aforestated intent of the PMLA is also corroborated with the preamble of the Act, which defines PMLA as, "an Act 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".

45. Sections 2(1)(u) and 3 of the PMLA, when put together leads us to infer that Section 3 criminalises any process or activity connected with proceeds of crime, which in turn includes property derived or obtained, directly or indirectly, by any person, as a result of criminal activity, relating to a scheduled offence and the value of such property.

46. The aforesaid position has also been rendered by the Supreme Court in Vijay Madanlal Chaudhary Judgement and the relevant paragraph is reproduced hereunder:

382.8. The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the

jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/ acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or anyone claiming such property being the property linked to stated scheduled offence through him.”

47. The view taken by the Supreme Court was further reiterated in a recent judgment passed by the Supreme Court in *Union of India through the Assistant Director v Kanhaiya Prasad*, and the relevant paragraph is as follows: ?

19. We also do not find any substance in the submission made by learned Senior Advocate Ranjit Kumar for the respondent that the respondent has not been shown as an accused in the predicate offence. It is no more *res integra* that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime, which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. Hence, involvement in any one of such process or activity connected with the Proceeds of Crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence, except the Proceeds of Crime derived or obtained as a result of that crime. The precise observations made in *Vijay Madanlal (supra)* in this regard may be reproduced hereunder:—

“270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not

alter or enlarge the scope of Section 3 at all.

271 to 405.....

406. It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigours of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money laundering is one wherein a person, 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. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected.

xxxx xxxx xxxx xxxx xxxx

49. Subsequently, since any process or activity connected with such proceeds of crime including possession, use, concealment, layering, projection or claim as untainted, constitutes money-laundering, the aforesaid proceeds, having been possessed, used, concealed, projected such as untainted property by PIL, brings the case squarely within the scope of the offence of money laundering as defined under Section 3 of the PMLA. Additionally, it is pertinent to note that explanation (ii) to Section 3 of the PMLA clearly states that the process of money laundering is a continuing offence linked to the existence of proceeds of crime.

50. The Supreme Court in *Satyendar Kumar Jain v. Directorate of Enforcement*, has clarified that the offence of money laundering is not limited to the final act of integration and remains ongoing as long as the proceeds are being dealt with. Accordingly, the continuing nature of money laundering, sustains the liability arising out of the PMLA for post-enactment activities involving such proceeds."

35. In substance, this Bench in *Prakash Industries-I*, upheld the validity of the PAO, with a finding that the definition of property under Section 2(1)(u) of the PMLA is deliberately wide to include both tangible and intangible assets, including rights and interests resulting into economic value. Accordingly, an allocation letter leading to an exclusive commercial benefit, falls well within the scope of an intangible property and as such constitutes proceeds of crime. Further, the misrepresentation by PIL in order to obtain such an allocation would be rendered as a criminal activity, resultantly generating proceeds of crime under Section 2(1)(u) of the PMLA. Against this backdrop, it was then established that Section 3 of the PMLA criminalises all processes connected with such proceeds, making

money laundering a distinct and continuing offence which subsists as long as such illicit gains are possessed or utilized by the accused.

36. Application of the aforesaid principles to the present case becomes relevant to the extent that the definition of proceeds of crime under Section 2(1)(u) of the PMLA, not only includes the property derived directly through a criminal activity related to the scheduled offence, rather it also includes any property derived indirectly by such a criminal activity.

37. In light of the aforestated, the LSJ, while making an observation that the investigation and chargesheet are confined merely to the aspect of misrepresentation, and therefore, would not extend to the allotment of preferential shares, has based his findings on a fundamental misconception of the nature, scope and legal implications provided within the contours of the offence of money laundering under the PMLA. While it is trite law that the offence under Section 3 of the PMLA is predicated upon the existence of a scheduled offence, it is of equal importance to understand that the offence of money laundering is a distinct and independent offence in itself.

38. Additionally, the essence of money laundering lies in the proceeds of crime as defined under Section 2(1)(u) of the PMLA, wherein the usage of words "directly or indirectly" are of crucial importance to demonstrate that the scope of the definition under Section 2(1)(u) extends not only to the immediate consequence of a crime, rather it also includes the subsequent transformation, layers and manifestation of the illicit financial gain. The usage of the word "indirectly" while defining proceeds of crime under PMLA, establishes the intentional expansive definition provided thereunder, which goes on to establish that once the proceeds are generated through any criminal activity, routing it through multiple channels or transactions, thereby creating layers of ostensible legitimacy does not prevent the accused from escaping liability within the rigours of Section 3 of the PMLA.

39. To put it in other words, even if no separate predicate offence is registered in relation to the subsequent act of utilisation of property to acquire funds through a legalised transaction, the classification of the illegal gains used by means of a legal transaction emanating from an illegal means adopted for attaining coal block allocation would still be construed as "proceeds of crime". This is because the proceeds nevertheless are traceable either directly or indirectly, to the original criminal activity relating to a scheduled offence.

40. Additionally, the offence of money laundering being continuing in nature is not confined only to the initial act of criminal acquisition but also extends to every process or activity connected with the proceeds including layering through multiple transactions, integration into the legitimate economy and projection of the acquired wealth as lawful. For instance, if a public servant receives a bribe, which constitutes an offence under the provisions of the Prevention of Corruption Act, 1988, and thereafter invests that sum in narcotics trade, real estate, preferential shares or any other avenue, the taint of illegality would still continue

and the entire corpus shall be liable to be attached irrespective of the subsequent channels through which it has been routed or the forms it assumes subsequently. Similarly, if the sum received as bribe is invested in share market, which later increases or goes beyond and above the value of actual investment owing to market forces or corporate actions, the entire enhanced amount shall constitute as proceeds of crime. Meaning thereby the appreciation in value does not cleanse or purify the tainted origin, more so since the augmented value is inextricably and indirectly derived from the original illicit source of bribe.

41. In view of the aforesaid, it would not be imperative and/or reasonable to compartmentalize the offence of money laundering and limit its scope only to an isolated event of misrepresentation by PIL. The offence shall rather be construed or viewed as a series of connected acts which begins from the generation of proceeds by unlawful means extending through their subsequent lawful layering or projection.

42. In the present case, the FIR based upon which the ECIR was registered by the Directorate and the subsequent chargesheet filed by the CBI includes the misdeclaration made by PIL before the Ministry of Coal to attain the coal block allocation. Moreover, it remains undisputed that PIL made a misrepresentation before the BSE regarding the said allocation. Even otherwise, the question of whether such misinformation was indeed made, is a matter of adjudication by the competent trial court, which will assess the evidence, inter-alia, testimonies of witnesses produced by the parties.

43. In view of the aforesaid, the argument advanced by learned senior counsel for PIL that the essential ingredients of the scheduled offence are not fulfilled in the present case, lacks merit. Particularly, for the reason that this Court is only concerned with the aspect of proceeds of crime for the purpose of the attachment. Whether an offence is made out or not is a matter to be adjudicated by the concerned Trial Court, since a chargesheet has already been filed by the CBI whereas the Supreme Court in the matter arising therefrom, has presently stayed the proceedings of Trial Court. Consequently, this Court is not required to examine that issue, since it is sub-judice before the Supreme Court.

44. Further, on a perusal of the Impugned Judgement vis-à-vis the record placed before this court, if taken to be correct on face value, reflects that even the chargesheet filed subsequently records the fact that PIL misdeclared their net worth as Rs. 532 Crores whereas the investigation revealed the actual net worth of PIL during the relevant period which was (-) Rs. 144.16 Crores. Had such misdeclaration not been made, the allocation would not have been granted in its favour. Consequently, PIL would not have obtained the coal block in the first place. The aforesaid facts and circumstances when read together establishes a clear nexus between the rise in the share price of PIL and the coal block allocation, thereby prima facie satisfying the conscience of this Court that the issuance of the PAO to the PIL may not be incorrect.

45. To conclude, as per Section 3 of the PMLA not only the tainted property but every process or activity connected with such property falls within the ambit of money laundering. Therefore, even if the share allotment on preferential basis appears to be a "legal transaction" in form, its foundation is inherently rooted in misrepresentation and fraud underlying the core predicate offence enabling the Directorate to trace and connect such transactions to the proceeds of crime. Accordingly, the finding of the LSJ that the Directorate could not have attached the property in absence of the allotment of preferential share forming part of the report of predicate agency falls short of merit and is in contravention of provisions of the PMLA.

C. POWER OF PROVISIONAL ATTACHMENT UNDER SECTION 5 OF THE PMLA: WHETHER INDEPENDENT FROM SECTION 66(2) OF PMLA?

46. Proceeding now to deal with the exercise of power by the Directorate as envisaged under Section 5 of the PMLA and whether such power is interlinked with the information to be shared to a predicate agency under Section 66(2) of the PMLA, it is noted that in Prakash Industries-I, the question pertaining to the powers of the Directorate under Section 5 of the PMLA to attach the value of property fell for the consideration, upon which this Bench conclusively held:

"D. ATTACHMENT UNDER SECTION 5 OF THE PMLA: WHETHER THE DIRECTORATE IS JUSTIFIED IN ATTACHING THE VALUE OF COAL EXTRACTED?

53. Section 5(1) of the PMLA permits provisional attachment where the authorized officer has a "reason to believe" that a person is in possession of proceeds of crime and such proceeds are likely to be dealt in a manner, the result of which is likely to undermine the proceedings related to confiscation provided under the PMLA. However, the first proviso to Section 5 (1) of the PMLA, highlights that the order of attachment shall be issued following some formal action taken, namely, registration of final report under Section 173 of the CrPC; complaint filed by an authorised officer before a court or magistrate; or in case of offence committed outside India, a similar report or complaint being filed under the municipal laws of the respective countries.

54. The statutory definition of proceeds of crime under Section 2(1)(u) of the PMLA expressly includes, "the value of any such property", which enables the Directorate, subject to statutory prerequisites, to attach the equitable value where the specified property and its value obtained illegally by the person become untraceable or has been intermingled or dissipated.

55. In order to proceed with the order of attachment, the Directorate has to show a nexus with a scheduled offence, demonstrate the generation of proceeds of crime under Section 2(1)(u) and show that the accused participated in the process highlighted under Section 3 of the PMLA. The aforesaid foundation must then be supported with a recorded "reasons to believe" with an identified equivalent value of proceeds before proceeding to adjudication under the PMLA, failing which attachment under Section 5 of the PMLA fails.

56. In the present case, the Directorate's evaluation of Rs. 951.77 crores corresponding to the coal excavated during the financial years from 2006-07 to 2014-2015, reflects the financial gain derived by PIL pursuant to attaining the coal block allocation through misrepresentation. The quantification reached by the Directorate as also elaborated in the preceding paragraphs is not constrained to the date of allocation, rather continues as long as the benefit from the tainted property subsists. In the aforesaid background, although it is the case of PIL that the quantification by the Directorate is baseless, no credible evidence to rebut the said quantification has been produced, thereby failing to discharge the onus of proof imposed upon it once the procedural presumption arises.

57. Therefore, once the Directorate has made a prima facie case, establishing the predicate offence, its nexus to the proceeds and reason to believe, the burden shifted to PIL to prove that the property is untainted. Accordingly, the Directorate, is justified in attaching the "value" of coal extracted under Section 5 of the PMLA, when the pre-requisites of attachment has been satisfied."

47. To put the above view summarily, the Directorate, under Section 5(1) of the PMLA is empowered to attach a property of equivalent value when the original proceeds of crime obtained by the accused is untraceable. However, before issuing such an order of attachment, the Directorate must necessarily record a 'reason to believe' that the person is in possession of proceeds of crime and also establish a clear nexus of such proceeds to a scheduled offence.

48. The LSJ under Part H titled Section 66(2) and its ramification, has rendered a finding that the Directorate while exercising the emergency measures as envisaged under Section 5 of the PMLA, has to mandatorily transfer the information to a predicate agency under Section 66(2) of the PMLA. While applying the aforesaid principle to the facts of the present case, it has been held by the LSJ that the PAO is violative of the statutory provisions of the PMLA, since no report or complaint in relation to the allocation of the preferential shares and the proceeds derived therefrom, which constitutes the substratum of the PAO, has been registered by any predicate agency till date. However, in view of the findings rendered by this Bench in the preceding paragraphs under Part B of this judgment, the aforesaid finding rendered by the LSJ is incorrect to the extent that, firstly, the allocation of preferential shares need not be registered as a separate offence to trigger the provision of Section 5 of the PMLA enabling the Directorate to exercise the power of attachment. Secondly, the powers of attachment under Section 5 of the PMLA is distinct, independent and autonomous, and is to be exercised without any requirement of prior communication under Section 66(2) of the PMLA.

49. In this regard, it becomes pertinent to highlight that the primary objective of Section 5 of the PMLA is preventive and protective, in order to preserve the assets that may be subject to dissipation if not confiscated by the agency. A perusal of the aforesaid provision shows that it is a complete and self-contained section which distinctively lays down the conditions precedent to exercise the

powers provided thereunder. The said provision nowhere makes any reference to or requirement of prior information sharing under Section 66(2) of the PMLA. Moreover, the conditions precedent to invoke the provision has already been dealt by this Court in the preceeding Paragraph Nos. 48 and 49 of this judgment, and therefore, is not being dealt with herein.

50. Turning now to the requirement under Section 66(2) of the PMLA, the provision although uses the word "shall", making the sharing of information a mandate once the Directorate had formed an opinion regarding the contravention of the provisions of distinct statutory laws. However, the said provision nowhere prescribes any strict timeline within which such information must be shared by the Directorate.

51. Moreover, the language used therein does not create a bar on the exercise of powers under other provisions of the PMLA. In this regard, it is also pertinent to note that a complete reading of Section

66 of the PMLA, highlights the legislative intent behind the addition of the provision, which was to merely ensure and maintain an effective flow of information between the investigating agencies and reinforce inter-agency cooperation.

52. Additionally, while interpreting the provisions of PMLA, it has to be borne in mind that time and again it has been held by the Courts through judicial precedents that PMLA is a self-contained and comprehensive legislation enacted to prevent money laundering and connected activities enabling the authorities to combat the problem of money-laundering and processes related thereto, confiscate proceeds of crime, comply with the international obligations under Vienna and Palermo Convention and meet the FATF recommendations. Therefore, the intent behind the addition of Section 66(2) of the PMLA must also be carefully examined in order to ascertain whether the statute makes the sharing of information a condition precedent or merely an independent obligation which runs parallelly vis-à-vis the power exercised by the Directorate under Section 5 of the PMLA to prevent the problem of money laundering and to ensure that any undue financial gains by an accused is not utilised or allowed to flow as untainted in the nation's economy.

53. In addition to the aforesaid, it is to be noted that whether a provision of the statute is mandatory or merely directory is not to be determined by the usage of word 'shall' in the provision; rather the mandatory nature of a provision is to be determined by the consequence following the non-obligation or non-compliance of such provision or if any time limit has been prescribed for the compliance of the same. In case either of the aforesaid is not provided in the relevant provision, it would be construed that the infringement of such provision shall not affect the existence or exercise of powers provided under the different provisions of the statute. The provisions which are merely directory in nature do not affect the case even if the same has not been complied with or as long as

consequence of its non-compliance is directly mentioned under the statute.

54. In the present case, even if it is assumed that the Directorate has defaulted in sharing information as mandated under Section 66(2) of the PMLA, it is to be taken into account that the provision nowhere provides for any specific time limit within which the information must be shared. Notably, it is nowhere provided in the statute that before the issuance of PAO, information must be shared under Section 66(2) of the PMLA. Further, the said provision does not contemplate that any omission or delay in sharing such information would attract adverse consequences thereby invalidating the PAO or rendering any subsequent proceedings void.

55. Therefore, once it is established that the compliance of Section 66(2) of the PMLA is not a condition precedent for issuance of PAO, the Directorate, is legally justified in attaching the equivalent value of properties of PIL under Section 5 of the PMLA, especially when the pre-requisites of the attachment has been satisfied.

CONCLUSION:

56. Keeping in view the above position of law, as well as the facts and circumstances of the present case, the present Appeals are allowed. The Impugned Judgment passed by the learned Single Judge, which is under challenge herein, is hereby set aside.

57. Resultantly, the cancellation of the PAO and its consequential proceedings by the learned Single judge are also set aside.

58. Accordingly, the present Appeals, stand closed.

59. The foregoing discussions were only for the purpose of adjudication of lis raised in the present Appeals and the same shall not be treated as a final expression on the submissions of respective parties and also shall not affect the future adjudication emanating before any other forum in accordance with law.