

**(2022) 03 DEL CK 0066**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 12033 Of 2021, Civil Miscellaneous No. 37418 Of 2021 and 40579 Of 2021

M/S Kumar Food Industries Ltd.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

**Date of Decision :** 10-03-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 19, 21  
Prevention Of Money Laundering Act, 2002 — Section 2(1)(u), 2(1)(v), 2(1)(w), 3, 5, 5(1), 6, 8, 8(1), 8(2), 8(5), 8(8), 17, 26, 42, 44, 50, 56  
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471  
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)(e), 13(2), 16  
Code Of Criminal Procedure, 1973 — Section 102, 102(1), 102(3)

**Citation :** (2022) 03 DEL CK 0066

**Hon'ble Judges :** V. Kameswar Rao, J

**Bench :** Single Bench

**Advocate :** Tanveer Ahmed Mir, Prabhav Ralli, Vaibhav Suri, Bharathi Raju, Zoheb Hossain, Vivek Gurnani, Kartik Tayur

**Final Decision :** Dismissed

## Judgement

V. Kameswar Rao, J

CM. No. 40579/2021 (by respondent No.2 for condonation of 8 days delay in filing the counter affidavit)

For the reasons stated in the application, the same is allowed and the delay of 8 days in filing the counter affidavit is condoned. Counter affidavit is taken on record. Application is disposed of.

W.P.(C) 12033/2021

1. This present petition has been filed with the following prayers:-

"a. Quash and set aside the 'debit freeze' direction issued by the Respondent No.2 to the Respondent No.3 Bank in relation to the Bank Account bearing No.

28321300000046 and 31141600000028 of the Petitioner Company and all consequential proceedings arising therefrom;

b. And Pass any other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

2. The instant petition challenges and impugns the direction/order/communication dated August 25, 2021 of the respondent No.2 / Directorate of Enforcement ('ED' hereinafter) against the petitioner company under Section 5 of the Prevention of Money Laundering Act, 2002 ('the PMLA', for short), directing the respondent No. 3 Bank to 'debit freeze' the bank accounts of the petitioner company bearing Nos. 28321300000046 and 31141600000028. It is the case of the petitioner that the actions of the respondent No. 2 are actuated by malice and is unsustainable in law.

3. It is stated that the petitioner company, incorporated in 1991, is engaged in the business of manufacturing and sale of products related to the food processing. It uses the licences and trade names of M/s Shakti Bhog Foods Limited ('SBFL', for short), a company which is currently under liquidation. The petitioner company has an established retail marketing network and enjoys considerable market presence in North India and also has tie ups with third parties in other parts of the country, and is a running concern that directly employs over 172 people.

4. On June 7, 2011, the petitioner availed a loan of ₹ 10 crore from the State Bank of India ('SBI', for short), Karol Bagh, New Delhi to meet its working capital needs and to further its business expansion plans. On December 11, 2017, the said loan was taken over by the DCB Bank, (respondent No. 3 herein) from the SBI, whereupon, the petitioner was issued a No Dues Certificate. The respondent No. 3 Bank also sanctioned a term loan of ₹17.35 crore and an overdraft facility of ₹ 1crore.

5. On December 31, 2020, the Central Bureau of Investigation ('CBI', for short) registered an FIR bearing No. RC0742020E0014 under Section 420 read with Sections 120-B, 467, 468 and 471 of the Indian Penal Code along with Section 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 against one company namely M/s Shakti Bhog Foods Limited ('SBFL', for short) along with four other individuals who are the promoters of the said company. It is stated that the petitioner company is a sister concern of SBFL. The said company SBFL is in liquidation since January 2018 and an Official Liquidator is currently looking after the affairs of the said company. The CBI has alleged in the FIR that SBFL has caused a loss to the tune of ₹3269 crore to the consortium of banks from whom the company had taken financial assistance for reviving its business. As per the allegations, the SBFL had inflated its receivables and stock statement to present a rosy picture to the banks for availing financial assistance. It is stated in the petition that the petitioner company has not been accused or even mentioned in the said case.

6. Pursuant to the case being registered by the CBI, the ED, on January 30, 2021, registered an Enforcement Case Information Report ('ECIR', for short) bearing No. DLZO-I/12/2021 in which the allegations made in the CBI FIR were reiterated. It is stated that even in the ECIR, the name of the petitioner company has not been mentioned.

7. On August 18, 2021, when the petitioner company tried to operate its bank accounts bearing Nos. 28321300000046 and 31141600000028 maintained with the respondent No. 3 Bank, no transactions could be carried out. On enquiry, it was found out that the status of the account was 'Debit Frozen Account'. As the said account is the primary account of the petitioner company from which all business related transactions are carried out and even the loan availed by the petitioner has been linked to the said account, the petitioner requested the bank that the debit freeze should be removed, as the business of the company was being adversely affected by the same. The respondent No. 3 Bank did not respond to the email communications and phone calls by the petitioner company. It is stated that however, the officers of the Bank unofficially informed the petitioner that the status of the accounts were changed subsequent to the communication received by the respondent No. 2 / ED.

8. It is stated that the respondent No. 2 on August 25, 2021 passed a Provisional Attachment Order under Section 5 of the PMLA whereby the properties and bank accounts of several entities have been provisionally attached. It is stated that the loan amount and the primary business account of the petitioner has been provisionally attached by the respondent No. 2 thereby hampering its business activity. It is further stated that the order was communicated by the respondent No. 2 to the respondent No. 3 Bank on August 18, 2021, however the attachment order was signed only on August 25, 2021. According to the petitioner, this shows that law and logic was surpassed by the respondent No. 2 in attaching their bank accounts. On September 1, 2021, a prosecution complaint was filed under Section 44 and Section 56 of the PMLA before the Special Designated Court, New Delhi. Even in the said complaint, the petitioner herein has not been arrayed as an accused.

9. It is stated that the action taken by the respondent No.2 in debit freezing the bank accounts bearing No. 28321300000046 and 31141600000028 belonging to the petitioner is de-hors the law. The respondent No.2 has exercised power under Section 5 of the PMLA without satisfying the ingredients as enshrined in the said provision itself. The mala fide of the respondent No.2 is further writ large from the fact that after the action was been taken by the respondent No.2 and the bank accounts of the petitioner company was frozen, the respondent No. 2 has been issuing summons to the promoters and other employees of SBFL, coercing them to give statements that money used to flow from the accounts of SBFL to the petitioner company, in order to establish a money trail between the two companies and to justify the action taken. This shows that at the time of issuing direction under Section 5 of the PMLA, the Authorized Officer did not have

any material in his possession which formed the basis for his reason to believe that the account in question is in receipt of proceeds of crime. It is stated that further, the respondent No.2 has sufficient knowledge that the transactions between the petitioner company and SBFL is limited to the sale and purchase of gram flour and the amounts received from SBFL is completely accounted for in the books of both the companies.

10. It is also stated in the petition that Supreme Court in Opto Circuit India Limited vs. Axis Bank & Ors., (2021) 6 SCC 707 has held that the procedure under the PMLA has to be mandatorily followed by the Authorized Officers as the same affords statutory safeguards in favour of the entity/ person against whom action is to be taken and further ensures fairness in the process. It is submitted that in the case at hand the action taken by the respondent No.2 against the petitioner company is in total violation of the procedure enshrined under the PMLA, firstly for the reason that the respondent No.2 since registration of the ECIR till date has not summoned the petitioner company or any of its principal officers with the records of the company and thus it is unclear as to how the respondent No.2 came to the conclusion that the bank accounts in question are in receipt of proceeds of crime or involved in money laundering. Secondly, SBFL is in liquidation since January, 2018 and no transaction has taken place between the petitioner company and SBFL since liquidation began. It is the case of the petitioner company that therefore, the action of the respondent No. 2 in debit freezing the bank accounts has been done with non-application of mind.

11. It is also submitted that this Court has, in various cases wherein bank accounts were frozen, modified the orders of the respondent No. 2 to allow the use and operation of attached bank accounts, subject to maintenance of balance of the attached amount in the accounts. Reference in this regard is made to the decision of this Court in M/s Art Housing Finance (India) Limited v. Directorate of Enforcement and Ors., WP.(C) No. 3083/2020 decided on June 10, 2020, and Ramaluthra v. Directorate of Enforcement, 2021 SCC Online Del. 1979.

12. A counter affidavit has been filed on behalf of the respondent No. 2/ ED, wherein, at the outset it is stated that the writ petition is not maintainable in view of the alternate statutory remedy available to the petitioner to approach the Adjudicating Authority under Section 8 of the PMLA, and thereafter, in appeal to the Appellate Tribunal under Section 26 of the PMLA. It is only after exhausting these remedies that the petitioner is entitled to approach this Court under Section 42 of the PMLA. That apart, parties aggrieved by the actions of the respondent No. 2 /ED can also approach the Special Court under Section 8 (8) of the PMLA.

13. It is the case of the respondent No. 2 that no order of 'debit freeze' has been issued by them with regard to the bank accounts of the petitioner. Further, out of the two bank accounts mentioned in the petitioner, only the bank account bearing No. 28321300000046 has been subjected to attachment through Provisional Attachment Order No. 05/2021 dated August 25, 2021. It is also

alleged that the petitioner has not disclosed the fact that a Notice dated October 12, 2021 has been issued under Section 8(1) of the PMLA which named the petitioner as defendant No. 2 and directed it to submit reply thereof before the Adjudicating Authority in respect of Original Complaint No. 1526/2021. It is stated that the writ petition is liable to be dismissed on the ground of suppression of material fact. Reliance in this regard is placed on the judgment of the Supreme Court in the case of *Prestige Lights Ltd. v. State Bank of India*, (2007) 8 SCC 449.

14. That apart, it is stated in the counter affidavit that the petitioner had taken a loan of ₹ 3269 crore from a consortium of ten banks, SBI being the consortium leader. The credit facility turned into a Non Performing Asset ('NPA', for short) on March 31, 2015. Investigations revealed that SBFL, in connivance with its Directors and some others had rotated the loan funds through its group companies in the form of share investment, share application money, share premium, inter-corporate deposits, compulsory convertible debentures, loans / advances, and inter-group purchases/ sales, to launder and change the appearance of the said funds from liabilities to assets. Transactions with the group companies were perfected through shell companies, by creating complex layers of transactions so as to change the colour of the borrowed funds. It is further stated that SBFL, in league with its Directors, Promoters and some others, created a mechanism which generated proceeds of crime, and then effected acquisition thereof through intricate layering and siphoning of the same. In this scheme, almost all Directors and Promoters of SBFL and its 24 group companies became beneficiaries of the proceeds of crime.

15. It is also stated that the petitioner company herein, i.e., M/s Kumar Food Industries, is one of the group companies used by SBFL under the camouflage of sale and purchase to circulate its loan funds through their bank accounts. Investigation conducted so far has revealed that inter-group purchase/sale transactions of these companies were not genuine and were meant to enhance turnover figures and resultantly, inflate their financials. The group companies of SBFL had no independent/ separate teams for maintaining their accounts, audit and finance related functions; rather the account teams and internal auditors of SBFL were being used. It is stated that one Abdul Hasan Ansari, the Auditor of the petitioner company, in his statement recorded under Section 50 of the PMLA, has stated that the group companies have no separate independent business and that the entries of sale/purchase were made in their books of accounts on the basis of fake invoices that he made. It is also stated that the petitioner company along with Shakti Bhog Snacks Pvt. Ltd., a subsidiary of SBFL, layered and utilised the bank funds of SBFL in the guise of sales and purchases. It has been established in the investigation that the petitioner company was involved in sham transactions with SBFL and hence, was providing a platform for laundering proceeds of crime in the name of loans, investments, purchases and sales, a fact which has been corroborated by Sunanda Kumar, Director of SBFL and Abdul Hasan Ansari, the Auditor.

16. Analysis of bank account statements has revealed that from the year 2006-07 to 2015-16, the petitioner company had received proceeds of crime to the tune of ₹687.53 crore directly from SBFL in the form of purchases/loans, out of which only ₹42.17 crore has been given back to SBFL, leaving an amount of ₹645.36 crore with the petitioner company. Out of these funds, an amount of ₹301.09 crore was transferred to the Directors of the petitioner company and their relatives. It is stated that out of the remaining funds, ₹14.55 crore was transferred to Shakti Bhog Snacks Pvt. Ltd., ₹19.81 crore to SBFL, ₹5.15 crore to Pancy Holding Pvt. Ltd., ₹5.80 crore to Dinkar Holding Pvt. Ltd. and ₹85 lac to Dash Exports. According to the respondent No. 2, this is indicative of the fact that proceeds of crime were being circulated in the colour of business transactions through the petitioner company.

17. That apart, it is stated that the investigation conducted so far has revealed that the petitioner company received loan funds directly from SBFL in the form of sale/purchase and loan/investment etc. and further transferred them to various shell companies/firms in the form of bogus purchases without actual transaction of goods. From the financial year 2010-11 to 2016-17, the petitioner company had booked bogus purchases and transferred ₹200.06 crore to shell companies/firms. The above-mentioned group companies of SBFL including the petitioner company, have been floated mainly for the purpose of generating, acquiring, layering and siphoning proceeds of crime by changing its colour and then projecting it as untainted. As per the respondent No. 2, it is in this background that ECIR No. DLZO-I/12/2021 dated January 30, 2021 was recorded and the assets of SBFL and its group companies including the petitioner herein were attached under Section 5 of the PMLA vide Provisional Attachment Order No. 05/2021 dated August 25, 2021.

#### SUBMISSIONS:-

18. Mr. Tanveer Ahmed Mir, learned counsel for the petitioner has prayed that, as the respondent No. 2/ ED has clarified in the counter affidavit that the loan account bearing No. 31141600000028 is not part of the Provisional Attachment Order dated August 25, 2021, appropriate directions be issued to the respondent No. 3 Bank for allowing the petitioner to operate the said bank account. He has also sought operation of the current account bearing No. 28321300000046 subject to maintaining the balance of ₹24,75,993/-, which is the balance reflected in the said account as on date of the attachment order of August 25, 2021. He has relied upon the Judgments of this Court in the cases of Vijay Kumar Sharma & Anr. V. Directorate of Enforcement and Anr., W.P.(C.) 6236/2021 and M/s Avi Enterprises v. Union of India & Ors., W.P.(C.) 6037/2020, wherein this Court has allowed the operation of the bank accounts, even when the same were attached by ED.

19. It is the submission of Mr. Mir that the grant of relief would not affect the interests of ED; however, the refusal of the same would adversely affect the petitioner company. He stated that the bank account of the petitioner has only

been attached to the extent of an amount of ₹24,75,993/- and the petitioner is willing to maintain the said amount as balance in the said bank account, thus fully protecting the interest of the respondent No. 2/ ED. Further, if the petitioner is not allowed to operate the attached bank account, the account would turn into an NPA on account of the loan availed from the respondent No. 3 Bank, and shall grossly affect the business of the petitioner company and also more than a hundred employees directly employed with the petitioner company. He has also stated that since the respondent No. 3 Bank had sanctioned a working capital loan of ₹17 crore to the petitioner company, the transactions carried out by the petitioner are being monitored by the respondent No. 3 Bank, and no concern has been raised by the Bank at any point of time. The operation of both the bank accounts is extremely necessary for the smooth operations of the company as the same would allow the petitioner company to repay the loan.

20. That apart, Mr. Mir has stated that subsequent to the Provisional Attachment Order dated August 25, 2021, the respondent No. 2 in the ECIR in question has filed a prosecution complaint on September 1, 2021 and two supplementary complaints dated October 11, 2021 and November 18, 2021. However, the petitioner company has not been made an accused in these complaints, and no allegation of money laundering has been raised against the petitioner company. He has also stated that the Provisional Attachment Order of August 25, 2021 also fails to show that the amount in the bank account belonging to the petitioner company is proceeds of crime and has rather proceeded in the matter on mere assumption.

21. In response to the argument of the respondent No. 2 regarding an alternate remedy available to the petitioner, Mr. Mir has submitted that the relief being sought in the instant writ petition cannot be granted by the learned Adjudicating Authority under Section 8 of the PMLA, which only contemplates confirmation or rejection of the attachment order, a fact that was admitted/ conceded by the respondent No. 2 through its counsel on February 11, 2022 during the course of hearing of the petition. He has also stated that the petitioner company will defend the attachment of the bank accounts before the Adjudicating Authority, and it is only seeking directions to operate the said bank accounts through this writ petition. That apart, he has also relied upon the Judgment of the Supreme Court in the case of M/s Kaushalya Infrastructure Development Corporation Limited v. Union of India & Anr., SLP (Crl.) 565/2022 to contend that the proceedings before the Adjudicating Authority under Section 8 of the PMLA shall have no bearing to the challenge of the provisional attachment order before this Court.

22. That apart, he submitted that the stand of the respondent No. 2 that attachment of the bank account is different from attachment of the money in the bank account, is contrary to law and logic, as the said attachment order does not specifically state that the bank account itself, and not the amount therein, has been attached as property. The attachment has been affected as the amount

cannot be attached without attaching the bank account.

23. Mr. Mir contested the argument of the respondent No. 2 that the bank account has been attached as there is an apprehension that some amounts may be credited in the bank account in the future, by stating that such an argument is dehors the scheme of the PMLA, as for any attachment to take place under Section 5 of the Act, the ED needs to record reasons in writing that the property so attached has been derived from proceeds of crime and as such a bank account per se could not be attached by the respondent No. 2/ ED, as the same cannot be a property derived from a crime. Only the money/amount in such account is liable to be attached, that too, to the extent the same is proceeds of crime. This position can be seen from the reading of provisions of Section 2 (1) (u), Section 2 (1) (v) and Section 3 of the PMLA.

24. He further submitted that Judgment in the case of State of Maharashtra v. Tapas D. Neogy 1999 (7) SCC 685, on which reliance was placed by the learned counsel for the respondent No. 2 during the course of hearing, is inapplicable herein inasmuch as, it was passed by the Supreme Court on account of contradictions in the opinions expressed by various High Courts regarding the attachment of bank accounts by police officers under Section 102 of the Code of Criminal Procedure ('Cr.P.C.' hereinafter). The said judgment does not discuss the difference between attachment of bank account and attachment of bank balance. Even otherwise, the respondent No. 2 cannot rely upon Section 102 of the Cr. P.C. in the instant case, as the PMLA has specific provisions for attachment, and the same shall prevail over the provisions set out in Cr.P.C.

25. It is also submitted that similar reliefs have been granted by this Court with the consent of the respondent No. 2/ ED in some other matters. It is the contention of Mr. Mir that the approach of the respondent No. 2 in adopting a discriminatory approach, by giving consent to operate bank accounts in some matters and denying consent in some others, demonstrates the arbitrariness of the actions of the respondent No. 2.

26. That apart, he has also stated that the impugned attachment of the bank accounts are in violation of Article 19 and Article 21 of the Constitution of India, as the same would lead to the economic strangulation of the petitioner company, which would then result in the denial of the right to livelihood.

27. Mr. Zoheb Hossain, learned Special Counsel for the respondent No. 2/ ED stated at the outset, that the present petition is misconceived in light of the prayer which seeks an order from this Court to quash and set aside the debit freeze direction issued by respondent No.2 to respondent No.3 in relation to two bank accounts bearing Account Nos. 28321300000046 and 31141600000028 of the petitioner company. He submitted that there has been no order of freezing passed under sub section (1A) of Section 17, freezing either of the above two bank accounts and therefore, the prayer being misconceived, the petition itself deserves to be rejected.

28. He reiterated the stand taken in the counter affidavit that only the bank account bearing No. 28321300000046 is subject to attachment under the Provisional Attachment Order No. 05/2021 dated August 25, 2021 and the other account bearing No. 31141600000028 has neither been attached nor is subject to any freeze.

29. He has also stated that in light of the factual position in the present case, there exists an alternate statutory remedy available to the petitioner. It is his argument that this Court has consistently refused to interdict statutory proceedings and dismissed writ petitions holding that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. In this regard he has relied upon the decision of the Supreme Court in the case of State Bank of Travancore v. Mathew KK, (2018) 3 SCC 85, and of this Court in the cases of Rose Valley Hotels and Entertainment Ltd. v. The Secretary, Department of Revenue 2015 SCC OnLine Del 10111, Rai Foundation through its Trustees v. The Director, Directorate of Enforcement and Ors., 2015 SCC Online Del 7626. He has also placed reliance on the Constitutional Bench decision in Smt Ujjam Bhai v. State of UP, AIR 1962 SC 1621 to contend that the petition is liable to be dismissed as the petitioner has not challenged the jurisdiction of the Adjudicating Authority, which is competent to deal with the issues pertaining to proceeds of crime attached vide provisional attachment orders.

30. It is his submission that the petitioner company be relegated to the alternative statutory remedy available before the Adjudicating Authority, wherein the proceedings of the provisional attachment are presently pending. He has relied upon the Judgment of the Supreme Court in the case of Pareena Swarup v. Union of India, (2008) 14 SCC 107, to contend that Adjudicating Authority constituted under Section 6 of the PMLA fulfils the requirements of an independent judicial body.

31. He has also contested the argument of Mr. Mir that as the interest of the respondent Bank is also involved in the present case and therefore, only a Writ Court can pass suitable direction, by stating that proviso to Section 8(2) of the PMLA sufficiently takes care of interest of third parties who stake a claim to the property. The said proviso reads as under:-

“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.”

32. The Provisional Attachment Order dated August 25, 2021 clearly provides that the loan amounts were fraudulently availed by SBFL from the banks. Investigation has also revealed that from the year 2010 to 2020, the petitioner company had received proceeds of crime of ₹687.53 crore directly from SBFL in the form of purchases, loans, etc. and SBFL has only received back ₹42.17 crores, leaving ₹645.36 crore for the use of the petitioner company. He stated

that out of the proceeds of crime of ₹645.36 crore, the total attachment made in the hand of the petitioner company is a much lesser figure of ₹87,71,443/-. Therefore, to safeguard the interest of the investigation and also larger public interest and to ensure that the proceeds of crime are ultimately available for confiscation, the bank account of petitioner company, which is a property involved in money laundering, itself has been attached. This is evident from the schedule of attached properties mentioned in the writ petition at page 309 which shows the account No.28321300000046 in DCB Bank as the attached property with a balance 'as on date' of ₹ 24,75,993.97/-.

33. Mr. Hossain has also submitted that a bank account is a 'property' as defined in Section 2(1)(v) of the PMLA which is extracted as below:-

"(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;"

34. He further submitted that the legal position whether a bank account can be held to be property and is liable to be attached has been answered by the Supreme Court in the case of *Tapas D. Neogy (supra)* in the context of Section 102 of the Cr.P.C., by holding that in the course of investigation, authorities can seize or prohibit operation of a bank account if it has direct links with the commission of the offence under investigation. Contrary views thereof taken by the Karnataka, Guwahati and Allahabad High Courts and this Court, were found to have laid down the incorrect position of law by the Supreme Court. Even the decision of this Court in *Swaran Sabharwal v. Commissioner of Police, 1988 CRLJ 241 (Del) (DR)* which was relied upon by the counsel for the petitioner during the course of the hearing, was also found to have laid down an incorrect position of law in *Tapas D. Neogy (supra)*.

35. It is his submission that under the scheme of the PMLA, as is evident from a plain reading of the second proviso to Section 5(1) as well as Sub-Section (2) of Section 8 read with Sub-Section (5) of Section 8, 'property involved in money laundering' is capable of being attached. The expression 'property' as defined in Section 2(1)(v) of the PMLA would clearly encompass a bank account which is a property used in the commission of offence of money laundering by siphoning of the loan funds by SBFL to the petitioner company.

36. He stated that the reliance placed on *Tapas D. Neogy (supra)* is for a limited purpose to demonstrate that attachment of a bank account in its entirety is permissible being in the nature of property. Therefore, the contention of Mr. Mir that only the bank balance can be attached and not the bank account deserves to be rejected in terms of the law in *Tapas D. Neogy (supra)*.

37. That apart, he stated that the reliance placed by Mr. Mir on the orders claiming to be passed under identical circumstances do not create any precedent. According to Mr. Hossain, the order passed by this Court in M/s Art House Finance Limited (supra) is distinguishable in light of the fact that the provisional attachment order in that case had only attached the balances lying in the bank account and not the bank account itself. Therefore, there was no contest between the parties therein on the legal issues involved and neither was any provision of law considered. Therefore, the order passed therein is an order sub-silentio. Reference in this regard is made to the Judgment of the Supreme Court titled *Municipal Corporation of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101. As regards the reliance placed on *Vijay Kumar Sharma* (supra), it is stated that the same is a consent order. It is also stated that the order in *M/s Avi Enterprises* (supra), was an interim order, which cannot be treated as precedent. To buttress this argument, Mr. Hossain has referred to the judgment of the Supreme Court in the case of *State of Assam v. Barak Upatyaka DU Karamchari Sanstha*, (2009)5 SCC 695.

38. That apart, it is his submission that neither any fundamental right nor any statutory right of the petitioner company has been violated on the basis of which it could seek to maintain the present petition. It is well settled that if a person / entity acquires proceeds of crime, the State is perfectly justified in depriving such persons / entity of the enjoyment of such ill-gotten wealth and such a deprivation would neither be arbitrary nor in violation of any fundamental right. Reliance in this regard is placed on the Judgment of the Supreme Court in *Biswanath Bhattacharya v. Union of India*, (2014) 4 SCC 329.

39. It is his contention that the attachment of bank account itself is consistent with the legislative objective as well as the explanation to Section 2 (1) (v) of the PMLA that the remaining proceeds of crime as and when available in the bank account would be liable to be attached. In this regard, he has referred to the definition of proceeds of crime as contained in Section 2 (1) (u) of the PMLA.

40. He stated that as is clear from the above provision, the proceeds of crime is not the only tainted property which is derived or obtained directly or indirectly by any person as a result of criminal activity relating to scheduled offences, but also the value of such property. He has relied upon the judgment of this Court in *Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank*, 2019 SCC Online Del 7854, to contend that when the direct proceeds of crime is not available for attachment, even the equivalent value of the proceeds of crime may be attached as per Section 2 (1) (u) read with Section 5 of the PMLA.

41. Having heard the learned counsel for the parties and perused the record, the first issue that needs to be decided by this Court is on the basis of the plea advanced by Mr. Hossain that there exists an alternate remedy to the petitioner before Adjudicating Authority, in view of Section 8(2) of the PMLA which specifically takes care of the interest of any party who stakes a claim to the property, and as such the petitioner must be relegated to the said Authority.

42. A perusal of the prayer would reveal that in substance, and also contended by Mr. Mir, the relief sought in the petition is to issue a direction to the respondent to allow the petitioner to operate the bank accounts, a relief which cannot be granted by the Adjudicating Authority under Section 8 of the PMLA as the said Section contemplates confirmation or rejection of the attachment order on the ground that the property is involved in money laundering or not, which is not the case of the petitioner in this petition. In fact, Mr. Hossain during his submission has conceded the above position with regard to Section 8 of PMLA. That apart, Mr. Mir is justified in relying upon the judgment of the Supreme Court in case of M/s Kaushalya Infrastructure Development Corporation Limited (supra), wherein it was held that the proceedings before the Adjudicating Authority under Section 8 of the PMLA shall have no bearing on the challenge to the Provisional Attachment Order under Section 5 of the PMLA, which can be decided/adjudicated independently irrespective of the remedy available under Section 8 of PMLA.

43. In view of the above conclusion, it may not be necessary for this Court to refer to various judgements relied upon by Mr. Hossain in support of his submission of alternate statutory remedy.

44. Having said that the issue which arises for consideration is whether the bank accounts of the petitioner could be attached, I may at this stage state, it is the case of the respondent No.2 that it is only the bank account bearing No.28321300000046 which is the subject matter of attachment under the Provisional Attachment Order No.05/2021 dated August 25, 2021 and the other account bearing No.31141600000028 has neither been attached nor is subject to any freeze. This stand of the respondent is taken on record.

45. It is the stand of the petitioner and so contended by Mr. Mir that since registration of the ECIR till date, the respondent No.2 has not summoned the petitioner company or any of its officers and as such it is unclear how respondent No.2 has come to the conclusion that the bank account in question is in receipt of proceeds of crime or is involved in money laundering. Further, in various cases where bank accounts have been frozen, this Court had modified the orders of the respondent No.2 to allow the use and operation of the attached bank accounts subject to maintenance of the balance of attached amount in the accounts by giving reference of M/s Art Housing Finance (India) Limited (supra) and Ramaluthra (supra). In other words, a bank account per se cannot be attached, what can be attached is the amount of money lying in the account, which is the proceeds of crime.

46. On the other hand, Mr. Hossain has stated that investigation revealed that from the year 2010-20 the petitioner company received proceeds of crime of ₹ 687.53 crore directly from SBFL in the form of purchases / loans, leaving ₹ 645.36 crore for the use of the petitioner company. Out of the proceeds of crime of ₹ 645.36 crore, the total attachment made in hand of the petitioner is a much lesser figure of ₹ 87,71,443 (with balance amount of ₹ 24,75,993.97 as on the

date of attachment). Therefore, to safeguard the interest of the investigation and also the larger public interest and to ensure that the proceeds of crime are ultimately available for confiscation, the bank account of the petitioner company which is a property involved in money laundering, is attached.

47. The above stand of Mr. Hossain was contested by Mr. Mir by relying upon the attachment of this Court in Swaran Sabharwal (*supra*), wherein this Court in paragraph 11 held as under:-

"10. We may further point out that no justification seems to exist for "seizing" the amounts in the bank account. All that the respondents seem to want to establish from the bank account is that some funds were transferred by the petitioner's husband to her. This can be proved at any time by a comparison of the two accounts and since the entries in the accounts are always available, no purpose seems to be served by restraining the operation of the bank account. Since, as we point out below, it is not the case of the department that the moneys in the bank constitute "case property", i.e., the property involved in the commission of the crimes with which Ram Swarup is charged, the seizure of the monies by the issue of a prohibitory order cannot be upheld."

48. The submission was that a distinction has to be made between the money in the bank account and the money being proceeds of crime. This plea of Mr. Mir was contested by Mr. Hossain by relying upon the judgment in the case of Tapas D. Neogy (*supra*) by stating that the above judgment in Swaran Sabharwal (*supra*) was also considered by the Supreme Court in the above case. The question as to whether a bank account can be held to be a property within the meaning of Section 102 Cr.P.C. was also answered in the affirmative. He has heavily relied upon paragraph 12 of the Judgment which I reproduce as under:-

"12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or

prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

49. I must state here, the plea of Mr. Mir was by relying upon a recent opinion of the Supreme Court in the case of Opto Circuit India Limited (supra), to contend that the seizure of a bank account under Section 102 Cr.P.C. is not akin to what is contemplated under provisions of the PMLA. In this regard, he has relied upon paragraph 11 of the Judgment which reads as under:-

"11. Mr S.V. Raju, learned Additional Solicitor General made a subtle attempt to contend that the power of seizure is available under Section 102 CrPC, which has been exercised and as such the freezing of the account would remain valid. We are unable to appreciate and accept such contention for more than one reason. Firstly, as noted, it has been the contention of Respondent 4 that the PMLA is a standalone enactment. If that be so and when such enactment contains a provision for seizure which includes freezing, the power available therein is to be exercised and the procedure contemplated therein is to be complied with. Secondly, when the power is available under the special enactment, the question of resorting to the power under the general law does not arise. Thirdly, the power under Section 102 CrPC is to the police officer during the course of investigation and the scheme of the provision is different from the scheme under the PMLA. Further, even sub-section (3) to Section 102 CrPC requires that the police officer shall forthwith report the seizure to the Magistrate having jurisdiction, the compliance with which is also not shown if the said provision was in fact invoked. That apart, the impugned Communication dated 15-5-2020 does not refer to the power being exercised under the Code of Criminal Procedure."

50. I am afraid such a plea of Mr. Mir is unmerited for two reasons. Firstly, in paragraph 9 of the Judgment, the Apex Court has clarified that the bank account having the alleged proceeds of crime would fall under the ambit of "property" and "records" as defined under Section 2(1)(v) and 2(1)(w) of the PMLA. Paragraph 9 reads as under:-

"9. For the purpose of clarity, it is emphasised that the freezing of the account will also require the same procedure since a bank account having alleged "proceeds of crime" would fall both under the ambit "property" and "records". In that regard, it would be appropriate to take note of Sections 2(1)(v) and 2(1)(w) of the PMLA which defines "property" and "records". The same read as follows:

"2. (1)(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;

\* \* \*

2. (1)(w) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;"

51. Paragraph 11 on which heavy reliance has been placed by Mr. Mir, is only with regard to submission made by learned Additional Solicitor General in support of action of the Enforcement Director in that case by relying upon Section 102 Cr.P.C. to justify the action taken to seize the bank account under Section 102 Cr.P.C. In that regard, the Supreme Court held that the procedure which is contemplated under Section 17 of the PMLA regarding seizure was not adhered to (which is not an issue herein) and therefore, the seizure was bad. This cannot be construed to mean the Supreme Court had disagreed/overruled its decision in the case of Tapas D. Neogy (supra) where it was held that a bank account can be considered to be a "property".

52. If that be so, the submission of Mr. Mir that the bank account cannot be attached is not acceptable, in view of clear conclusion of the Supreme Court in the judgments cited above i.e., a bank account having alleged proceeds of crime would fall under the ambit of "property".

53. Insofar as the reliance placed by Mr. Mir in the order passed by this Court in M/s Art Housing Finance (India) Limited (supra) the same was distinguished by Mr. Hossain by stating that in that case what was attached was the balances lying in the bank account and not the account itself, which was also the stand of the respondent. Similar is the position in the case of Ramaluthra (supra). Even the plea of Mr. Mir that only the funds lying in the Bank Account are liable to be attached is not appealing.

54. The plea of Mr. Mir that the Provisional Attachment Order dated August 25, 2021 does not expressly state that the Bank Account itself is attached, is also untenable, as the said Provisional Attachment Order in paragraph 20 under

'Schedule of Attached Properties' include the Bank Account with the amount lying therein.

55. In view of my above discussion, it is held that the petitioner is not entitled to the prayers made. The petition is dismissed.

CM. No. 37419/2021(for interim relief)

56. It is noted that an inadvertent error had occurred in the order dated October 26, 2021 passed by this Court, wherein incorrect numbers were accorded to the applications seeking interim relief and exemption from filing certified copies.

57. Appropriate shall be, it is clarified that the application seeking exemption, disposed of vide the order dated October 26, 2021 is CM. Appl. No. 37418/2021 and the application for the interim relief is CM. Appl. No. 37419/2021.

58. In view of my decision in the writ petition above, the captioned application (CM No. 37419/2021) is dismissed.