(2019) 06 ATPMLA CK 0005

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-2872, 2874/HYD/2016, FPA-PMLA-1190, 1191/HYD/2016

M/S Penna Cement Industries Limited APPELLANT

Vs

Joint Director Directorate Of Enforcement, Hyderabad RESPONDENT

Date of Decision : 14-06-2019

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 2(1)(u), 3, 5, 4, 8, 8(1), 8(2), 26, 35, 50, 50(2), 50(3)
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 420
Prevention Of Corruption Act, 1988 — Section 13
Code Of Civil Procedure, 1908 — Order 38

Citation : (2019) 06 ATPMLA CK 0005

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Neeraj Malhotra, Parmatma Singh, Cassandra Zonsangliani, Mohd. Faraz

Final Decision : Disposed Of

Judgement

Date,Favour,"DateÂ Â Â Â Â Â Â Â

of

Investment","AmountÂ

of

Investment",Invested in

16.12.2006,"CompletionÂ Â Â of

resumptionÂ Â Â of assignedÂ Â

lands toÂ theÂ extentÂ of

114Â Â Â Â Â Â Â Â Â Â acres

(approx) facilitatedÂ Â Â Â Â by

MRC,Â Â Â Â Â Yadiki, Anantapur

District.",22.12.2006,Rs. 10 Cr.,"M/sÂ Â Â Â Â

Carmel AsiaÂ Â

Holdings Private Ltd.

,,27.12.2006,Rs. 13 Cr.,"M/sÂ Â Â Caramel

AsiaÂ Â Â Â

Holding Private Ltd.

28.12.2007,"WrittenÂ request toÂ Â Â

theÂ Â Â Chief MinisterÂ byÂ Sri

P.Â Â Â Â Â Â Â Â Prathap

ReddyÂ Â Â Â Â Â Â Â Â Â for

alienationÂ Â Â Â Â Â of

landsÂ Â Â toÂ Â Â the extentÂ Â

ofÂ Â 237 acres. (IncludingÂ Â 114

acresÂ Â Â Â Â Â Â Â Â Â Â Â Â

of

assigned lands)",3.12.2007,Rs. 20 Cr.,"M/s.Â Â Â Â Â Â

Jagati Publications

Pvt. Ltd.

28.12.2007,"WrittenÂ request toÂ Â Â

theÂ Â Â Chief MinisterÂ byÂ Sri

P.Â Â Â Â Â Â Â Â Prathap

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ofÂ Â 237 acres. (includingÂ Â 114

acresÂ Â Â Â Â Â Â Â Â Â Â Â Â

of

assigned lands)",3.12.2007,Rs. 20 Cr.,"M/sÂ Â Â Â Â Â Â

Jagati Publications

Pvt. Ltd.

12.12.2008,"Issue of GO Ms.

No.Â Â Â Â Â Â Â Â Â Â Â 1490

RevenueÂ Â Â (Asn.

V)Â Department, Dated 12.12.2008",9.3.2009,Rs. 10 Cr.,"M/s.Â Â Â Â Â Â

Jagati Publication

Ltd.

5. The case of the appellants is that, no impropriety or illegality or favour was done while alienating the subject land to the appellant company. The",,,,

true and correct dates and events relating to the alienation of land to the extent of 231.09 acres to the appellant company are given as below by the,,,,

appellants:-,,,,

22.04.2006: Formal letter was submitted by Sri CJ Reddy on behalf of the appellant for alienation of land admeasuring 239.51 cents in Yadiki,,,,

Mandal, Ananthapur district.",,,,

25.08.2006: Application in the given format for alienation of land made.,,,,

13.09.2006: District Collector addressed a letter to MRO, Yadiki and Tadipatri, Ananthapur District for enquiry and submission of proposal for",,,,

alienation.,,,,

9.12.2006: District Revenue Officer (DRO) having full charge of Joint Collector, inspected the land sought to be alienated.",,,,

02.03.2007: Notices were published in respect of the lands in question inviting objections if any and no objections were reported.,,,,

24.3.2007: Tahsildar, Yadiki Mandal submitted a report confirming the publication of notice in the villages on 01.03.2007.",,,,

23.05.2007: Inspection notes were made by RDO & Tahsildar.,,,,

26.05.2007: RDO addressed a letter to the District Collector, confirming the Sub-registrarâ??s highest basic value.",,,,

17.07.2007: Letter addressed by the District Collector to CCLA recommending alienation of land in favour of the appellant and suggesting the,,,,

market price of Rs. 20,000/- per acre.",,,,

13.09.2007: DRO addressed a letter to CCLA certifying that â??lands are not notified in terms of AP Assigned Lands (POT) Act, 1977.",,,,

08.02.2008: DRO in his incharge capacity as Joint Collector addressed his letter to the CCLA clarifying market value and POT Act.,,,,

04.06.2008: Proposal for alienation was placed before the Empowered Committee and the Committee recommended alienation at the rate of Rs.,,,,

50,000/-per acre to the appellant, being the commercial organization.",,,,

18.07.2008: Advocate General (LW-10 in charge sheet) gave his legal opinion confirming that in case of surrender by the assignees, the land gets",,,,

into the common pool of the government and the provisions of the POT Act do not apply.,,,,

01.10.2008: Draft memorandum for Council of Ministers was prepared wherein Collector had recommended alienation at the rate of Rs. 20,000/- per",,,,

acre.,,,,

07.06.2008: CCLA addressed a letter to the Principal Secretary enclosing minutes of the Empowered Committee.,,,,

30.07.2008: Collector addressed a letter to the Special Chief Secretary and CCLA with circular notes which were signed by the Principle Secretary,",,,,

revenue.,,,,

29.11.2008: Cabinet of Council of Ministers approved the proposals as Agenda No. 7 by the Council resolution No. 381 of 2008.,,,,

12.12.2008: GO Ms. No. 1490 was issued alienating 231.09 acres to the appellant at the rate of Rs. 50,000/- per acre.",,,,

6. In view of filing of the FIR, the Enforcement Directorate (Respondent herein) registered a case vide ECIR No. 09/HZO/2011 dated 30.08.2011 on",,,,

the basis of the information received by CBI under the PMLA, 2002. The respondent issued PAO No. 10/2015 dated 12.08.2015 which was",,,,

confirmed by the Adjudicating Authority vide the impugned order dated 14.12.2015.,,,,

7. It is stated on behalf of appellants that due process of law was duly followed and the land was alienated over a period of three years after the,,,,

request for alienation of land was made by the Appellant. The requirements of issuance of notices, valuation, survey, inspection etc. were duly carried",,,,

out by the respective revenue officers i.e. MRO, RDO, Joint Collector, District Collector, CCLA & Commissioner (Legal Affairs). It is only after the",,,,

said revenue authorities gave its go ahead for alienation of land in favour of the

Appellant, the mater was placed before the Empowered Committee",,,,

and Council of Ministers, which recommended that the valuation be done at Rs. 50,000/- per acre. The same was preceded by the legal opinion of the",,,,

Advocate General of State of Andhra Pradesh stating that there was no bar in alienating the land to the Appellants.,,,,

The investigation carried out under PMLA, 2002:",,,,

8. Under section 120-B read with Section 420 of IPC, 1860 and Section 13 of PC Act, 1988 are the Scheduled offences under the Act, a case has",,,,

been registered under ECIR/09/HYZO/2011 dated 30.08.2011 (Annexure-B3) and investigation has been initiated under the provisions of PMLA,",,,,

2002.,,,,

9. Documents submitted by M/s Jagati publications Ltd, in response to the summons issued under PMLA, 2002, reveal inter alia that S/Shri V. Vijay",,,,

Sai Reddy, Harish C. Kamarthy and Jella Jagan Mohan Reddy are the initial subscribers of the company, incorporated as private limited company on",,,,

14.11.2006 and later converted to public limited company on 12.01.2009. The registered office of the company is at Hyderabad, State of Telangana.",,,,

a) Shri V. Vijay Sai Reddy and Shri Y.S. Jagan Mohan Reddy were the Directors for the period from 14.11.2006 to 21.06.2007 and from 21.06.2007,,,,

to 01.02.2011 respectively.,,,,

b) During the year 2006-07, M/s Jagati Publications had raised share capital of Rs. 50.04 crores by way of allotting shares at the rate of Rs. 10/ per",,,,

share. The company was yet to commence its commercial operations, during 2006-07.",,,,

c) During the year 2007-08, M/s Jagati Publication Limited has launched Sakshi, a Telugu daily newspaper on 24.03.2008. The company had allotted",,,,

3,18,72,201 equity shares of Rs. 10/-each at a premium during the year. An amount of Rs. 324.02 crore including premium of Rs. 292.15 crores was",,,,

received by the company by way of private placement of equity shares. The accumulated loss as on 31.03.2008 was Rs. 7.23 crores approximately.,,,,

Sl.

No.",Floor,"AreaÂ Â

(InÂ Â sq. mtr)","HeightÂ Â Â Â Â Â Â Â

(In Mtrs.)","Approximate

dateÂ Â Â Â Â Â Â Â Â Â Â Â Â Â Â

of

completion

1,"Basement-

1",4460.40,2.95,"January, 2008

2,"Basement-

2",3467.60,37.75,"Feb, 2008

3,"Basement-

3",3467.60,2.95,"April, 2008

,Total,11395.60,9.65,

4,"Ground

Floor",2240.12,4.50,"June, 2008

5,1st Floor,1989.42,5.85,"August, 2008

6,2ndÂ Floor,1699.18,3.80,"November, 2008

7,3rdÂ Floor,1844.77,3.20,"December, 2008

8,4th Floor,1844.77,3.20,"January, 2008

9,5th Floor,1844.77,3.20,"March, 2009

10,6th Floor,1844.77,3.20,"May, 2009

11,7th Floor,1844.77,3.20,"July, 2009

12,8th Floor,1844.77,3.20,"January, 2010

13,9th Floor,1976.26,5.00,"March, 2010

,,18973.60,38.35,

Date,Favour,"Date of

Investment","Amount of

Investment",Invested in

16.12.2006,"CompletionÂ Â ofÂ Â

resumptionÂ Â of assigned lands

to the extent of

114Â Â acresÂ Â

(approx)Â Â facilitated byÂ Â

MRC,Â Â Yadiki,Â Â

Anantapur District.",22.12.2006,Rs. 10 Cr.,"M/s Carmel Asia

Holdings Private Ltd.

,,27.12.2006,Rs. 13 Cr.,"M/s Carmel Asia

Holdings Private Ltd.

28.12.2007,"Written request to the Chief

MinisterÂ Â byÂ Â SriÂ Â

P.Â Â Prathap Reddy for

alienation of lands to theÂ Â Â

extentÂ Â Â ofÂ Â Â

237Â Â Â acres.

(includingÂ Â Â Â Â

114Â Â Â Â Â

acresÂ Â Â Â Â of assigned

lands)",3.12.2007,Rs. 20 crore,"M/s Jagati

Publications Pvt. Ltd.

12.12.2008,"Issue of GO Ms. No. 1490

Revenue (Asn. V) Department,

Dated 12.12.2008",9.3.2009,Rs. 10 Crore,"M/s Jagati

Publications Ltd.

14.9 The department of Revenue issued GO MS No. 1490 was issued on 12.12.2008 alienating 231.09 acres to the appellant at the rate of 50,000 per",,,,

acre.,,,,

15. The details mentioned in proceeding para are supported with the documents which have not legally considered by the Adjudicating Authority.,,,,

16. The respondent has recorded the statement of the witnesses. None of the material witness has admitted that the investment of money towards the,,,,

shares are the bribe amount or in lieu of the quid pro-quo investment. It is argued on behalf of appellants that the provisional attachment order has,,,,

been passed under prosecutions and on the basis of FIR and charge-sheet. Charges are not framed against the appellants under schedule offence.,,,, Counsel for the appellants has argued that in fact there is hardly any independent investigation is done. The properties were attached mainly on the,,,,

basis of allegation mentioned in the charge-sheet of CBI.,,,,

17. Learned counsel for the respondent has supported the impugned order and has made argument that the investment was just eye wash. The shares,,,,

issued are having no value in the market. No dividend has been issued. Thus, it was a bogus stand of the appellants. Both appeals must be dismissed",,,,

with costs.,,,,

18. In view of facts and material placed on record, prima facie, it shows that due process of procedure wholly has not been ignored as the land was",,,,

alienated after a period of over three years after the request for alienation of land was made by the Appellant. The requirements of issuance of,,,,

notices, valuation, survey, inspection etc. were duly carried out by the respective revenue officers i.e. MRO, RDO, Joint Collector, District Collector,",,,,

CCLA & Commissioner (Legal affairs). After the said revenue authorities gave its nod to go ahead for alienation of land in favour of the Appellant,,,,

the matter was placed before the Empowered Committee and Council of Ministers, which recommended that the valuation to be done at Rs. 50,000/-",,,,

per acre. The same was preceded by the legal opinion of the Advocate General of State of Andhra Pradesh stating that there was no bar in alienating,,,,

the land to the Appellant. It can not be concluded that no due process has been followed at all as argued by the counsel for the respondent. The fact,,,,

of the matter is that under the mandatory provisions of Section 8(2) of the Act, the reply and material placed on record has not been legally considered",,,,

at the time of confirmation order.,,,,

19. It might be possible that some technical discrepancies have been crepted by following the procedure, but, ultimately one has to see the overall",,,,

conduct of the parties. It is also correct that there are allegations against the appellants in CBI Charge-sheet, but this Tribunal does not wish to make",,,,

any comment on those allegations, the same are to be tested in law before the Special Court in the present proceedings, the only concern of this",,,,

Tribunal is to examine the investigation carried out under PMLA t as well as the validity of PAO and confirmation thereof are sustainable or not.,,,,

20. There is a force in submission of senior counsel appearing on behalf of appellants that the provisions of PMLA are not attracted as none of the,,,,

allegations made regarding alienation of land and violation of the POT Act constitute a schedule offence prescribed in the PML Act as the alienation,,,,

of land was done in favour of the appellant with approval of Council of Ministers. The decision of the Council of Ministers was never challenged and,,,,

therefore same cannot be questioned the present proceedings. The Respondent no. 1 cannot sit in judgment over the policy decisions taken by the,,,,

state or its instrumentality.,,,,

The alienation of land was in accordance with the state policies and no illegality can be imputed by the respondent. The aforesaid principle has been,,,,

stated in the case of Arun Kumar Agarwal Vs. Union of India and others reported in (2013) 7 SCC 1 and in case of Pathan Mohammed Suleman,,,,

Rehmathkan Vs. State of Gujarat and Others reported in 2013 Law suit (SC) 1076.,,,,

21. It is submitted on behalf of the appellants that the question of getting the benefit does not arise when the total cost of land borne by the Appellant,,,,

is way higher than the Government value of land. The total cost of land borne by the Appellant no.1 is Rs. 1,67,56,825/- in which Rs. 1,15,54,500/-",,,,

(@50,000 per acre) was paid by the Appellant to the Government of Andhra Pradesh and rest Rs 52,02,325/- was paid by the Appellant to the",,,,

assignees.,,,,

22. As per record no complaint whatsoever was ever made by any of the assignees/ Farmers who relinquished the assigned land. The land was,,,,

alienated in favour of the Appellant vide GO. Ms. No. 1490 dated 12.12.2008 on payment of Rs. 50,000/- per acre.",,,,

Pioneer Holiday Resorts Ltd.,,,,

23. With regard to M/s Pioneer Holiday Resort Limitedâ??s appeal is concerned, the allegation against the present appellant in the provisional",,,,

Â attachment order and the O.C. No. 515 of 2015 is that certain favours/benefits in form of permission/relaxations for hotel construction at Banjara,,,,

Hills, Hyderabad vide Memo No. 2710/M1/09, MA and UD dated 03.03.2009 were granted to the appellant company and in lieu of such benefits quid",,,,

pro quo investments were made in the Jagan Mohan Reddy Group of Companies.,,,,

24. The Enforcement Directorate attached part of the hotel building constructed (i.e. part of Basement 2 (790.8 sq. mtrs), entire basement no. 3, total",,,,

9th floor, total 8th floor, part of 7th floor (907.74 sq. mtr) by the appellant company at Banjara Hills Hyderabad. The learned counsel for the",,,,

respondent has argued that many favours are granted to the appellants after investment and the provisions to built the extra floors could not be,,,,

granted, therefore, the attachment of the said floor is valid.",,,,

25. The total property under attachment has been valued at Rs. 6,69,37,415/-. In lieu of the aforesaid benefit an investment of Rs. 25 Crores which is",,,,

being alleged as the bribe, was made in M/s Jagathi Publications Ltd (Rs. 10 Crores each in Jagathi Publications on 09.03.2009 and on 23.03.2009 by",,,,

M/s Pioneer Infrastructure Holdings Pvt. Ltd). One is failed to understand, how it is possible.",,,,

26. It is not denied by the counsel for the respondent that shares have been issued but he argued that those are all eye wash and waste of paper and,,,,

have no market value. His argument is that if there is valid investment, why dividend has not issued and how the shares were purchased on higher",,,,

price. It is not denied by the respondent that the investment money was a clean money. It is also alleged that share certificate of total value of Rs. 25,,,,

Crore was issued on 01.06.2009 in anticipation of additional investment for Rs. 5 Crores.,,,,

27. It is a matter of fact that the land property at Banjara Hills was acquired by the appellant through various registered sale deeds (16 in total) from,,,,

the year 1988 to 2008. The total extent of the area is 9759.16 sq. yards in which the additional area of 397 sq. yards for road widening purchased by,,,,

the appellant in 2008 is included. The land use of the aforesaid land was converted from residential to general commercial by the State Government,,,,

vide GO. Ms. No. 324 of 1998 and requisite fee for the same was paid. Another G.O. Ms. No. 423 of 1998 was issued which rationalized the FAR,,,,

values and standards of buildings requirements in Municipal Corporation & Urban Developments Authorities areas.,,,,

28. Thereafter, the State Government issued G.O. Ms. No. 329 of 2005, wherein it was specifically stated that in Banjara Hills and Jubilee Hills, there",,,,

will be no height restrictions for constructions of multi-storied hotels of 4 star and above category subject to the conditions specified therein. HUDA,,,,

vide order dated 13.07.2005 informed the appellant of the land use change from residential use to general commercial use.,,,,

29. The appellant submitted an application on 14.06.2005 for sanction of building permission and relevant fee of Rs. 41,10,378/- was paid. The",,,,

appellant further paid Rs. 23,92,071/- towards permit fee and provided a bank guarantee of Rs. 14,24,500/- to the MCH. Thereafter, on 30.12.2005 the",,,,

building permission were granted in favour of the appellant for construction of cellar, sub-cellar for parking, ground + 8 upper floors for hotel building.",,,,

30. The Hyderabad Revised Building Rules 2006 were promulgated and G.O. Ms. No. 86 of 2006 was issued which modified the G.O. Ms. No. 423,,,,

of 1998 and relaxed the shortcomings faced earlier. As per clause 9.4 of the aforesaid G.O. Ms. No. 86, no further permission from the Airport",,,,

Authority was required, if the site did not fall under the funnel zone. As the site of the appellant did not fall under the funnel zone, the appellant was",,,,

not required to obtain further permissions from the Airport authorities. All the contents of these paras supported by documentary evidences.,,,,

31. Counsel for the appellant has referred the document in order to show that a similar case M/s Blitz Hotels & Resorts Limited, was permitted by the",,,,

State Government for construction of 5 star hotel at Banjara Hills without any height stipulation and the company was not required to pay any,,,,

conversion charges with respect to the same.,,,,

32. Thereafter, the State Government issued Memo No. 2710 dated 03.03.2008 and permitted the same benefits to the appellant subject to (i) payment",,,,

of all fees and charges as possible (ii) compliance of all other provisions of GO Ms. No. 86 (iii) obtaining prior clearance from AAI and also permit to,,,,

extend the setback relaxation as per the existing policy of GHMC, keeping in view the appellant had surrendered to an extent of 166.24 sq. yards, for",,,,

the proposed road widening for free of cost to the concerned authorities. Accordingly, the requisite fee was paid by the appellant and sanctioned third",,,,

cellar for parking and 8th and 9th floor.,,,,

33. The appellant case is that the appellant had paid a total sum of Rs. 65,02,449/- towards the permit issued in the year 2005 and Rs, 14,24,500/-",,,,

towards bank guarantee. The appellant had further paid a sum of Rs. 95,54,500/- for revised permit in the year 2009 which includes the",,,,

Developmental and permit fee, Infrastructure Impact fee etc.",,,,

Having paid a sum of Rs. 95,54,500/- over and above what was paid by the appellant in the year 2005, it cannot be the case that the appellant was in",,,, any way granted financial favours or benefits by the State Government. The revised building plan for construction of hotel was sanctioned on,,,,

11.11.2009 vide permit No. 10/17, well after the then Chief Minister alleged to have benefited the appellant had expired on 2-9-2009.",,,,

34. It was submitted that no relaxation was made to the appellant company and the entire process was followed by the government officials as per,,,,

law and none of the Govt. Officials and public servant were made accused in the aforesaid chargesheet. The construction of the hotel at Banjara Hills,,,,

is as per the building bye laws and various Government orders issued by the State Government from time to time. No benefit was derived by the,,,,

appellant in any manner, therefore, the same cannot be considered as â?? proceeds of crimeâ??. The appellant has prepared a chart showing the",,,,

amount spent for grant of permission. At the interim stage also, counsel for appellant gave the suggestion to deposit the value assessed by the",,,,

respondent, however, the respondent was not agreeable and pressed for hearing the appeals on merit.",,,,

35. M/s Jagati Publication Pvt. Ltd. commenced its operation on 12.01.2006. The total investment in the aforesaid company is Rs. 25 Crs. [(Rs. 10 Cr,,,,

on 09.03.2009, 10 Cr. on 23.03.2009 and 5Cr. on 06.06.2009) (investment in @ Rs. 350 M/s Jagati w.r.t. allegations made in M/s Pioneer",,,,

Infrastructure).,,,,

36. At the time of investment (share premium at Rs. 350 in M/s Jagati Publication) the Eenadu Newspaper which was the leading telugu newspaper,,,,

evaluated its share at Rs. 5,28,630/-. At the time of deciding to invest, the details of the compiled data including the annual report and quotes of Sun",,,,

TV and Deccan Chronicle were also placed before the meeting and comparisons were made.,,,,

The Sakshi newspaper published by M/s Jagati Publication has become the second largest Telugu newspaper in past few years.,,,,

37. It is submitted on behalf of the appellants that for a total alleged benefit of Rs. 6.69 Crs. an investment of Rs. 25 Crs. as quid-pro-quo investment,,,,

cannot be considered to be a bribe. The same is unbelievable. It is alleged that the investments are genuine business transactions and the same is also,,,,

evident from the fact that the newspaper Sakshi became second largest Telugu daily in circulation within few years of its launch.,,,,

38. As explained above it was not a public issue, and already Rs. 20 Cr. investment was made. The share certificate of Rs. 25 Cr. were issued on",,,,

01.06.2009 on the promise that the amount of Rs. 5 Cr. to be paid on 06.06.2009. Such an act cannot tantamount to any IPC offence much less any,,,,

schedule offence and the appellant was holding sanction to build two basements and seven floors since 2005. Since height relaxation were permitted to,,,,

another hotel in the same locality in 2008, the construction of the hotel building started in 2008 and completed in March 2010 after the same was",,,,

regularised by GHMC vide Permit No. 10/17 dated 11.11.2009.,,,,

39. It is submitted that from 2009 to till date there is no notice/direction/action by the municipal authorities to demolish the structure meaning thereby,,,,

the whole structure is completely legal and according to the municipal rules. Even otherwise the Enforcement Directorate or the Central Bureau of,,,,

Investigation has not alleged that the permission/the regularisation even by the municipal corporation is illegal and not according to the municipal rules.,,,,

It is stated that it is not Â the case of ED that such regularisation was done illegally or such a regularisation was impermissible in law, what has been",,,,

regularized is legally permissible, such regularisation as per law do not tantamount to any offence under any act much less under IPC or a schedule",,,,

offence.,,,,

Common discussions in both appeals,,,,

40. It appears from the impugned order that the show cause notice issued u/s 8(1) was mechanically issued without satisfying itself that there is,,,,

â??reason to believe that any person has committed an offence u/s 3 or is in possession of proceed of crimeâ? as mandated u/s 8(1) of the Act and if,,,,

the mandate of Section 8(2) is not followed by the Adjudicating Authority, the confirmation of the provisional attachment order is liable to set aside. In",,,,

case the provisional attachment order is read, it is clear that there are valid reasons to believe. It is just mainly repetition of allegations of charge-sheet",,,,

of CBI and very little the details of PMLA investigation.,,,,

41. Thus, it is evident that the respondent while passing the provisional attachment order has not adhered to the mandate of section 5 of the PMLA in",,,,

as much as one of the pre-requisites for attaching the property under section 5 is that the Respondent must have â??reason to believeâ?, which shall",,,,

be recorded in writing on the basis of material in his possession, that the proceeds of crime are likely to be transferred or concealed or dealt with in",,,,

any manner which may result in frustrating the proceedings. In the provisional attachment order, there is not even a single averment to this effect and",,,,

the reasons required to form part of the attachment order under section 5 are conspicuously missing.,,,,

42. The allegations of pressurizing the farmers and the assignees in surrendering the land by the Appellant are patently false and are figment of,,,,

imagination of the respondent. Had it been the case, the farmers or the assignees of the land would have lodged a complaint before the Authorities",,,,

against the Appellant. When enquired from the counsel as well as from IO there was confirmation that any complaint is filed or civil proceedings are,,,,

pending on behalf of seller.,,,,

43. Therefore, at the best subject to final decision it may or may not be the substantive offence u/s 420IPC and 120B alleged to have been committed",,,,

by the appellant but prima facie, it is difficult to arrive that it is a scheduled offences under the PMLA, 2002 at the time when the alleged benefits",,,,

were granted to the appellant and it is only after the PML Amendment Act was passed on 1.06.2009, the same became part of schedule offences",,,,

under the PMLA as alleged by the appellant.,,,,

44. The aforesaid investee companies were a startup and it was not a public issue, so any information/suggestion to invest could not have come from",,,,

any independent source except the promoters/directors of the companies. Shri. P Pratap Reddy and Late Shri YSR Reddy and Shri. Jagan Mohan,,,,

Reddy belong to same district in Andhra Pradesh.,,,,

45. It has come on record that Sh. P Pratap Reddy has also invested earlier in 1996 as per material available on record. Shri. Jagan Mohan Reddây??s,,,,

Company and therefore, there is a force in the submission of the appellants that when the aforesaid companies (in question) were incorporated, it was",,,,

suggested by Late Sh. YSR Reddy to invest and Sh. P Pratap Reddy after deliberations and discussions about the prospect of investing in a media,,,,

company by the Board of Directors and comparing with other existing media companies decided to invest in the companies in question. The said,,,,

material is available on record.,,,,

46. It is the case of appellants that at the time of investment (share premium at Rs. 350 in M/s Jagati Publication and Rs. 252 in M/s Caramel Asia),,,,

the Eenadu Newspaper which was the leading Telugu Newspaper evaluated its share at Rs. 5,28,630/-. At the time of deciding to invest, the details of",,,,

the compiled data including the annual report and quotes of Sun TV and Deccan Chronicle were also placed before the Board of Directors meeting,,,,

and comparisons were made. The Sakshi Newspaper published by M/s Jagati Publication has become the second largest Telugu Newspaper in the,,,,

past few years all these materials are available on record.,,,,

According to, Audit Bureau of Circulation, circulation figures released in December, 2017, Sakshi is the second largest circulating newspaper in",,,,

Telugu states after Eenadu with a circulation figure of more than 1.09 million (internet figures).,,,,

47. The alleged benefit of 1.15 Cr. against the investment of 45 Crs. to be considered as bribe is beyond an imagination. One is failed to understand,",,,,

how it is possible. As per the appellants investments are genuine business transactions and the same is also evident from the fact that the newspaper,,,,

Sakshi became second largest Telugu daily in circulation within few years of its launch.,,,,

48 DETAILS OF PROPERTIES ATTACHED,,,,

I. PROPERTIES WITH M/S. PENNA CMEENT INDUSTRIES LIMITED (Lands),,,,

AC 231.09 Cents of land in Kamalapadu, Gudipadu, Kundankota and Nittor Village of Yadaki Mandal, Anantapur District, Andhra Pradesh of M/s.",,,,

Penna Cement Industries Limited alienated vide GO Ms. No.1490 Revenue (ASNV) Department dated 12.12.2008 - Rs.1,15,54,500/-.",,,,

II. PROPERTIES WITH M/S. PIONEER HOLIDAY RESORTS LIMITED (Buildings),,,,

Hotel Building constructed [part of Basement No.2 (790.8 Square Meters), entire Basement No. 3, total 9th Floor, total 8th Floor and part of 7th Floor",,,,

(907.74 Square Meters) of the Hotel Building] at 8-2-268, Banjara Hills, Hyderabad of M/s. Pioneer Holiday Resorts Limited â?" Rs.6,69,37,415/-",,,,

GRANT TOTAL - Rs. 7,84,91,915/-",,,,

49. As per charge-sheet dated 10th September, 2015, filed by the CBI with regard to the 1st property, one of the allegations against the appellants is",,,,

that they have received the benefit received by Penna Group of companies are i) Alienation of Government land to an extent of 231.09 Acre in Yadiki,,,,

Mandal of Anantapur District to M/s. Penna Cement Industries Limited vide GO Ms. No. 1490 Revenue (ASN.V) Department, dated 12.12.2008, on",,,, payment of market value of Rs. 50,000/- per acre. This includes an extent of 114 acres of assigned lands which were made to relinquished by the",,,,

assignees by way of inducement and allured with money by M/s. Penna Cement Industries Ltd. ii) Grant of Prospecting License for Limestone over,,,,

an extent of 304.740 Ha in Kurnool District for a period of 3 years vide GOMs No. 91 industries & Commerce (M.I.) Department dated 29.03.2008.,,,,

50. The allegation against the appellants is that this prospecting license was granted ignoring the ML application already submitted by M/s. Ultra Tech,,,,

Cement Limited, which was withdrawn by the company subsequently iii) Grant of first renewal of Mining Lease for limestone in favour of M/s",,,,

Walchand Tandur Cement Company Limited vide GO Ms. No. 76, Industries & Commerce (M.I.) Department dated 26.02.2009 and change of name",,,,

of the company from M/s. Walchand Tandur Cement Company Ltd. to M/s. Penna Tandur Cement Ltd. vide GO Ms. No. 25, Industries and",,,,

Commerce Department dated 29.01.2009 and iv) Permission for Hotel construction at Banjara Hills, Hyderabad and relaxations thereon vide Memo",,,,

No. 2710/M1/09, MA & UD dated 03.03.2009 to M/s. Pioneer Holiday Resorts Limited.",,,,

51. Admittedly, the perspective license was granted for a period of three years, which has already been expired. Therefore, at present, this Tribunal is",,,,

not inclined to release the attachment of property i.e. M/S. PENNA CMEENT INDUSTRIES LIMITED (Lands) AC 231.09 Cents of land in,,,,

Kamalapadu, Gudipadu, Kundankota and Nittor Village of Yadaki Mandal, Anantapur District, Andhra Pradesh of M/s. Penna Cement Industries",,,,

Limited alienated vide GO Ms. No.1490 Revenue (ASNV) Department dated 12.12.2008 - Rs.1,15,54,500/-.",,,,

52. In case para-83 of the impugned order is read, one is surprised to note that the adjudicating authority, in this para, has observed that the appellants",,,,

have committed schedule offence, when the charges are yet to be framed in the matter. It appears to this Tribunal that the adjudicating authority was",,,,

not aware that unless the charges are framed and trial is conducted, nobody can be declared that he has committed the schedule offence.",,,,

In the same para-83 of the impugned order, it is also observed that the attached properties are proceed of crime or value thereof. It is evident that the",,,,

hearing officer was not sure as to whether the attached properties were to be confirmed as proceed of crime or value thereof. The adjudicating,,,, authority has taken the middle path in this para by using the word â??orâ??. Similar findings are given in para-76 of the impugned order while coming,,,,

to the conclusion that the properties were purchased in proceed of crime or value thereof. The said findings in both paras suffer from inherent lapsed,",,,,

thus, the impugned order was passed without due application of mind.",,,,

53. However, in view of the amendment inserted by Act of 13/2018, which is applicable w.e.f. 19.4.2018 where in the 2nd proviso, it is allowed to",,,,

party to claim the restoration of the said property during the trial by moving the said application, if so required, if the appellant has acted in good faith,",,,,

would be able to satisfy the Special Court that the appellant is suffering irreparable loss if the claim of the appellant is not allowed.,,,,

54. It is also known fact that CBI charge sheet and allegations made therein or any FIR or criminal complaint can not be taken as gospel truth by any,,,,

agency including ED and Adjudicating Authority as the said allegations are yet to be proved before court strictly as per law. No doubt for ready,,,,

reference and the purpose of registering ECIR the allegations may be considered by taking the inference at the initial stage only.,,,,

55. Being an independent Statute as claim by the respondent, an independent and impartial evidence is to be traced against the person concerned who",,,,

is stated to be involved in money laundering. Merely on the basis of allegations the respondent with evidence can not attach any property by passing,,,,

provisional attachment order unless there are reason to believe that the impugned property is definitely involved in money laundering within the,,,,

meaning of Section 2(1)(u) read with Section 3 of the Act.,,,,

56. Reason to believe is not a formality but it should akin to prima facie findings that the person concerned is positively involved in money laundering.,,,,

The provisional attachment order can only be passed if such exercise is done within the four corners of settled law. The meaning of proceeds of crime,,,,

is any property derived or obtained directly or indirectly as a result of criminal activities relating to a schedule offense.,,,,

57. Section 35 of PMLA provides the Procedure and powers of the Appellant Tribunal which says that Tribunal shall not be bound by the procedure,,,,

laid down by Code of Civil Procedure but shall be guided by the principles of natural justice and subject to the other provisions of this Act and,,,,

Appellant Tribunal shall have powers to regulate its own procedure.,,,,

58. One of the main objects and reasons of this Act is to confiscate of proceeds of crime apart to the criminal liability if the accused has committed,,,,

under the provisions of this Act and schedule offense. Till the time final order is passed by the Special Courts, if a valid case is made by ED, the",,,,

proceeds of crime must be preserved so that after final order it should be confiscated for the benefit of State.,,,,

59. Before this Act came into existence, it has been noticed that accused person used to dispose of proceeds of crime till the time final orders are",,,,

passed under the Schedule Offense. Therefore in order to secure the proceeds of crime, some direction are required to be passed in appropriate",,,,

appeals to preserve the proceeds of crime.,,,,

60. In case Order XXXVIII of code of Civil Procedural are read meaning manner it appears that the objects and reasons of Pmla to preserve the,,,,

proceeds of crime to somehow similar. Order XXXVIIII provides the remedy of arrest and attachment before judgment.,,,,

61. Sub section (1) of the said provision mandates that any stage if the defendant has absconded or left the local limit of the jurisdiction or is about to,,,,

abscond or leave and has disposed of his property or part thereof in order to obstruct the execution of decree against him, the court under those",,,,

circumstances may issue warrant to arrest to bring him before court and ask him to furnish security for his appearance. if the defendant fails to,,,,

furnish security under sub section 4, under sub section 5, the court if satisfies may direct the defendant for furnish security for production of property",,,,

in order not to allow the defendant to obstruct the decree.,,,,

62. The provisions of Section 5 and 8 of PMLA are not exactly similar but principles and intend to incorporate the said provision to some are the,,,,

guiding factors.,,,,

63. Therefore, the provisions of this Act may be considered along with guidance by the principles laid down by the Code of Civil Procedure 1908. In",,,,

the present set of appeals no doubt there are allegations against the appellants in the charge sheet, however charges are yet to be framed. There is no",,,,

direct, clear and cogent evidence is available on record to conclude that Rs. 53 Crores were bribe or investment.",,,,

64. It is a matter of fact the shares were issued against the said allegedly investment. It has also come on record that the market value of the said,,,,

shares were increased.,,,,

65. The manner in which the provisional attachment order was passed and confirmation thereof in the impugned order, the same cannot continue by",,,,

attaching commercial properties where the future and career of hundred of employees are involved with regard to commercial properties, the value of",,,,

the property can be secured by depositing the same with the respondent till the final order is passed by the Special Court.,,,,

66. In the light of above, the appeal no. 1190/2016 is partly allowed. The impugned order dated 14.12.2015 is modified to the extent that attachment of",,,,

the said property [PROPERTY WITH M/S. PENNA CMEENT INDUSTRIES LIMITED (Lands) â?" AC 231.09 Cents of land in Kamalapadu,",,,,

Gudipadu, Kundankota and Nittor Village of Yadaki Mandal, Anantapur District, Andhra Pradesh], shall continue, however, possession of the said",,,,

property shall not be taken by the respondent.,,,,

67. With regard to second property i.e. PROPERTY WITH M/S. PIONEER HOLIDAY RESORTS LIMITED (Buildings) - Hotel Building,,,,

constructed [part of Basement No.2 (790.8 Square Meters), entire Basement No. 3, total 9th Floor, total 8th Floor and part of 7th Floor (907.74",,,,

Square Meters) of the Hotel Building] at 8-2-268, Banjara Hills, Hyderabad of M/s. Pioneer Holiday Resorts Limited, the appeal no. 1191/2016 is",,,,

allowed by modifying the impugned order by coming to conclusion that at the best, the said property could have been attached in lieu of value thereof.",,,,

The suggestion given by the appellants is allowed. The appellant shall furnish a Fixed Deposit Receipt of an amount of Rs. 6,69,37,415/- in favour of",,,,

the respondent, subject to the said deposit with the respondent within two months from today, the attachment of entire basement no. 3, total 9th",,,,

floor,8th floor and part of 7th floor of the Hotel buildings (which are attached) shall be released. It is also subject to the condition that the appellant",,,,

shall not dispose of the said floors of the property till the final order is passed by the Special Court in the complaints pending and shall not claim any,,,,

equity on the said floors if any renovation and repairs are made.,,,,

68. Both appeals are disposed of by modifying the impugned order along with all pending applications.,,,,

69. No costs.,,,,

