
(2019) 07 ATPMLA CK 0001

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-2987, 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3190, 3095/HYD/2016, FPA-PMLA-1573, 1574, 1575, 1576, 1577, 1579, 1582, 1583, 1584, 1585, 1586, 1587, 1588/HY

Y.S. Jagan Mohan Reddy & Ors

APPELLANT

Vs

Joint Director Directorate Of Enforcement, Hyderabad

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 20, 20(1)
Mineral Concession Rules, 1960 — Rule 16(3), 54(2), 55(5), 59, 59(1)(ii)
Prevention Of Money Laundering Act, 2002 — Section 2(fa), 2(1)(u), 2(1)(y), 3, 4, 5, 5(1), 8, 8(1), 8(2), 8(3), 8(4), 8(5), 17, 17A, 18, 23, 24
Indian Penal Code, 1860 — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 9, 13, 13(1)(d), 13(2)
Mines and Minerals (Development and Regulation Act, 1957 — Section 5(2), 7(2), 11

Citation : (2019) 07 ATPMLA CK 0001

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Ranjan Reddy, Rajiv Nayyar, Raghenth Basant, Siddharth Rao, Namita Wali, Shikha Tandon, Shivanshu Bhardwaj, Mohammad Faraz

Final Decision : Partly Allowed

Judgement

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FPA-PMLA-1573 &" 1577, 1579, 1582 &" 1588 & 1619/HYD/2016",,,,,

1. By this common order, this Tribunal proposes to decide the above-mentioned 14(fourteen) appeals filed against Order dated 23.11.2016 by the",,,,,

Adjudicating Authority made in Original Complaint No. 618 of 2016 confirming the attachments made vide Provisional Attachment Order No. 02/2016,,,,,

dated 29.06.2016 (PAO) in ECIR/09/HZO/2011. PAO passed corresponding to CC

No. 25 of 2013 before The Special Judge for CBI Cases," ,,,,,

Hyderabad (CBI Case). Earlier, the appeals were heard by the Chairman and the Honâ?ble Member. The appeals were listed for clarification/re-" ,,,,,

hearing. In the meanwhile, the Honâ?ble Member retired/resigned. The appeals were re-heard and the orders were reserved." ,,,,,

2. The PAO arises out of registered case no. ECIR/09/HZO/2011 dated 30.8.2011 filed by the Respondent, in pursuance of an FIR filed by Central" ,,,,,

Bureau of Investigation (hereinafter referred to as â?CBIâ?) being RC 19(A)/2011-HYD dated 17.8.2011, alleging that the alleged offences made" ,,,,,

out by the CBI under Section 120-B, Section 420 of Indian Penal Code, 1860 (hereinafter referred to as â?IPCâ?) and Section 13 of the Prevention" ,,,,,

of Corruption Act, 1988 (hereinafter referred to as â?PCAâ?), which are Scheduled Offences under the Prevention of Money Laundering Act, 2002" ,,,,,

(hereinafter referred to as â?PMLAâ?).,,,,,

3. Total Attachments effected in the entire O.C. 618 of 2016 totalling to Rs. 746.17 Crs.,,,,,

a) Mr. Y. S. Jagan Mohan Reddy & Group â?" Rs. 569.57 Crs.,,,,,

Rs. 179.74 Crs - Mr. Y.S. Jagan Mohan Reddy (Shares of M/s. Bharathi Cements Corporation Pvt. Ltd. and M/s. Sandur PowerCompany Pvt. Ltd," ,,,,,

Classic Realty Pvt. Ltd. and M/s. Silicon Builders Pvt. Ltd.),,,,,

Rs. 49.45 Crs - M/s. Classic Realty Pvt. Ltd (Immovable Property of land and building),,,,,

Rs. 181.00 Crs - M/s. Sandur Power Company Pvt. Ltd. (Immovable Property including plant and machinery),,,,,

Rs. 32.33 Crs M/s. Saraswati Power and Industries Pvt. Ltd. (Immovable and Movable properties),,,,,

Rs. 8.11 Crs M/s. Nivesh Infrastructure Pvt. Ltd.; now merged into M/s Classic Realty Pvt. Ltd. (Immovable Property),,,,,

Rs. 43.70 Crs M/s. Shalom Infrastructure Pvt. Ltd.; now merged into M/s Classic Realty Pvt Ltd. (Immovable Property),,,,,

Rs.24.88 Crs M/s. Capstone Infrastructure Pvt. Ltd. (Immovable and Movable properties),,,,,

Rs. 23.53 Crs M/s. Utopia Infrastructure Pvt. Ltd. (Immovable Property),,,,,

Rs. 8.46 Crs M/s. Harish Infrastructure Pvt. Ltd. (Immovable Property),,,,,

Rs.1.53 Crs M/s. Marvel Infrastructure Pvt. Ltd.; now merged into M/s Classic Realty Pvt. Ltd. (Immovable Property),,,,,,

Rs. 6.70 Crs M/s. Revan Infrastructure Pvt. Ltd. (Immovable Property),,,,,,

Rs.6.42 Crs M/s Inspire Hotels Pvt. Ltd.; now merged into M/s Classic Realty Pvt. Ltd. (Immovable Property),,,,,,

Rs. 6.63 Crs M/s Bhagavathi Sannidhi Estates Pvt. Ltd. (Immovable and Movable properties),,,,,,

b) Mrs. Y.S. Bharathi Reddy â?" Rs. 22.31 Crs.,,,,,,

Rs. 22.31 Crs â?" Mrs. Y.S. Bharathi Reddy (Immovable and movable properties),,,,,,

c) M/s. Bharathi Cements Corporation Pvt. Ltd. and Group â?" Rs. 154.29 Crs.,,,,,,

Rs. 152.84 Crs - M/s. Bharathi Cements Corporation Pvt. Ltd. (Fixed Deposits),,,,,,

Rs. 1.45 Crs â?" Mr. Jella Jagan Mohan Reddy (Immovable and movable properties),,,,,,

4. The Provisional Attachment Order was confirmed by the impugned order dated 23.11.2016.,,,,,,

5. The following appeals have been filed:,,,,,

Y.S. Jagan Mohan Reddy & Group:,,,,,

1. Appeal Nos. 1573 of 2016â?" Mr. Y.S. Jagan Mohan Reddy,.,,,,,,

2. Appeal Nos. 1575 of 2016 â?" M/s. Classic Realty Pvt. Ltd.,,,,,,

3. Appeal Nos. 1576 of 2016 - M/s. Sandur Power Company Pvt. Ltd.,,,,,,

4. Appeal Nos. 1577 of 2016 - M/s. Silicon Builders Pvt. Ltd.,,,,,,

5. Appeal Nos. 1582 of 2016 - M/s. Silicon Infrastructure Pvt. Ltd.,,,,,,

6. Appeal Nos. 1583 of 2016 - M/s. Capstone Infrastructure Pvt. Ltd.,,,,,,

7. Appeal Nos. 1584 of 2016 - M/s. Revan Infrastructure Pvt. Ltd.,,,,,,

8. Appeal Nos. 1585 of 2016 - M/s. Bhagavath Sanidhi Estates Pvt. Ltd.,,,,,,

9. Appeal Nos. 1586 of 2016 - M/s. Utopia Infrastructure Pvt. Ltd.,,,,,,

10. Appeal Nos. 1587 of 2016 - M/s. Saraswati Power and Industries Pvt. Ltd.,,,,,,

11. Appeal Nos. 1588 of 2016 - M/s. Harish Infrastructure Pvt. Ltd.,,,,,,

12. Appeal Nos. 1574 of 2016 â?" filed by Mrs. Y.S. Bharathi Reddy,.,,,,,,

13. Appeal Nos. 1579 of 2016 â?" M/s. Bharathi Cements Corporation Pvt. Ltd.,,,,,,

14. Appeal Nos. 1619 of 2017 - Mr. Jella Jagan Mohan Reddy,.,,,,,,

6. With regard to appeal no. 1619/2017, filed by Jella Jagan Mohan Reddy, separate order is being passed. By this common order, thirteen appeals are",,,,,, being decided.,,,,,,

7. CBI did not file charge sheets against all the persons / entities indicated in the FIR dated 17.08.2011, CBI, Hyderabad filed a Memo dated",,,,,,

23.09.2013 before the Special Judge for CBI Cases, Nampally, Hyderabad wherein it is inter alia stated as -",,,,,,

5. It is further submitted that during the course of investigation, in respect of the following issues no quid pro quo could be",,,,,,

established, however, it came to light that the overt acts, irregularities, violations committed by the firms/ individuals coming under the",,,,,,

purview of Enforcement Directorate, Income Tax, Registrar of Companies and Govt. of A.P. Accordingly, matters were referred to the",,,,,,

department concerned for taking necessary action as deemed fit in respect of the following, as the case may be ",,,,,,

i. M/s Sandur Power Company Ltd.,,,,,,

ii. M/s Carmel Asia Holdings Pvt. Ltd.,,,,,,

iii. M/s PVP Business Ventures,,,,,

iv. M/s Jubilee Media Communications,,,,,

v. M/s Classic Realty Ltd. and M/s Brahmani Infratech Pvt. Ltd.,,,,,,

vi. M/s RR Global Enterprises Pvt. Ltd.,,,,,,

vii. M/s Saraswati Power & Industries Ltd.,,,,,,

viii. M/s Mantri Developers ",,,,,,

8. The main allegations in the charge-sheet as well as the provisional attachment orders are for allotment of mining lease granted to M/s. Bharathi,,,,,

Cement Corporation Pvt. Ltd. (BCCL) are that Y. S. Jagan Mohan Reddy, in a criminal conspiracy with certain public officials and Mr. Jella Jagan",,,,,,

Mohan Reddy, got a mining lease wrongfully awarded in favour of M/s Bharathi Cement Corporation Pvt. Ltd. (BCCL then M/s. Raghuram",,,,,,

Cements Pvt. Ltd.) in violation of the statutory provisions. On the basis of such mining lease, Mr. Y. S. Jagan Mohan Reddy proceeded to establish",,,,,,

BCCL Plant. The following investments were made by the investors, which is the Proceeds of Crime (PoC).",,,,,,

i) Rs. 30 Crs by Mr. Y.S. Jagan Mohan Reddy - Rs. 30 Crs invested by Mr. Y.S.

Jagan Mohan Reddy were funneled by monies payed by Mr.,,,,,,

Nimmagadda Prasad which were occasioned by VANPIC favours.,,,,,,

ii) Rs. 252.5 Crs by Mr. Nimmagadda Prasad & group companies i.e. the investments are stated to be in lieu of VANPIC favours.,,,,,,

iii) Rs. 15 Crs by M/s. Silicon Builders Pvt. Ltd. - Rs. 15 Crs invested were funneled by Mr. Nimmagadda Prasad's group company, M/s. Beta",,,,,,

Avenues Pvt. Ltd., through M/s. Carmel Asia Holdings Pvt. Ltd. which are also occasioned by VANPIC favours." ,,,,,,

Allegations in the CBI charge-sheet.,,,,,,

8.1 As far as monies received by Mr. Y.S. Jagan Mohan Reddy from Mr. Nimmagadda Prasad and the subsequent monies realized from sale of ,,,,,,

shares of BCCL, the allegations are that Rs. 30 Crs were received as bribe amount by Mr. Y.S. Jagan Mohan Reddy from Mr. Nimmagadda Prasad" ,,,,,,

in lieu of VANPIC favours and was guised as sale consideration for sale of shares held by Mr. Y.S. Jagan Mohan Reddy in M/s. Sandur Power ,,,,,,

Company Ltd. (Sandur Power) to Mr. Nimmagadda Prasad. The said Rs. 30 Crs were utilized in purchasing 3,00,00,000 shares of BCCL at Rs. 10" ,,,,,,

per share. Mr. Y.S. Jagan Mohan Reddy sold 62,00,972 shares held by him in BCCL to PARFICIM SAS, France at Rs. 671.20 per share totaling to" ,,,,,,

Rs. 416.20 Crs on 28.04.2010. The Rs. 416.20 Crs so realized were transferred into various group companies controlled by Mr. Y.S. Jagan Mohan ,,,,,,

Reddy.,,,,,,

The initial investments into BCCL and subsequent investments by companies such as M/s. Dalmia Cements, M/s. India Cements Ltd. and Mr." ,,,,,,

Nimmagadda Prasad's group of companies at high valuations are nothing but bribe money paid as quid pro quo for the benefits derived by such ,,,,,,

companies.,,,,,,

8.2 The allegations also relating to Mr. Bharathi Reddy are that Mrs. Y.S. Bharathi Reddy had become the Director of BCCL solely on behest of ,,,,,,

Y.S. Jagan Mohan Reddy and has been drawing a high remuneration equating to Rs.3,90,00,000/- per year from the year 2011 and an amount of" ,,,,,,

Rs.19.50 Crores is categorized as proceeds of crime in respect of remuneration drawn for five (5) years ending with 31.12.2015. She, as director of" ,,,,,,

M/s Silicon Builders Pvt. Ltd (M/s Silicon Builders), had facilitated a smooth transfer and investment by Silicon Builders in the equity capital of" ,,,,,,

BCCL towards promoter's contribution from monies allegedly routed from Mr. Nimmagadda Prasad's group company M/s. Beta Avenues Pvt.,,,,,,

Ltd.,,,,,,

She is in receipt of a total of Rs. 15.5 Crs from Mr. Y.S. Jagan Mohan Reddy out of the monies realized from sale of his shares in BCCL to,,,,,

PARFICIM SAS, France.",,,,,

8.3 The allegations in relation to M/s. Sandur Power Company Pvt. Ltd. (Sandur Power) are that out of Rs 416.20 Crs arising out of the sale of Mr.,,,,,,

Y.S. Jagan Mohan Reddy's shares in BCCL to M/s PARCIFIM SAS, France treated as proceeds of crime, a sum of Rs 80.27 Crs was received by",,,,,

Sandur Power towards the sale of following shares:,,,,,

i) Rs 65 Crs for purchase of 88,103 shares of M/s Classic Realty Pvt Ltd.",,,,,

ii) Rs 2.86 Crs for purchase of 2,58,181 shares of M/s Silicon Builder Pvt Ltd.",,,,,

iii) Rs 12.41 Crs for purchase of 1,85,000 shares of BCCL Thereafter, an amount of Rs. 82 Crs was utilized by Sandur Power in form of",,,,,

i) Rs. 67 Crs was paid to M/s. Classic Realty Pvt. Ltd. as Share Application Money.,,,,,,

ii) Rs. 15 Crs was paid to M/s. Saraswati Power and Infrastructure Pvt. Ltd. as Share Application Money.,,,,,,

Thus, it is stated that "Tangible Fixed Assets as detailed in the Audited Balance sheet for 2013-14" being equivalent to the proceeds of Crime",,,,,

valued at Rs. 118.49 Crs is being attached.,,,,,,

8.4 Relating to M/s. Classic Realty Pvt. Ltd. (and merged entities i.e., M/s. Nivish Infrastructure Pvt. Ltd (Defendant No. 9), M/s. Shalom",,,,,,

Infrastructure Pvt. Ltd (Defendant No. 10), M/s. Marvel Infrastructure Pvt. Ltd (Defendant No. 14) and M/s. Inspire Hotels Pvt. Ltd (Defendant",,,,,,

No. 17), the allegations are that M/s. Classic Realty Pvt. Ltd. (Classic Realty) has received, in total, an amount of Rs. 193.50 Crores (Rs. 126.50 Crs",,,,,,

from Mr. Y.S. Jagan Mohan Reddy and Rs. 67 Crs from Sandur Power) as Share Application Money from Rs 416.20 Crs realized by Mr. Y.S. Jagan",,,,,,

Mohan Reddy from sale of his shares in BCCL to M/s PARCIFIM SAS, France on 27.04.2010.",,,,,

Thereafter, an amount of Rs. 196.85 Crs was utilized in the following nature:",,,,,

i) Rs. 58 Crs was returned to Mr. Y.S. Jagan Mohan Reddy against earlier received

Share Application Money.,,,,,,

ii) Rs. 56 Crs returned to BCCL against earlier received Share Application Money.,,,,,,

iii) Rs. 57 Crs paid to G2 and Suguni Constructions for acquiring Silicon Builders Shares.,,,,,,

iv) Rs. 25.85 Crs invested into 4 companies.,,,,,,

It is stated as monies received are not parked with Classic Realty, the ED has sought to attach, on the basis of concept of beneficial ownership,".,,,,,,

â??Tangible Fixed Assets of M/s Classic Realty Pvt Ltd as detailed in the Audited Balance Sheet for 2013-14 being equivalent to the proceeds of.,,,,,,

Crime valued at Rs.49,45,62,869/- (includes companyâ??s asset â?" Building named Commerce @ Mantri, Bannerghatta Road, Bangalore)".,,,,,,

8.5 The allegation in relation to M/s. Silicon Builders Pvt. Ltd. Are that M/s. Silicon Builders Pvt. Ltd. (Silicon Builders) is in receipt of Rs.15 Crs.,,,,,,

from M/s. Carmel Asia Holdings Pvt. Ltd. (not arrayed in the Complaint) and Sandur Power. Carmel Asia has in-turn received such moniesfrom Mr.,,,,,,

Nimmagadda Prasadâ?sgroup company, M/s. Beta Avenues as a quid pro quo in relation to alleged favours granted to Mr.Nimmagadda Prasad in",.,,,,,,

VANPIC Project by the then Government of the erstwhile unified State of A.P. Silicon Builders had invested the said Rs. 15 Crs in BCCL and had.,,,,,,

purchased 1,50,00,000 share of Rs. 10/- each. From the said shares, Silicon Builders received an amount of Rs. 51.20 Crs as dividend.".,,,,,,

8.6 Relating to M/s. Capstone Infrastructure Pvt. Ltd., Capstone Infrastructure is a company owned and controlled by Mr. Y.S. Jagan Mohan Reddy",.,,,,,,

and is in receipt of Rs. 15.30 Crs from Classic Realty which in-turn received from Y.S. Jagan Mohan Reddy and Sandur Power. Therefore,".,,,,,,

immovable and movable properties worth Rs.24.88 Crs. is being attached.,,,,,,

8.7 The allegations relating to M/s. Revan Infrastructure Pvt. Ltd. Are that the Revan Infrastructure is a company owned and controlled by Mr. Y.S.,,,,,,

Jagan Mohan Reddy and is in receipt of Rs. 2 Crs from Classic Realty which in-turn received from Y.S. Jagan Mohan Reddy and Sandur Power.,,,,,,

Therefore, immovable properties valued at Rs. 6.79 Crs is being attached.".,,,,,,

8.8 In relation to M/s. Saraswati Power and Industries Pvt. Ltd., the allegations are that M/s. Saraswati Power and Industries Pvt. Ltd. (Sandur",.,,,,,,

Power) is a company owned and controlled by Mr. Y.S. Jagan Mohan Reddy and is

in receipt of Rs. 15 Crs from Sandur Power which in-turn,,,,,

received from Mr. Y.S. Jagan Mohan Reddy and another Rs. 8 Crs as Share Application Money from Mr. Y.S. Jagan Mohan Reddy. Therefore,",,,,

immovable and movable properties worth Rs.32.33Crs is being attached.,,,,,

8.9 With regard to M/s. Silicon Infrastructure Pvt. Ltd. , M/s. Bhagavathi Sannidhi Pvt. Ltd., M/s. Utopia Infrastructure Pvt. Ltd. and M/s. Harish",,,,

Infrastructure Pvt. Ltd., no reference or allegation regarding investment of monies into the above companies is made. The above companies are",,,,

arrayed for having beneficial ownership with other defendants and their properties are attached.,,,,,

9. It is stated that it was revealed from the Charge Sheet filed by CBI with the Honâ?ble Court that S/Shri Y.S Jagan Mohan Reddy, V. Vijay Sai",,,,

Reddy, Jella Jagan Mohan Reddy & others committed the offences of criminal conspiracy, cheating and criminal misconduct by abusing official",,,,

position of Late Dr. Y.S. Rajsekhar Reddy, the then Chief Minister of Andhra Pradesh, punishable under Section 120-B read with Section 420 of the",,,,

Indian Penal Code, 1860 and Sections 9, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The offences under Section 120-",,,,

B, Section 420 of IPC, 1860 and Section 13 of PC Act, 1988 are the scheduled offences as per Section 2(1)(y) of PMLA, 2002. The investigation",,,,

carried out so far under PMLA, 2002, has revealed that, as a result of the above stated scheduled offences, following are the Proceeds of Crime in",,,,

this case.,,,,,

i) Shri Y.S. Jagan Mohan Reddy built a Cement Factory with the quid pro quo investments received by him from the companies of S/Shri,,,,

Nimmagadda Prasad, N. Srinivasn and Puneet Dalmia for the benefits/favours extended t them in the form of various approvals/concessions by the",,,,

then Government of Andhra Pradesh by influencing his father Late Shri Y.S. Raja Sekhar Reddy. Shri Y.S. Jagan Mohan Reddy further got mining,,,,

lease in the name of M/s. Bharathi Cement Corporation Private Limited employing illegal means and by influencing public servants in criminal,,,,

conspiracy with others. Smt. Y.S. Bharathi Reddy who was appointed as Director of M/s. Bharathi Cement Corporation Private Limited by virtue of,,,,

the Stake held by Shri Y.S. Jagan Mohan Reddy and his companies, received huge remunerations. Apart from the above, in lieu of the Criminal",,,,

conspiracy by Shri Y.S. Jagan Mohan Reddy with others, Shri Y.S. Jagan Mohan Reddy got various benefits/quid pro quo investments, etc., and the",,,,,

details are as follows:-,,,,,

ii) As regards, bribe of Rs. 35 Crore paid by Shri Nimmagadda Prasad to Shri Y.S. Jagan Mohan Reddy in the guise of investment in M/s. Sandur",,,,,

Power Company Private Limited and at a later date shares of M/s. Sandur Power Company Private Limited have been allotted with ante date. It may,,,,,

be noticed/taken note that, during the course of CBI, these Proceeds of Crime which are being received by Shri Y.S. Jagan Mohan Reddy are",,,,,

provisionally attached in the form of immovable properties and shares from Shri Y.S. Mohan Reddy by the Directorate of Enforcement, HIU, Delhi",,,,,

vide PAO No. 01/2014 dated 04.03.2014 and has been confirmed by the Honâble Adjudicating Authority, PMLA, New Delhi vide order dated",,,,,

19.08.2014 in Original Complaint No. 276 dated 27.03.2014.,,,,,

iii) As regards, Rs. 33 crore received by Shri Y.S. Jagan Mohan Reddy from group companies of Shri Nimmagadda Prasad towards secondary",,,,,

purchase of shares of M/s. Bharathi Cement Corporation Private Limited. It may be noticed/taken note that, during the course of investigation under",,,,,

PMLA, 2002, in Charge Sheet No. 14/2012 dated 13.08.2012 filed by CBI, these Proceeds of Crime which are being received by Shri Y.S. Jagan",,,,,

Mohan Reddy are provisionally attached in the form of immovable properties and shares from Shri Y.S. Mohan Reddy by the Directorate of",,,,,

Enforcement, HIU, Delhi vide PAO No. 01/2014 dated 04.03.2014 and has been confirmed by the Adjudicating Authority, PMLA, New Delhi vide",,,,,

order dated 19.08.2014 in Original Complaint No. 276/2014 dated 27.03.2014.,,,,,

iv) As regards, 1,50,00,000 shares of Rs. 10/- each purchased by M/s. Silicon Builders Private Limited in M/s. Bharathi Cement Corporation Private",,,,,

Limited from the bribe amounts received by Shri Y.S. Jagan Mohan Reddy from Shri Nimmagadda Prasad, Shri Y.S. Jagan Mohan Reddy, out of the",,,,,

bribe amounts received by him through his group companies from Shri Nimmagadda Prasad, transferred an amount of Rs. 15 Crore to M/s. Silicon",,,,,

Builders Private Limited for which he received 1.5 Crore shares of Rs. 10/- each of M/s. Bharathi Cement Corporation Private Limited. M/s. Silicon",,,,,

Builders Private Limited continues to hold these shares till date which are the

direct Proceeds of Crime.,,,,,,

v) Shri Y.S. Jagan Mohan Reddy, purchased 3,00,00,000 Shares of Rs. 10/-each in M/s. Bharathi Cement Corporation Private Limited from the bribe",,,,,,

amounts received by him from Shri Nimmagadda Prasad. Out of these 3,00,00,000 shares, Shri Y.S. Jagan Mohan Reddy, in April 2010, sold",,,,,,

62,00,972 shares to M/s. Parficim, France at a rate of Rs. 671.20 per shares and benefitted by an amount of Rs. 416,20,92,406/- and the same was",,,,,,

deposited in his bank account maintained at Oriental Bank of Commerce, Jubilee Hills Branch, Hyderabad (A/c No. 09242011001503). Shri Y.S.",,,,,,

Jagan Mohan Reddy is till continues to hold 2,38,06,435 shares of Rs. 10/- each in M/s. Bharathi Cement Corporation Private Limited which were",,,,,,

acquired by him out of the bribe amounts received by him and these shares forms part of Proceeds of Crime as defined under Section 2(1)(u) of",,,,,,

PMLA, 2002. Shri Y.S. Jagan Mohan Reddy, out of illegally benefitted amount of Rs. 416,20,92,406/-, transferred to various companies/his own",,,,,,

accounts which were further transferred to various companies/individuals as investments.,,,,,,

vi) It is stated by the respondent that the total sum of Rs. 416,20,92,406/- received by Shri Y.S. Jagan Mohan from sale of shares of M/s. Bharathi",,,,,,

Cement Corporation Private Limited to M/s. Parficim S.A.S., who has transferred his own companies or accounts. The details of the same are given",,,,,,

as under:-,,,,,

a. Rs. 80,27,72,000/- transferred to M/s. Sandur Power Company Private Limited.",,,,,,

b. Rs. 8,00,00,000/- transferred to M/s. Saraswati Power & Industries Private Limited.",,,,,,

c. Rs. 126,50,00,000/- transferred to M/s. Classic Realty Private Limited.",,,,,,

d. Rs. 177,20,00,000/- transferred to his own account maintained at OBC, Koramangala, Bangalore.",,,,,,

e. Rs. 5,00,00,000/- transferred to YSR Foundation towards donation.",,,,,,

f. Rs. 18,70,22,635/- transferred to his own account maintained at OBC, Jubilee Hills, Hyderabad.",,,,,,

vii) The above amounts are the proceeds of crime in terms of Section 2(1)(u) of PMLA, 2002 as the shares were acquired by Shri Y.S. Jagan Mohan",,,,,,

Reddy from the bribe amounts received as discussed supra.,,,,,,

viii) M/s. Bharathi Cement Corporation Private Limited has not extracted limestone from the mining lease area till 2008-09 since 27.03.2006, i.e. from",,,,,, the date on which the company obtained mining lease fraudulently.,,,,,,

ix) Investigation conducted also revealed that M/s. Bharathi Cement Corporation Private Limited had excavated the Lime Stones using Mine License,,,,,

illegally granted to them by the then Government of Andhra Pradesh.,,,,,,

x) Investigation conducted with Department of Mines & Geology, Government of Andhra Pradesh revealed that the price of Lime stone is ranging",,,,,,

between Rs. 30 per MT to Rs. 150/- per MT during the above period.,,,,,,

10. It is alleged by the respondent that in view of above, the value of the limestone excavated by M/s. Bharathi Cement Corporation Private Limited",,,,,,

has been worked out to be of Rs. 152,84,61,315/- for the period from 2009-10 to 2015-16.",,,,,,

11. It is stated that from the above, it is evident that the pecuniary gain derived by M/s. Bharathi Cement Corporation Private Limited on account of",,,,,,

excavation of Lime stone from the Mining License granted illegally amounts to Rs.152,84,61,315/- which is proceeds of crime in terms of Section 2(1)",,,,,,

(u) of PMLA, 2002.",,,,,,

12. The total alleged proceeds of crime as per respondents as per Provisional Attachment Order dated 29.06.2016 and O.C. No. 618 of 2016 are as,,,,,

follows:,,,,,

416.20 Crs Monies realized by Mr. Y.S. Jagan Mohan Reddy from selling of 62,00,972 shares to M/s. PARFICIM SAS at Rs. 671.20 per share.",,,,,,

23.80 Crs Shares held by Mr. Y.S. Jagan Mohan Reddy in BCCL (From the monies received from Mr. Nimmagadda Prasad),,,,,,

15.00 Crs Shares held by Silicon Builders in BCCL (From the monies invested by Mr. Nimmagadda Prasad),,,,,,

81.25 Crs Dividend received by Mr. Y.S. Jagan Mohan Reddy on 2,38,06,435 shares of BCCL",,,,,,

51.20 Crs Dividend received by Silicon Builders on 1,50,00,000 Shares of BCCL",,,,,,

152.84 Crs Value of limestone extracted by BCCL.,,,,,,

19.50 Crs Salaries of Mrs. Y.S. Bharathi Reddy.,,,,,,

Sl. No.,Investor,"Total

Investment", "No. of Shares

Held",,,

1., Dalmia Cements (Bharat) Ltd., "94,99,95,750/-", "21,83,899",,,

2., India Cements Ltd., "95,32,60,850/-", "18,03,973",,,

3., "Mr. Nimmagadda Prasad's

Group", "285,49,81,915/-", "83,50,023",,,

Investor, Total Investment, "Return on Sale of

Shares", Profits made, % of profits,

D a l m i a Cements

(Bharat) Ltd.", "94,99,95,750/ -", "146,58,33,009/-", "51,58,37,259/-", 54,

India Cements Ltd., "95,32,60,850/ -", "121,08,26,678/-", "5,75,65,828/-", 27,

M r . Nimmagadda

Prasad's Group", "285,49,81,915 /-", "560,45,35,438/-", "274,95,53,523 /-", 96,

which is to the detriment of either the Government of Andhra Pradesh or of Gujarat Ambuja or both.,,,,,,

18. The main allegations in the charge-sheet as well as the provisional attachment orders are for allotment of mining lease granted to M/s. Bharathi,,,,,

Cement Corporation Pvt. Ltd. (BCCL) are that Y. S. Jagan Mohan Reddy, in a criminal conspiracy with certain public officials and Mr. Jella Jagan",,,,,

Mohan Reddy, got a mining lease wrongfully awarded in favour of M/s Bharathi Cement Corporation Pvt. Ltd. (â??BCCLâ? then M/s. Raghuram",,,,,

Cements Pvt. Ltd.) in violation of the statutory provisions. On the basis of such mining lease, Mr. Y. S. Jagan Mohan Reddy proceeded to establish",,,,,

BCCL Plant, for which establishment. The following investments were made by the investors, the same is Proceeds of Crime (PoC).",,,,,

i) Rs. 30 Crs by Mr. Y.S. Jagan Mohan Reddy - Rs. 30 Crs invested by Mr. Y.S. Jagan Mohan Reddy were funneled by monies payed by Mr.,,,,,

Nimmagadda Prasad which were occasioned by VANPIC favours.,,,,,

ii) Rs. 252.5 Crs by Mr. Nimmagadda Prasad & group companies i.e. the investments are stated to be in lieu of VANPIC favours.,,,,,

iii) Rs. 15 Crs by M/s. Silicon Builders Pvt. Ltd. - Rs. 15 Crs invested were funneled by Mr. Nimmagadda Prasad's group company, M/s. Beta",,,,,

Avenues Pvt. Ltd., through M/s. Carmel Asia Holdings Pvt. Ltd. which are also

occasioned by VANPIC favours." ,,,,,

As far as investment of Rs.30 crores and Rs.252.5 crores by Nimmagadda Prasad is concerned, in separate order, the said issues are discussed and" ,,,,,

decided in connected appeals nos. 751/2014, 752/2014, 753/2014, 754/2014, 755/2014, 673/2014, 747/2014, 672/2014, 670/2014, 671/2014 & 668/2014." ,,,,,

The said order also be read as part of this order.,,,,,

19. As far as allegations of CBI and ED are concerned, the same are recorded in earlier part of my order. The response of appellants are also" ,,,,,

recorded. In case, even prima facie, this Tribunal would come to conclusive that mining lease is granted against the receipt of bribe amount paid to" ,,,,,

Jagan Mohan Reddy and his group at the instance of his father, who was the Chief Minister at the relevant period of time, then the attachment of the" ,,,,,

said FDs has to continue.,,,,,

20. It is submitted on behalf of the appellant in appeal no. 1579/2016 that the Respondent has misinterpreted the statutory provisions as contained in,,,,,

the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "MMDR Act") and the rules made thereunder. The" ,,,,,

Respondent has wrongly come to the conclusion while ignoring relevant material in arriving at the finding of unlawful allotment of the Mining Lease,,,,,

dated March 29, 2006 in favour of the Appellant as mentioned above." ,,,,,

21. As per pleadings, the admitted following facts are:-" ,,,,,

(a) Gujarat Ambuja was granted a Prospecting License for a period of 2 (two) years, i.e., from September 13, 2000 until September 12, 2002 vide a" ,,,,,

license deed.,,,,,

(b) After Gujarat Ambuja was unable to complete the prospecting work, it applied for a renewal of the Prospecting License for a further period of 2" ,,,,,

(two) years, i.e., from September 13, 2002 until September 12, 2004." ,,,,,

(c) As no reply was received from the State authorities, there was deemed renewal of the Prospecting License for a further period of 2 (two) years," ,,,,,

i.e., until September 12, 2004, in terms of the renewal application filed by Gujarat Ambuja." ,,,,,

(d) There was no application filed for a further extension of the Prospecting Licence, either before or after September 12, 2004. Accordingly, the" ,,,,,

Prospecting License expired by efflux of time on September 12, 2004;" ,,,,,,

(e) However, Gujarat Ambuja continued to carry out prospecting operations for another 1 (one) year, i.e. until October 31, 2005 when the State" ,,,,,,

Government finally cancelled the Prospecting License after prior issuance of a show cause notice vide memo No. 16794 on September 21, 2005." ,,,,,,

(f) There is hardly any dispute that Gujarat Ambuja enjoyed the prospecting license from September 13, 2000 until October 31, 2005 i.e. for a period" ,,,,,,

of 5 years and 48 days (approx.) ,,,,,,

(g) The proviso to Section 7(2) of the Mines and Minerals (Development and Regulation Act, 1957 (hereinafter referred to as" ,,,,,,

â??MMDR Actâ?) provides that the total period for which a Prospecting License may be granted to any party (including extensions) ,,,,,,

cannot a maximum period of 5 (five) years. ,,,,,,

(h) Thus, the Prospecting License for a period greater than the maximum period contemplated by the MMDR Act, could not have sought or obtained" ,,,,,,

any extension of the Prospecting License after September 12, 2015 (i.e. upon expiry of the statutorily prescribed outer limit of five years). No further" ,,,,,,

extension of the Prospecting License is contemplated or permitted under the mining laws. The same is not denied by the Respondent which is also ,,,,,,

prescribed under Sub-section (2) of Section 7 of the Act. ,,,,,,

(i) After the completion of the maximum period of 5 years, the Prospecting License expired by efflux of time under the law under deeming provision." ,,,,,,

Had Gujarat Ambuja applied for a further renewal after September 12, 2005, although no such application was made. In fact, the proviso to Section" ,,,,,,

7(2) of the MMDR Act prohibited any renewal after September 12, 2005, once the prescribed period of five years enjoyed." ,,,,,,

22. It is the admitted position that Gujarat Ambuja had not filed any application for grant of a mining lease for the subject area, whether within the" ,,,,,,

period of 3 (three) months after the expiry of the Prospecting License, or even later as mandated by Section 11 of the MMDR Act. Therefore, the" ,,,,,,

question of preferential right for grant of a Mining Lease in favour of Gujarat Ambuja does not arise for the subject area. ,,,,,,

23. It is submitted on behalf of appellants that the the Adjudicating Authority did not appreciate that in absence of any right existing in favour of ,,,,,,

Gujarat Ambuja, as contained in the MMDR Act itself. T he very genesis of the

alleged conspiracy of grant of Mining Lease to the Appellant by",,,,,

surpassing Gujarat Ambuja, fails at the very threshold. Even the Revision Application filed by Gujarat Ambuja challenging the rejection of its renewal",,,,,

application/ cancellation of Prospecting License was dismissed on merits vide a detailed final order dated September 8, 2006.",,,,,

24. Admittedly, Gujarat Ambuja has not filed any other complaint, whether civil or criminal, in this regard. The said fact was admitted on behalf of",,,,,

respondent by the counsel as well as IO present. Under no circumstances, irrespective of any allegations against the appellants, one thing is very clear",,,,,

that Gujarat Ambuja as per the mandatory provision of the Act, was not entitled for renewal of prospective mining lease after the expiry of five years.",,,,,

25. Once the preferential right in favour of Gujarat Ambuja was ended, the Government (State) is not precluded to invite the filing of an application for",,,,,

grant of Mining Lease as per rules, nor was Government of Andhra Pradesh (hereinafter referred to as "GoAP") was precluded from granting",,,,,

the same in its favour, but as per set procedure and due process. After the rejection of Gujarat Ambuja's Prospecting License on October 31, 2005",,,,,

a Gazette Notification for re-grant of the prospecting license area under the applicable rules was published on November 21, 2005 by the competent",,,,,

authority.,,,,,

26. It is also submitted on behalf of appellants that in terms of Rule 59 of the Mineral Concession Rules, 1960, an area which was previously held",,,,,

under a reconnaissance permit, prospecting license or mining lease would not be available for re-grant unless the availability of the area of the grant is",,,,,

notified in the Official Gazette and a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official",,,,,

Gazette) is specified from which such area shall be available for grant.,,,,,

27. One of the allegations of the respondent is that the notification dated 21.11.2005 issued under MMDR Act was not issued for Mining Lease is",,,,,

unfounded as Rule 59(1)(ii) of the Mineral Concession Rules, 1960 does not distinguish between as notification for grant of Prospecting License and",,,,,

notification for grant of Mining Lease. Therefore, the attempt of the respondent to restrict one of the notified areas as that "for mining" and one",,,,,

for "Prospecting License" is an attempt to give the notification as untenable interpretation. The respondents' also allegation is that the mining",,,,,

lease was granted to BCCL without prior prospecting of the area is evidence of a criminal conspiracy is unfounded and without basis.,,,,,

28. The appellants reply to the submission of the respondent on a Gazette Notification.,,,,,

(a) The annexure was merely a description of the nature of the land which was being notified and not a description of the nature of rights proposed to.,,,,,

be granted thereunder. In fact, the nature of rights proposed to be granted had been clearly specified in the text of the notification, viz., mining lease/" ,,,,,

prospecting license.,,,,,

(b) The annexure of the notification which describes the notified land describes the names of previous lessee and nature of rights granted to them. In.,,,,,

this regard, since the grant to Shri M. Obul Reddy was in the nature of a mining lease, the annexure to the notification stated so. Similarly, since the" ,,,,,

grant to Gujarat Ambuja was in the nature of a prospecting licence, the notification stated so." ,,,,,

(c) Rule 59(1)(ii) of the Mineral Concession Rules, 1960 does not distinguish between a notification for grant of a prospecting license and a notification" ,,,,,

for grant of mining lease. In fact, the provision merely requires that the area for re-grant be notified." ,,,,,

(d) The attempt in the PAO to restrict one of the notified areas as that for â?? mining leaseâ? and the other for â??prospecting licenceâ? is contrary.,,,,,

to the language of the notification itself.,,,,,

(e) In fact, nothing precluded Gujarat Ambuja from applying for a Mining Lease pursuant to the said notification, but it has chosen not to apply." ,,,,,

(f) In view of the above, the allegations in the PAO that first, the Notification dated November 21, 2005 was not issued for a mining lease, and second," ,,,,,

the Appellantâ?s application for mining lease pursuant to the same is evidence of a purported criminal conspiracy, are far-fetched, unfounded and" ,,,,,

without any basis in law.,,,,,

29. It is submitted on behalf of appellants that the purported statement by Mr Jella Jagan Mohan Reddy, the director of the Appellant company, that a" ,,,,,

copy of the Mining Lease deed had to be submitted to financial institutions before March 31, 2006 and it was submitted without prejudice. As long as" ,,,,,

there is no illegality in the executing of the Mining Lease, the mere fact of it being executed expeditiously cannot form the basis to reach a conclusion" ,,,,,

of a conspiracy. It is denied by the appellant that the entire process was completed within a day. Rather, it was submitted that due process was" ,,,,,

followed and the said process had taken about one month. ,,,,,

30. It is also submitted that there is no illegality in grant of conditional mining lease in favour of the Appellant during pendency of Revision ,,,,,

Applications- Revision Applications filed by Gujarat Ambuja challenging the following, namely (a) rejection of its Prospecting License; and (b) grant of" ,,,,,

mining lease in favour of the Appellant vide G.O. No. 95, both dismissed. It is alleged that the first and second revision petition filed by Gujarat" ,,,,,

Ambuja challenging the grant of Mining Lease in favour of the Appellant vide G.O. No. 95 had no bearing after the expiry of five years and was also ,,,,,

dismissed as withdrawn without liberty to re-file a fresh application, which is evidencing by the conduct of Gujarat Ambuja itself. The Adjudicating" ,,,,,

Authority failed to appreciate that even Gujarat Ambuja did not express any interest in pursuing a mining lease for the subject area. Even the said ,,,,,

party obtained interim order as the mining lease granted to Bharati Cement Corporation Pvt. Ltd. subject to the outcome of Revision Petition. ,,,,,

31. It is argued on behalf of appellants that there is no illegality in grant of conditional mining lease in favour of the appellant during pendency of ,,,,,

revision applications â?" revision applications filed by Gujarat Ambuja challenging the following, namely (a) rejection of its Prospecting License; and" ,,,,,

(b) grant of mining lease in favour of the appellant vide G.O. No. 95, both were dismissed." ,,,,,

32. Sub-rule 2 of Rule 54 of the Mineral Concession Rules, 1960 envisages an application by any person to the Central Government for revision of any" ,,,,,

order made by the State Government or other authority in exercise of the powers conferred on it by the MMDR Act or these rules that it is aggrieved ,,,,,

by, to be made within three months of the date of communication of the order to him." ,,,,,

33. It is true that the grant of the Mining Lease has been doubted by the Adjudicating Authority and in the PAO due to the pendency of the revision ,,,,,

petition at the time of grant of Mining Lease in favour of the Appellant. It is submitted on behalf of appellant that the Adjudicating Authority has failed ,,,,,

to take cognizance of the following relevant facts: ,,,,,

(a) The G.O. Ms. No. 95 dated March 27, 2006 granting the Mining Lease for

Limestone over an extent of 2037.52 acres in Sy. Nos. 215 to 231 etc.",,,,,

in villages in Yerraguntla and Kamalapuram Mandals in Kadapa District in favour of the Appellant was by no means an unconditional grant, as has",,,,,

been sought to be incorrectly portrayed in the impugned PAO.,,,,,

(b) On the contrary, the GO clearly provides that the grant orders are subject to the outcome of the decision of the Government of India in the",,,,,

Revision Application filed by Gujarat Ambuja.,,,,,

(c) In case Gujarat Ambuja's Revision Application had succeeded, the G.O. Ms 95 or Mining Lease granted in favour of the Appellant would not",,,,,

come in the way.,,,,,

(d) In addition to the same being subject to the outcome of the Revision Application, the Appellant was, inter alia, required to obtain environmental",,,,,

clearances within 6 (six) months and set up a cement unit within a period of 3 (three) years.,,,,,

(e) That even during the pendency of a revision application filed by a party, the grant of a mining lease to another party is within the contemplation of",,,,,

the Mineral Concession Rules, 1960.",,,,,

(f) Sub-rule 2 of Rule 54 of the Mineral Concession Rules, 1960 clearly provides that in every application for revision under Sub-rule 1 filed against the",,,,,

order of a State Government refusing to grant a prospecting license, any person to whom a prospecting license/mining lease was granted in respect of",,,,,

the same area or for a part thereof, shall be impleaded as party.",,,,,

(g) There is no provision under the MMDR Act or the Mineral Concession Rules, 1960 which prohibits the grant of a mining lease while pendency of",,,,,

a revision application. On the contrary, Sub-rule 2 of Rule 54 contemplates the situation that a mining license may be granted during pendency of a",,,,,

revision application and, merely imposes a requirement to implead the party who was granted the mining lease in respect of the same area. In this",,,,,

regard, reliance is placed upon the judgment passed by the Hon'ble Bombay High Court in Vidarbha Mining Association v. Central Government",,,,,

Tribunal Revisional Authority, New Delhi & Ors., 2014(5) Mh.L.J. 346 (based on similar facts where a mining lease was granted by the Central",,,,,

Government during pendency of revision petition), wherein it was held that:",,,,,

â??The plain reading of the above rule and sub-rule leaves no doubt that any

person whose application has been rejected by the State,,,,,

Government can very well challenge the said order by filing revision application invoking Rule 54. The only duty cast upon him is to,,,,,

implead as a party to a person to whom the prospecting license or mining lease has been granted vide the impugned order.â??,,,,,

(h) Therefore, it is alleged that the allegation of criminal conspiracy or of suppressing the factum of pendency of the Revision Application filed by",,,,,

Gujarat Ambuja so as to ensure execution of the mining lease in favour of the Appellant is clearly unfounded and unsubstantiated. In any case, both",,,,,

the Revision applications filed by Gujarat Ambuja were dismissed.,

(i) It is submitted that a party is not precluded from being granted a mining lease during the interim period, i.e., the period after a decision is taken by",

the State Government to deny the application of a party for grant of a prospecting license or mining lease, until the time such aggrieved party",

challenges the same in revision.,

(j) It was alleged that it is not within the contemplation of the mining rules that the competent authority is statutorily mandated to remain idle and not,,,,,

take decisions for grant of mining lease in respect of the same area until the period of limitation under Rule 54 expires, which interpretation will create",

a situation of absurdity and the same could not have been the intent of the framers.,

34. It is a matter of fact that the First Revision Application filed by Gujarat Ambuja, challenging the rejection of its renewal application/ cancellation of",

Prospecting License was dismissed on merits vide final order dated September 8, 2006. It cannot be denied that despite the Gazette Notification being",

in the public domain and known to Gujarat Ambuja, it chose to apply for a stay under Rule 55(5) of the Mineral Concession Rules, 1960 only on",

February 21, 2006, almost 4 (four) months after rejection of its renewal application and 3 (three) months after the Gazette Notification was published.",

35. It is also factual position that Gujarat Ambuja had also filed a second revision petition challenging the grant of Mining Lease in favour of the,,,,,

Appellant vide G.O. No. 95 dated March 27, 2006, however, the same was also dismissed as withdrawn without liberty to re-file a fresh application,",

which evidencing that Gujarat Ambuja, the Respondentâ?? is trying to display the

card Gujarat Ambuja who was not interested to file the application for" ,,,,,
approval, who itself had no case to make out against the said Mining Lease having been granted in favour of the Appellant. The said orders have since" ,,,,,
attained finality. The said party after withdrawal of the second Revision Petition and granting the mining lease to appellants have not challenged the ,,,,,
same in any court of law as of today. ,,,,,

36. The Adjudicating Authority did not properly dealt with this issue that even Gujarat Ambuja did not express any interest in pursuing a mining lease ,,,,,
for the subject area. It is the admitted position that despite knowledge of the Gazette Notification having been published, Gujarat Ambuja also did not" ,,,,,
apply for a mining lease. ,,,,,

The revisional authority had also considered both the revision applications as lacking in merit, which is revealed by the dismissal of one application on" ,,,,,
merits and dismissal of the other by way of withdrawal without liberty to re-file. Even otherwise, as admitted by both parties that the lease granted" ,,,,,
subject to the final outcome of Revision Petition. ,,,,,

37. It is submitted on behalf of appellants that grant of mining lease is permissible in law without prospecting operations by the same party as Sub- ,,,,,
section 2 of section 5 of the MMDR Act merely requires the subjective satisfaction of the GoAP that there be evidence to show that the area for ,,,,,
which the lease is applied for has been prospected earlier, or the existence of mineral contents therein has been established otherwise than by means" ,,,,,
of prospecting such area and it stands admitted by the Respondent in the PAO that Gujarat Ambuja had prospected the area from September 13," ,,,,,
2000, until the rejection of its renewal application on October 31, 2005, i.e., for period of more than 5 (five) years but had not completed the" ,,,,,
prospecting work or submitted the requisite final prospecting licence report. ,,,,,

38. In any case, the existence of mineral contents and limestone reserves in the area in question had already been established, which is clearly" ,,,,,
evidenced from the report of Mr. Shankar Narayana, Assistant Director (Mines & Geology) -" ,,,,,

As per the exploration report of M/s Gujarat Ambuja Cement Ltd., the total estimated reserves are to the tune of 144.06 million tonnes" ,,,,,
considering an average workable thickness of 18 mts and 50% of the area for practical working leaving sufficient area for safety zone for ,,,,,

blasting, green belt development and statutory limits from roads, lease periphery etc. â??",,,,,

39. It is submitted that as long as the existence of mineral content has been established (which was a clear finding of the GoAP), the grant of a mining",,,,,

lease (even without a prior prospecting license) cannot be questioned. In fact, by the allegations of the PAO itself, wherein it is detailing out the extent",,,,,

of lime stone extracted by the Appellant, it is evident that the said area indeed and indisputably contained sufficient reserves of minerals.",,,,,

40. The PAO itself reveals that (a) the GoAP had recorded and accepted that the existence of mineral contents therein has been established; and (b),,,,,

the post facto occurrences, i.e., the lime stone extracted by the Appellant from the area, evidence the correctness of the said recordal.",,,,,

41. Under the provisions of Section 5(2) of the MMDR Act, a mining lease can be granted to a party who has not carried out the prospecting",,,,,

operations in the same area, however, it depends upon situation to situation. In the present case, it was observed in the PAO that the limestone was",,,,,

extracted by the appellant from the area.,,,,,

42. It is submitted on behalf of the appellant that the impugned PAO has erred in holding that prior approval of the Minister (Mines and Geology) was,,,,,

not obtained for issuance of G.O. No. 95 dated March 27, 2006. As regards, it is submitted on behalf of the appellant the process for obtaining",,,,,

approvals for grant of mining lease in favor of the Appellant, the following facts are relevant:",,,,,

(a) It has been admitted by the Respondent that after receiving the combined proposal regarding grant of mining lease to the Appellant from the office,,,,,

of the ADMG, the DMG deemed it fit to consider the application subject to the condition that the Appellant shall establish a cement unit within 3",,,,,

(three) years.,,,,,

(b) Further, the note was put up through the Assistant Secretary, Deputy Secretary & Secretary to the Minister and the same was approved by the",,,,,

then Minister on February 7, 2006",,,,,

(c) After receiving the approval of the Minister (Mines & Geology) on February 7, 2006, a draft memo was put up on February 14, 2006 and Memo",,,,,

No. 676 dated February 15, 2006 was issued by the concerned official in favour of the Appellant, informing the Appellant Company of the grant of a",,,,,

mining lease for limestone over an extent of 2037.52 acres. The Appellant was also called upon to submit the Mining Plan within a period of 6 (six),,,,, months as per law.,,,,,

43. It is stated on behalf of appellants that due process was followed by the GoAP, including obtaining the approvals of the Minister (Mines &,,,,

Geology) as admitted by the Respondent itself in the impugned order dated November 23, 2016 and it has been wrongly held as the requisite",,,,,

ministerial approvals were in place at the time of grant of mining lease in favour of the Appellant. It is also submitted that once the approvals of the,,,,,

Minister had already been obtained for grant of the Mining Lease, it could not have been the intent to seek repeated approvals on the same matter.",,,,,

44. It is argued that Section 5(2) of the MMDR Act, do not bar the use of an earlier prospecting report in addition to other information which has been",,,,,

established other than by prospecting. Rule 16(3) - the Mineral Concession Rules, 1960 records the process to be followed in the event that",,,,,

information submitted by a person undertaking prospecting activities is to be treated as confidential.,,,,,

45. The allegation was that both the Appellant and M/s Saraswati Power and Industries Private Limited had failed to submit prospecting reports from,,,,,

the Geological Survey of India or from any other private consulting agency, and had instead used the prospecting report of Gujarat Ambuja, or that the",,,,,

same was unlawful.,,,,,

46. It is submitted on behalf of appellants that no such process for treating the information submitted by Gujarat Ambuja as confidential, had been",,,,,

requested or followed and as such, the Appellants were free to use all such information within the framework of the MMDR Act, and the Mineral",,,,,

Concession Rules, 1960. It is submitted that there is not even a single averment in either the charge sheet, the PAO or the impugned order that Gujarat",,,,,

Ambuja had marked their reports and information as confidential and as such, in terms of the said rule, the said reports and information could be used",,,,,

by any person, including the appellant herein.",,,,,

47. It is matter of fact that Gujarat Ambuja had the opportunity to submit its application for grant of Mining Lease on the basis of information available,,,,,

with it after the area was notified in terms of the mentioned Gazette Notification, but the said party did not do so. In the absence of Gujarat Ambuja",,,,,

itself not having applied for grant of Mining Lease, there cannot possibly be a grievance against use of all available information even if the same was" ,,,,,

generated by Gujarat Ambuja. It is a matter of fact that Gujarat Ambuja has taken any action civil and criminal against the appellants for using the ,,,,,

said information. It is also alleged on behalf of appellants that in the absence of any restriction on usage of available information there can be no ,,,,,

illegality, let alone criminality, attached to the usage of such information by the Appellant." ,,,,,

48. It is an undisputed fact that the Appellant, vide letter dated February 21, 2006, had submitted its Mining Plan to the Regional Controller of Mines, " ,,,,,

Hyderabad, within the statutory period of 6 (six) months, as directed. Thereafter, the Mining Plan with Scrutiny Comments was forwarded to the" ,,,,,

Controller of Mines (SZ), Indian Bureau of Mines, Bangalore, for further action. By letter dated March 16, 2006, the Appellant was directed to get the" ,,,,,

deficiencies rectified and submit 5 (five) bound copies of the Mining Plan within a period of 30 (thirty) days. Its director, Mr. Jella Jagan Mohan" ,,,,,

Reddy, on behalf of the Appellant, vide letter dated March 22, 2006 submitted 5 (five) bound copies of the Mining Plan, after rectifying the" ,,,,,

deficiencies observed by the Regional Controller of Mines, Hyderabad. And after having gone through the rectified Mining Plan, the Dealing Assistant" ,,,,,

had duly noted that the Mining Plan was â??more or less satisfactoryâ?, meaning thereby that it was fit to be put up for approval. Based on the" ,,,,,

notings of the Dealing Assistant, the Mining Plan was put up for approval on March 23, 2006. The same was signed on March 23, 2006/ March 24," ,,,,,

2006 and subsequently, the Approved Mining Plan was received by the Appellant." ,,,,,

49. It is submitted that in view of the above stated procedure undertaken by the Appellant and the various officials, the allegations contained in the" ,,,,,

impugned PAO as regards purported deficiencies in the Approved Mining Plan, and the basis on which the impugned order dated November 23, 2016" ,,,,,

was passed without appreciation of the correct facts. In any case, it is submitted that the deficiencies in the Mining Plan, if any, had been rectified" ,,,,,

fully by the Appellant, which was subsequently also confirmed by the Dealing Assistant before being approved by the competent authority." ,,,,,

50. The entire process for approval of the Mining Plan took more than a month i.e. from February 21, 2006 (when the mining plan was submitted) to" ,,,,,

March 23, 2006/ March 24, 2006 (when approval was granted), and therefore the allegation that the approvals were done in less than a day was not",,,,,

correct.,,,,,

51. The Appellant has relied upon the following judgement in this regard:,,,,

(a) Chairman & MD, BPL Ltd. v. S.P. Gururaja and Others, (2003) 8 SCC 567 [paragraphs 34 and 35]",,,,,

â??34. Undue haste also is a matter which by itself would not have been a ground for exercise of power of judicial review unless it is held,,,,

to be malafide. What is necessary in such matters is not the time taken for allotment but the manner in which the action had been taken. The,,,,

court, it is trite, is not concerned with the merit of the decision but the decision making process. In absence of any finding that any legal",,,,,

malice was committed, the Impugned allotment of land could not have been interfered with. What was only necessary to, be seen was as to",,,,,

whether there had been a fair play in action.,,,,,

35. The question as to whether any undue haste has been shown in taking an administrative decision is essentially a question of fact. The,,,,

States had devolved a policy of Single Window System with a view to get rid of red-tapism generally prevailing in the bureaucracy. A,,,,

decision which has been taken after due deliberations and upon due application of mind cannot be held to be suffering from malice in law,,,,

on the ground that there had been undue haste on the part of the State and the Board.â??,,,,,

52. It is admitted by the respondent that the Commission of inquiry constituted by the government of Andhra Pradesh found no wrongdoing in,,,,

allotment of Mining Lease in favour of the Appellant vide G.O. Ms. No. 648 Revenue (Assn. IV) dated May 14, 2007 constituted a Commission of",,,,,

Inquiry which was headed by Honâ?ble Mr. Justice P. Ramakrishnam Raju, a retired judge of the Honâ?ble High Court of Andhra Pradesh. One of",,,,,

the matters to be inquired upon by the said Commission was as under:,,,,

â??Whether issue of G.O.Ms. No. 95 Industries and Commerce (M. III) Department, dated 27.03.2006 by the government of Andhra",,,,,

Pradesh granting Mining Lease M/s Raghuram Cements Limited, for establishing their proposed cement factory in Kadapa District was in",,,,,

conformity with the established norms, procedures and provisions of law.â??",,,,,

After a detailed inquiry into the above issue, the Honâ??ble Commission vide its report dated August 27, 2007, unequivocally concluded as under:" ,,,,,

â??â?| I have no doubt the State Government has followed the procedure indicated above following the Mines and Minerals (Development ,,,,,

and Regulation) Act, 1957 and Mineral Concession Rules, 1960. I have pursued the entire procedure followed for the issue of G.O. Ms. No." ,,,,,

95 Industries and Commerce (M. III) Department, Dt. 27.03.2006. I do not find any infraction in following the established norms, procedure" ,,,,,

or the provisions of the law.â?? ,,,,,

The inquiry conducted by a retired High Court Judge has given an unequivocal finding in favour of the Appellant as regards the lawful allotment of the ,,,,,

Mining Lease. It is informed that the said report has not been challenged. ,,,,,

53. The Adjudication Authority did not care about the finding of a retired High Court Judge, heading a Commission constituted by the Government of" ,,,,,

Andhra Pradesh under the Commissions of Inquiry Act, 1952, rather it has given finding contrary to the report by coming to the conclusions that the" ,,,,,

allotment of the Mining Lease dated March 29, 2006 in favour of the Appellant was unsupported by any cogent and reliable material on record." ,,,,,

54. The Respondentâ??s stand is that the Honâ??ble Commission only enquired into the legality of the grant of Mining Lease by the Government," ,,,,,

however, the grant of Mining License to Appellant was illegal and despite of Honâ??ble Commission had categorically noted in paragraph 8.9.3 that" ,,,,,

there had been no infraction in following the established norms, procedure or the provisions of law in granting the Mining Lease to the Appellant." ,,,,,

55. It is admitted by the Respondent that the Appellant has paid royalty and cess on the limestone extracted. It is submitted that the OC and the PAO ,,,,,

itself detail out the royalties and cess paid by the Appellant for the limestone extracted by it from commencement of operations in 2009-2010 and till ,,,,,

2015-16, which totals to INR 122,77,05,799." ,,,,,

56. It is argued on behalf of the appellants that as a matter of fact the benefit has accrued to the Government on account of the mining activities of the ,,,,,

Appellant on its own private land purchased from private parties, and without any support from the Government, in the form of acquisition proceedings" ,,,,,

or otherwise. The said royalty is paid as per fixed per tonne rates prescribed by the Government by notifications issued on a year on year basis, and is" ,,,,,

not variable from person to person. Therefore, it is alleged that, irrespective of whether the Appellant was granted the mining lease or any other entity",,,,,

was granted the same, the rate at which the royalty would be paid would be the same without any adverse impact to the exchequer.",,,,,

57. It is also a matter of fact that despite several changes in political dispensation in the State of Andhra Pradesh, namely on September 3, 2009",,,,,

(Government of Shri K. Rosaiah) on November 25, 2010 (Government of Shri N. Kiran Kumar Reddy), on March 1, 2014 (President's Rule in the",,,,,

state), and thereafter on June 8, 2014 till May, 2019 (Government of Telugu Desam Party), no attempts have been made either to cancel the Mining",,,,,

Lease granted in favour of the Appellant or to satisfy the inquiry report submitted by Hon'ble Mr. Justice P. Ramakrishnam Raju.,,,,,

58. The next argument addressed on behalf of appellant is that there was no commission of a scheduled offence by the Appellant Company as,,,,,

envisaged within the meaning of Section 3 read with Section 2 (u) of the PMLA, for reasons elaborated hereinafter. No retrospective application of",,,,,

provisions of PMLA can be applied as the Mining Lease over the limestone area of 2037.52 acres in Kadapa District was admittedly allotted in favour,,,,,

of the Appellant as early as March 27, 2006 vide G.O. No. 95, and the Mining Lease Deed was executed as early as on March 29, 2006.",,,,,

59. Admittedly, Sections 120-B and 420 of the IPC and Section 13 of the PCA were added as "Scheduled Offences" by way of the Prevention of",,,,,

Money Laundering (Amendment) Act of 2009 (21 of 2009) which came into effect only June 01, 2009, much after the grant of the mining lease in the",,,,,

year 2006.,,,,,

60. The Respondent has chosen also invoked the provisions of the offences of Section 13 of the PCA, Section 120-B and Section 420 of the IPC as",,,,,

"Scheduled Offences" despite the fact that the purported offences were not "Scheduled Offences" within the meaning of Section 3 read with,,,,,

Section 2(u) of the PMLA, at that period of time and these were not existed. They were incorporated w.e.f. 15.06.2009. It is submitted on behalf of",,,,,

appellants that the provisions of law cannot be retrospectively applied, as Article 20(1) of the Constitution bars ex-post facto penal laws and no person",,,,,

can be prosecuted under Sections 3 and 4 of the Act. on the allegations which occur earlier by applying the provisions of law, which have come into",,,,,

force after the alleged incident.,,,,,,

61. In the impugned order dated November 23, 2016, it is held that proceeds on the basis that the offence of money laundering under Section 3 of",,,,,

PMLA is a continuing one, despite the allegations of commission of the offences and acquisition of proceeds there from having occurred prior to the",,,,,

offences being notified in the Schedule of PMLA. The impugned order has referred the following decision-B. Rama Raju v. Union of India -,,,,,

Honâ??ble Andhra Pradesh High Court in Writ Petition No. 10765, 10769 & 23166 of 2010 decided on March 4, 2011 (para 50 and 51)",,,,,

â??50. On analysis of the provisions of Section 5, 8, 17 and 18, it is clear that provisions of the Second Amendment Act have carefully",,,,,

ironed out the creases and the latent rucks in the texture of the provisions of the Act relating to attachment, adjudication and confiscation",,,,,

in Chapter-III. Attachment or confiscation of proceeds of crime in the possession of a person who is not accused or charged of an offence,,,,,

under Section 3 isthus not an incorporation for the first time by the provisions of the Second Amendment Act, 2009. The contention on",,,,,

behalf of the Petitioners that the second proviso to Section 5(1) of the Act, applies only to property acquired/possessed prior to enforcement",,,,,

of this provision or if interpreted as being retrospective, the provision itself must be invalidated for arbitrary retrospective operation is",,,,,

therefore without substance or force.,,,,,,

51. The above contention does not merit acceptance even otherwise. Article 20 of the Constitution enacts an injunction only in respect of ex,,,,,

post facto laws resulting in conviction for offences or imposition of penalties greater than which might have been inflicted under the law,,,,,

enforceable at the time of commission of the offence. No provision of the Constitution has been brought to our notice which prohibits a,,,,,

legislative measure which targets for attachment and confiscation proceeds of crime. On the text and authority of our Constitution while it,,,,,

may perhaps gainfully be contended that conviction for the offence of money-laundering cannot be recorded if the said offence is,,,,,

committed prior to the enforcement of Section 3 of the Act, such a contention cannot be advanced to target proceedings for attachment and",,,,,

confiscation, as these fall outside the pale of the prohibitions of the Constitution,

in particular Article 20(1).â??",,,,,

Distinguishing factors:,,,,,

i) The factual basis of the Rama Raju judgment was that the admission of guilt by B. Ramalinga Raju himself of acts of inflating cash and bank,,,,,

balances, falsification of projections of financial position of Satyam Computers over several years, inflated revenues, consequential artificial cash etc.,",,,,,

contained in a letter dated January 7, 2009. In the present Appeal, the Appellant has always maintained that the grant of mining lease is lawful and in",,,,,

accordance with law.,,,,,

ii) The issues in the Rama Raju case relate to a challenge to the vires of the provisions of PMLA. The Petitioners, inter alia, seek invalidation of",,,,,

Sections 5(1), 8(1), 8(2), 8(3), 8(4), 23 and 24 of the PMLA and other consequential reliefs. The observations of the Honâ?ble High Court as regards",,,,,

Article 20 is not the ratio decidendi and is merely obiter and is not an authority for Article 20 of the Constitution.,,,,,

In this regard, the Appellantâ??s seek to rely upon the following judgment:",,,,,

Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors., (2003) 2 SCC 111 â??"",,,,,

â??59. A decision, as is well-known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well-",,,,,

settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decisionâ?;and (2),,,,,

Bharat Petroleum Corporation Ltd. and Anr.v. N.R. Vairamani and Anr., (2004) 8 SCC 579.",,,,,

â??9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the,,,,,

decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and,,,,,

that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of,,,,,

Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to",,,,,

embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret",,,,,

judgments. They interpret words of statutes; their words are not to be

interpreted as statutes.â??,,,,,

iii) The Honâ??ble High Court has clearly stated that analysis of the provisions of PMLA by it in the Rama Raju judgment, has been confined to the",,,,,

narrow set of facts and circumstances of the cases on hand i.e. the judgment will not be a judgment in rem, and will not have precedential value in the",,,,,

facts of the present case as mentioned in paragraphs 13 and 14.,,,,,

iv) A Special Leave Petition challenging the aforesaid judgment of the Honâ??ble Andhra Pradesh High Court is pending before the Honâ??ble Supreme,,,,,

Court. Therefore, the judgment of the Honâ??ble Andhra Pradesh High Court is yet to attain finality.",,,,,

62. On the issue of the question of retrospectively effect and operation, the Maxwell on Interpretation of Statutes, Twelfth Edition, at page 215, under",,,,,

the heading-Retrospective Operation of Statutes, writes.",,,,,

â??UPON the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective,,,,,

operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a,,,,,

retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective,,,,,

operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. The",,,,,

statement of the law contained in the preceding paragraph has been â??so frequently quoted with approval that it now itself enjoys almost,,,,,

judicial authority.â??,,,,,

63. In *Lauri v. Renad* (1892) 3 Ch 402, by Lindley, L.J. that it is a fundamental rule of English Law that no â??statute shall be construed so as to",,,,,

have a retrospective operation, unless its language is such as plainly to require such a construction. And the same rule involves another and",,,,,

subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.",,,,,

It is stated that it is well recognized rule that statutes should be interpreted, if possible, so as to respect vested rights, but such a construction should",,,,,

never be adopted if the words are open to another construction. It is also stated that if a statute be ambiguous, the Court should lean to the",,,,,

interpretation which would support existing rights.,,,,,

64. In the Queen v. The Inhabitants of St. Mary, Whitechapel (1848) 12 QB 120, the Court pointed out that "The Statue which in its direct",,,,,

operation of prospective cannot be properly called a retrospective statute because a part of the requisites for that action is drawn from the time,,,,,

antecedent to its passing",,,,,,

65. The fundamental rule of interpretation of statutes. Following case laws are cited:-,,,,,

a) Monnet Ispat and Energy Limited Versus Union of India and Others (2012) 11 SCC at page 90 paras 153 & 154 held that:,,,,,

"153. Having carefully considered Section 17-A, I have no hesitation in holding that the said provision is prospective. There is no",,,,,,

indication in Section 17-A or in terms of the amending Act that by insertion of Section 17-A Parliament intended to alter the pre-existing,,,,,

state of affairs. Parliament does not seem to have intended by bringing in Section 17-A to undo the reservation of any mining area made by,,,,,

the State Government earlier thereto for exploitation in public sector. Parliament has no doubt plenary power of legislation within the field,,,,,

assigned to it to legislate prospectively as well as retrospectively. As early as in 1951 this Court in Keshavan Madhava Menon v. State of,,,,,

Bombay [AIR 1951 SC 128 : (1951) 52 Cri LJ 860] had stated about a cardinal principle of construction that every statute is prima facie,,,,,

prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute,,,,,

sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only. In Principles of Statutory",,,,,,

Interpretation (7th Edn., 1999) by Justice G.P. Singh, the statement of Lord Blanesburg in Colonial Sugar Refining Co. v. Irving [1905 AC",,,,,,

369 : (1904-07) All ER Rep Ext 1620 (PC)] and the observations of Lopes, L.J. in Pulborough Parish School Board Election, In re, Bourke",,,,,,

v. Nutt [(1894) 1 QB 725 : (1891-94) All ER Rep 831 (CA)] have been noted as follows: (QB p. 737),,,,,,

"In the words of Lord Blanesburg, "provisions which touch a right in existence at the passing of the statute are not to be applied",,,,,,

retrospectively in the absence of express enactment or necessary intendment".
"Every statute, it has been said", observed Lopes, L.J.",,,,,,

â??which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches" ,,,,,

a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effectâ??.â??" ,,,,,

154. Where an issue arises before the court whether a statute is prospective or retrospective, the court has to keep in mind presumption of" ,,,,,

prospectivity articulated in the legal maxim nova constitution futuris formam imponere debet non praeteritis i.e. â??a new law ought to regulate what ,,,,,

is to follow, not the pastâ?. The presumption of prospectivity operates unless shown to the contrary by express provision in the statute or is otherwise" ,,,,,

discernible by necessary implication.â??" ,,,,,

b) Keshavan Madhava Menon Versus State of Bombay, AIR 1951 SC 128 â?" para 7 [7 Judge Bench of Honâ??ble Supreme Court]" ,,,,,

Section 8(5) before amendment,"Section 8(5) after amendment

w.e.f. 15.02.2013" ,,,,,

(5) Where on conclusion of a trial for any

scheduled offence, the persons concerned is

acquitted, the attachment of the property of

the retention of the seized property or record

under sub-section (3) and net

income, if any, shall cease to have effect." ,"(5) Where on conclusion of a trial of an

offence under this Act, the Special Court finds

that the offence of money laundering has been

committed, it shall order that such property

involved in the money-

laundering or which has been used for

commission of the offence of money-

laundering shall stand confiscated to the

Central Government." ,,,,,

69. It may be seen from the above table that prior to the amendment, the attachment of a property will cease to have effect, the moment the" ,,,,,

persons concerned are acquitted on conclusion of trial for any scheduled offence. But after the amendment, the conviction of a person for a",,,,,

scheduled offence has no nexus to the confiscation of the property. What is now important is to see whether the Special Court finds the,,,,,

commission of an offence of money laundering or not.,,,,,

70. The contention of Mr. S. Ravi, learned senior counsel for the petitioner is that the petitioner company was not even implicated as an",,,,,

accused in the criminal case. All the accused, who were individuals and who were at the helm of affairs of the petitioner company, were",,,,,

prosecuted and they were convicted by the Special Court by a judgement dated 09-04-2015. Since the charge sheets filed prior to the,,,,,

amendment and since the petitioner was not one of the accused, the amendment to Section 8(5) will not apply to the case of the petitioner." ,,,,,

That vested rights cannot be taken away by retrospective application of the law (especially quasi criminal) is too well settled. A useful,,,,,

reference may be made in this regard to the judgements of the Supreme Court in STO v. Oriental Coal Corporation MANU/SC/0427/1988 :,,,,,

1988 (Suppl) SCC 308 and in K.S. Paripoornan v. State of Kerala MANU/SC/0200/1995 : (1994) 5 SCC 593. In Oriental Coal Corporation,,,,,

the Supreme Court pointed out that where there is no hint of retrospectivity, in the statute itself, it is not possible to read retrospectivity." ,,,,,

Similarly, in K.S. Paripoornan, the Supreme Court indicated the distinction between a statute dealing with substantive rights and a statute," ,,,,,

which relates to procedure or evidence or is declaratory in nature. A statute dealing with substantive rights is prima facie prospective unless,,,,,

it is expressly or by necessary implication made to have retrospective effect. On the contrary, a statute concerned mainly with matters of" ,,,,,

procedure, or evidence or which is declaratory in nature has to be construed as retrospective, unless there is clear indication to the contrary." ,,,,,

71. The PMLA is not a statute dealing merely with matters of procedure or evidence or which is declaratory in nature. It is a statute which,,,,,

affects substantive rights of parties. Therefore, by the test indicated in K.S. Paripoornan, it cannot have retrospective effect." ,,,,,

72. In fact, the PMLA ,2002 underwent several amendments from the year 2005 onwards. Even the expression "proceeds of crime" ,,,,,

defined in Section 2(1)(u) underwent an amendment by Act 2 of 2013 and later by Finance Act, 2016. Today, the definition includes any" ,,,,,

property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. Therefore," ,,,,,

even the property in the hands of third parties can be attached and confiscated, if it is shown that they represent proceeds of crime. Hence," ,,,,,

by its very nature, the provisions of the Act cannot have retrospective effect." ,,,,,

68. Thus, prima facie, there is a force in the submissions of the appellants that the said provisions could not be applied as the allegation of proceed of" ,,,,,

crime and money laundering were much prior in time. However, in the nature of facts and allegation made in the charge-sheet filed by the CBI, this" ,,,,,

Tribunal chooses to decide the matter on merit.,,,,,

69. This Tribunal has also noticed that there are many issues raised by the appellants either to have been ignored or not decided as per law by the ,,,,,

adjudicating authority.,,,,,

70. Total Alleged Proceeds of Crime: ,,,,,

The transactions labelled as alleged proceeds of crime according to the Provisional Attachment Order dated 29.06.2016 and O.C. No.618 of 2016 are ,,,,,

as follows: ,,,,,

416.20 Crs Monies realized by Mr. Y.S. Jagan Mohan Reddy from selling of shares to M/s. PARFICIM SAS at Rs. 671.20 per share.,,,,,

23.80 Crs Shares held by Mr. Y.S. Jagan Mohan Reddy in BCCL (From the monies received from Mr. Nimmagadda Prasad),,,,,

15.00 Crs Shares held by Silicon Builders in BCCL (From the monies invested by Mr. Nimmagadda Prasad),,,,,

81.25 Crs Dividend received by Mr. Y.S. Jagan Mohan Reddy on 2,38,06,435 shares of BCCL" ,,,,,

51.20 Crs Dividend received by Silicon Builderson 1,50,00,000shares of BCCL" ,,,,,

152.84 Crs Value of limestone extracted by BCCL ,,,,,

19.50 Crs Salaries of Mrs. Y.S. Bharathi Reddy ,,,,,

7.18Crs Salaries of Mr. JellaJagan Mohan Reddy ,,,,,

----- ,,,,,

766.97 Crs Total quantification of PoC ,,,,,

Total value of properties attached as "Proceeds of Crime" @ Pg. 52 of PA Order dated 29.06.2016 is Rs. 748.95 Crs.,,,,,,

71. Relating to Mrs. Y.S. Bharathi Reddy (Appeal No. 1574 of 2016):,,,,,

Salaries received by Mrs. Y.S. Bharathi Reddy,,,,,

Mrs. Y.S. Bharathi Reddy was appointed Director of BCCL, which is a company incorporated and is subject to regulations framed under the",,,,,,

Companies Act, 1956. The allegation leveled against Mrs. Y.S. Bharathi Reddy that she is continuing to be a Director of BCCL, which shows the",,,,,,

wrongful tacit relation between Mr. Y.S. Jagan Mohan Reddy and BCCL is without any substances as the appointment of Mrs. Y.S. Bharathi Reddy,,,,,

as a Director has been done in a legal manner and is in accordance with the provisions of the Companies Act. The appointment and the remunerations,,,,,

paid to Mrs. Y.S. Bharathi Reddy are in consonance with the relevant provisions and regulations of the Companies Act.,,,,,,

72. No allegations of any such appointment and remuneration paid to Mrs. Y.S. Bharathi Reddy being wrongful have therefore been raised either by,,,,,

the CBI in their investigation nor has been the subject matter of any issue in the enquiry/proceedings under the IT Act initiated by Income Tax,,,,,

Department, which have been substantially relied upon by the CBI and the respondents herein.",,,,,,

73. Income derived by a person working in a post can never be, therefore, termed as proceeds of crime. Mrs. Y.S. Bharathi Reddy has been serving",,,,,,

the company as its Director and Chairperson and the company has been generating surplus and profits to the satisfaction of the shareholders. The said,,,,,

fact is not denied on behalf of respondent.,,,,,,

74. It is correctly alleged that BCCL is a professionally managed and run company, held in majority by VICAT which is one of largest Cement",,,,,,

manufacturer in the world having its facilities in over eleven (11) countries. The balance sheets and the financial result of BCCL are subjected to audit,,,,,

processes and are published each year. Various mechanisms for the purpose of enquiring into any irregular functioning of any company are provided,,,,,

both in the private and public realm of the Companies Act. Such steps also include appropriate investigations by specified agencies. The fact that the,,,,,

investments made into BCCL by the foreign shareholder and the manner of functioning of BCCL has not been the subject of any enquiry would,,,,,

disclose that there can be no criminality imputed to the functioning of Mrs. Y.S. Bharati Reddy as Chairperson and being paid remuneration therefor.,,,,,

75. The allegations of the salaries being improperly drawn also stand contradicted by the admitted circumstance that BCCL is now controlled in.,,,,,

majority by PARFICIM SAS, France, a multi-national company. As neither Mr. Y.S. Jagan Mohan Reddy nor his associated shareholders have a",,,,,

majority stake, the insinuation that the salary amounts are dictated by collateral considerations would be impermissible.",,,,,

a) The flow of investments from Silicon Builders into BCCL is in regular course of business and the transaction in itself is completely legal and stands.,,,,,

test to standards of the Companies Act. Therefore, Mrs. Y.S. Bharathi Reddy, only by being in virtue of the director of Silicon Builders at the time of",,,,,

such investment, cannot be faulted with.",,,,,

Rs. 15.5 Crs. received from Y.S. Jagan Mohan Reddy is accrued from genuine business transaction.,,,,,

a) Mrs. Y.S. Bharathi Reddy received Rs. 1.5 Crs and Rs. 14 Crs from her husband, Mr. Y.S. Jagan Mohan Reddy on 14.06.2010 and 01.10.2010",,,,,

respectively from the monies accrued by Mr. Y.S. Jagan Mohan Reddy from the sale of his shares of BCCL to PARFICIM SAS, France. It is",,,,,

submitted that the sale of 62,00,972 shares to PARFICIM SAS, France by Mr. Y.S. Jagan Mohan Reddy for Rs. 416.20 Crs is a genuine business",,,,,

transaction.,,,,,

b) As the monies accrued by Mr. Y.S. Jagan Mohan Reddy from the sale of shares of BCCL are legitimate earnings, in light of the fact that the said",,,,,

shares were acquired with the monies generated from genuine business transactions, the Rs. 1.5 Crs and Rs. 14 Crs received by Mrs. Y.S. Bharathi",,,,,

Reddy cannot be termed, much less be attached as proceeds of crime.",,,,,

76. PML Act does not empower the respondents to attach the legitimate earnings made by Mrs. Y.S. Bharathi Reddy for rendering her services.,,,,,

connected with legitimate activity of a company. Further, attachment of past earnings of an alleged proceeds of crime is beyond the power of the",,,,,

respondents under Section 5 of the PML Act.,,,,,

77. Thus, the salaries amount received by Mrs. Y.S. Bharati Reddy and remuneration received by Jella Mohan Reddy are not proceed of crime. The",,,,,

appeal is accordingly allowed.,,,,,

78. Thus, the appeal filed by her is allowed as it was not proceed of crime. The attachment order was wrongly passed." ,,,,,

79. With regard to remuneration received by Mr. Jella Jagan Mohan Reddy, the appeal filed by him is allowed by passing separate order." ,,,,,

80. The only premise of contending that the share application money paid by Sandur Power to Classic Realty be treated as proceeds of crime is on a ,,,,,

corresponding allegation made that Mr. Y.S. Jagan Mohan Reddy had acquired various shares from Sandur Power for a value of Rs.80.27 Crs.,,,,,

81. With regard to monies received by M/s. Classic Realty Pvt. Ltd. and merged entities (Appeal No. 1575 of 2016), the respondent merely on" ,,,,,

assumption is pressing that the share application money received by Classic Realty is proceeds of crime. Such a finding would work against the ,,,,,

provisions of the Companies Act and the accounting standards specified by the Regulatory Agencies in relation to the affairs of the Company and the ,,,,,

status of such share application money. Share application money is to be treated as an advance lying with Classic Realty and the attachment, if any," ,,,,,

that can be resorted to by the respondents is permissible to the extent of receivables or entitlement of the share applicants where is the question of ,,,,,

money laundering. The attachment is wrongly done. The appeal is allowed accordingly.,,,,,

82. It is rightly alleged that the said shares acquired by Mr. Y.S. Jagan Mohan Reddy from Sandur Power have been separately attached and there is ,,,,,

no allegation that the said shares were overvalued for the purpose of acquisition. Therefore, as the value in relation to alleged proceeds of crime in the" ,,,,,

hands of Mr. Y.S. Jagan Mohan Reddy is attached (in form of shares), the money in the hands of Sandur Power cannot be called as proceeds of" ,,,,,

crime as it would amount to execution of double attachment and for twice the value which is contrary to the scheme of PML Act.,,,,,

83. Therefore, as the monies received by Sandur Power (which have been separately attached at the hands of Sadur Power) which have further been" ,,,,,

paid to Classic Realty as share application money cannot be attached as the same would amount to triple attachment of property. The said practise ,,,,,

cannot be allowed. The proceed of crime amount has to be finally identified, otherwise, there would be no end." ,,,,,

84. Relating to amalgamated entities viz, M/s. Nivish Infrastructure Pvt. Ltd (Defendant No. 9), M/s. Shalom Infrastructure Pvt. Ltd (Defendant No." ,,,,,

10), M/s. Marvel Infrastructure Pvt. Ltd (Defendant No. 14) and M/s. Inspire Hotels Pvt. Ltd (Defendant No. 17)",,,,,,

a) The Honâ??ble High Court of Karnataka, vide Orders dated 11.03.2016 in C.A. 346 of 2015 ordered amalgamation of:",,,,,,

1. Nivish Infrastructure Pvt. Ltd.,,,,,,

2. Shalom Infrastructure Pvt. Ltd.,,,,,,

3. Marvel Infrastructure Pvt. Ltd.,,,,,,

4. Inspire Hotels Pvt. Ltd.,,,,,,

b) Nivish Infrastructure: Classic Realty had purchased shares in Nivish Infrastructure against a consideration of Rs. 8.20 Crs from the monies it,,,,,

had received from Mr. Y.S. Jagan Mohan Reddy. As the monies realized by Mr. Y.S. Jagan Mohan Reddy are from a genuine business transaction,",,,,,

monies at the hands of Nivish Infrastructure cannot be termed or attached as proceeds of crime.,,,,,,

c) Shalom Infrastructure: No allegations have been leveled against Shalom, other than a bare allegation that Shalom Infrastructure received Rs. 33",,,,,,

Crs from Silicon Builders (which are totally distinct and irrelevant to the instant complaint). ED has sought to attach properties worth more than Rs.,,,,,,

43.70 Crs without any justification and has claimed the same to be part proceeds of crime and part equivalent to the value of proceeds of crime.,,,,,,

without distinguishing the quantum of the same.,,,,,,

Amount,"Cheque

No.",Remarks,,,

Rs.3,00,00,000/-",120848,Investment from M/s Sandur Power,,,

Rs.2,50,00,000/-",761124,Investment from M/s Sandur Power,,,

Rs.1,10,00,000/-",761133,Investment from M/s Sandur Power,,,

Rs.5,00,00,000/-",120856,Investment from M/s Sandur Power,,,

Rs. 5,00,00,000/-",130812,"Investment from Carmel Asia Holdings Pvt. Ltd.

Subsequently requested to be treated as investment

by Investment from M/s Sandur Power leading to

refund of said advance back to Carmel Asia

HoldingsPvt. Ltd.",,,

(Rs.1,60,00,000/-)",108366,Returned back to M/s Sandur Power,,
Rs.5,00,00,000/-",120866,Investment from M/s Sandur Power,,
(Rs. 5,00,00,000/-)",224277,"Returned back to Carmel Asia Pvt. Holdings as per
request jointly made by Carmel Asia Holdings Pvt.
Ltd. And Sandur Power",,,
Rs.15,00,00,000/-",,Total Received by Silicon Builders,,
88. Monies invested by Beta Avenues into Carmel Asia are already attached at
the hands of Carmel Asia in O.C. No. 276 of 2014 (VANPIC,,,,,
Attachment). Beta Avenues invested into Carmel Asia as equity participation and
transferred Rs. 5 Crs on 14.12.2006 and Rs. 15 Crs on 03.01.2007,,,,,
The said Rs. 20 Crs is the only investment received by Carmel Asia from Beta
Avenues. The respondent alleges in O.C. No. 276 of 2014 that Rs. 20,,,,,
Crs received by Carmel Asia from Beta Avenues were utilised for purchasing
shares in M/s. Jagati Publication Ltd. and thereafter proceed to attach,,,,,
Jagati Publication's Shares held by Carmel Asia. The respondent now seek to
make further attachments of shares worth face value of Rs. 15 Crs,,,,,
(and recognised market value of much higher) of BCCL held by Silicon Builders
and Rs. 51.20 Crs of dividends thereon in the instant Complaint i.e,",,,,
O.C. No. 618 of 2016 on the contention that Silicon Builders received monies
from Carmel Asia and had used the same amounts to purchase BCCL,,,,,
shares. Therefore, the attachment of 1,50,00,000 shares held by Silicon Builders
in BCCL and the Rs. 51.20 Crs of dividend received by Silicon",,,,,
Builders ought to be released from any attachment.,,,,,
89. Relating to M/s. Capstone Infrastructure Pvt. Ltd. (Appeal No. 1583 of
2016):,,,,,
It is the case of appellants that the investments received by Capstone
Infrastructure from Classic Realty are share subscription amounts in lieu of,,,,,
allotment of 1,53,00,000 shares of Capstone Infrastructure to Classic Realty. The
said transaction is a genuine business transaction and therefore,",,,,
investment of monies into Capstone Infrastructure cannot be faulted with and be
termed as "proceeds of crime". Investments received by,,,,,
Capstone Infrastructure from Classic Realty are monies which were in turn
invested into Classic Realty by Mr. Y.S. Jagan Mohan Reddy from the,,,,,
monies accrued after sale of his shares in BCCL to PARFICIM SAS, France. As the

monies accrued by Mr. Y.S. Jagan Mohan Reddy from the sale",,,,,

of his shares in BCCL are legitimate earnings, in light of the fact that the said shares were acquired with the monies generated from genuine business",,,,,

transactions. Therefore, investments received by Capstone Infrastructure from Classic Realty cannot be termed as proceeds of crime. Thus, the same",,,,,

is released by allowing the appeal.,,,,,,

90. With regard to M/s. Revan Infrastructure Pvt. Ltd. (Appeal No. 1584 of 2016):,,,,,

It is the case of the appellants that investments received by Revan Infrastructure from Classic Realty are share subscription amounts in lieu of,,,,,

allotment of 20,00,000 shares of Revan Infrastructure to Classic Realty. The said transaction is a genuine business transaction and therefore,",,,,,

investment of monies into Revan Infrastructure cannot be faulted with and be termed as "proceeds of crime". Investments received by Revan,,,,,

Infrastructure from Classic Realty are monies which were in turn invested into Classic Realty by Mr. Y.S. Jagan Mohan Reddy from the monies,,,,,

accrued after sale of his shares in BCCL to PARFICIM SAS, France. Since the monies accrued by Mr. Y.S. Jagan Mohan Reddy from the sale of",,,,,

his shares in BCCL are legitimate earnings, in light of the fact that the said shares were acquired with the monies generated from genuine business",,,,,

transactions. Therefore, investments received by Revan Infrastructure from Classic Realty cannot be termed as proceeds of crime. The appeal is",,,,,

allowed.,,,,,,

91. M/s. Saraswati Power and Industries Pvt. Ltd. (Appeal No. 1587 of 2016):,,,,,

(i) Rs. 8 Crs received from Mr. Y.S. Jagan Mohan Reddy.,,,,,,

Saraswati Power received Rs. 8 Crs from Mr. Y.S. Jagan Mohan Reddy from the monies accrued from the sale of his shares of BCCL to,,,,,

PARFICIM SAS, France. It is submitted that the sale of 62,00,972 shares to PARFICIM SAS, France by Mr. Y.S. Jagan Mohan Reddy for Rs.",,,,,

416.20 Crs is a genuine business transaction. The monies accrued by Mr. Y.S. Jagan Mohan Reddy are from the sale of his shares in BCCL are,,,,,

earnings. The said shares were acquired with the monies generated from genuine business transactions, investments received by Saraswati Power",,,,,

cannot be termed as proceeds of crime. Thus, the appeal is allowed.",,,,,

92. Attachment of Rs. 15 Crs received from Sandur Power amounts to triple attachment:,,,,,

The investments of Rs. 15 Crs from Sandur Power into Saraswati Power made as share subscription monies against allotment of 1,50,00,000 Shares",,,,,

in Saraswati Power are monies received by Sandur Power from Mr. Y.S. Jagan Mohan Reddy as consideration against sale of shares of various,,,,,

companies held by it.,,,,,

Mr. Y.S Jagan Mohan Reddy had accrued such monies from the sale of his shares in BCCL to PARFICIM SAS, France, which is a genuine business",,,,,

transaction. Against him, no action is pending. Counsel for the respondent has admitted that amount paid by French Company against the shares is the",,,,,

clean money. The profit earned by the group companies cannot be treated as proceed of crime once the original purchase of shares are done under,,,,,

business transaction.,,,,,

It is therefore submitted that as the monies accrued by Mr. Y.S. Jagan Mohan Reddy from the sale of shares of BCCL are legitimate earnings, in light",,,,,

of the fact that the said shares were acquired with the monies generated from genuine business transactions, the Rs. 15 Crs received by Saraswati",,,,,

Power through Sandur Power cannot be termed, much less be attached as proceeds of crime." ,,,,,

93. It is alleged by the respondent that the share subscription monies received by Saraswati Power from Sandur Power be treated as proceeds of,,,,,

crime is on a corresponding allegation made that Mr. Y.S. Jagan Mohan Reddy had acquired various shares from Sandur Power for a value of,,,,,

Rs.80.27 Crs. The said shares acquired by Mr. Y.S. Jagan Mohan Reddy from Sandur Power have been separately attached. It is pertinent to note,,,,,

that there is no allegation that the said shares were overvalued for the purpose of acquisition by Mr. Y.S. Jagan Mohan Reddy from Sandur Power.,,,,,

Even if Mr. Y.S. Jagan Mohan Reddy is alleged to have generated Rs.80.27 Crs of proceeds of crime (out of the total of Rs.416.20 Crores derived,,,,,

from sale of shares of PARFICIM SAS, France), Mr.Y.S. Jagan Mohan Reddy has used Rs. 80.27 Crs to acquire valuable securities and shares for",,,,,

the said value of Rs.80.27 Crs from Sandur Power. The said shares have already been attached separately. Therefore, once the value in relation to",,,,,

proceeds of crime in the hands of Mr. Y. S. Jagan Mohan Reddy (pertains to the

investments made to Sandur Power) are attached, the money in the",,,,,
hands of Saraswati Power, on the pretext that it had received monies from Sandur Power, cannot be called as proceeds of crime as it would amount",,,,,
to execution of triple attachment and for twice the value which is contrary to the scheme of PML Act. The said act on the part of respondent is not,,,,,
permissible in law. The findings in this regard are set-aside.,,,,,

94. M/s. Silicon Infrastructre Pvt. Ltd. (Appeal No. 1582 of 2016) , M/s. Bhagavathi Sannidhi Pvt. Ltd. (Appeal No. 1585 of 2016), M/s.",,,,,

Utopia Infrastructure Pvt. Ltd. (Appeal No. 1586 of 2016) and M/s. Harish Infrastructure Pvt. Ltd. (Appeal No. 1588 of 2016),,,,,

In the Complaint, there is no reference or allegation regarding investment of monies into the above mentioned appellants. The respondents have",,,,,

alleged the concept of â??beneficial ownershipâ? for causing attachments in the hands of the above appellants. Section 5 of PML Act does not,,,,,

sanction employment of concept of â??beneficial ownershipâ? for the purpose of attachment of properties. A company is an independent juristic,,,,,

entity that has been incorporated under the provisions of the Companies Act. A Company bears an identity that is entirely distinct from its equity,,,,,

holders. The purported attachments caused to be made even beyond the wrongful terming of proceeds of crime in the hands of various companies on,,,,,

a premise that they are being beneficially owned by Mr. Y.S. Jagan Mohan Reddy would be legally impermissible as any such extension of liability,,,,,

cannot be fastened onto an independent juristic entity like a Company. Under the PMLA inter alia it is a mandatory prerequisite that a person/entity is,,,,,

in possession of proceeds of crime for issuance of an attachment order. Such powers cannot be extended beyond the scope of PML Act by adding,,,,,

the new concepts which is alien to the provisions of the PML Act.,,,,,

95. The concept of beneficial ownership cannot be attributable under Sec. 2(fa) of the PML Act is not attracted in the facts of the case. Mr. Y.S.,,,,,

Jagan Mohan Reddy has no equity in most of the companies directly and does not control the said juridical entity and in the absence of such finding.,,,,,

The appeals are accordingly allowed by set-aside the impugned order.,,,,,

96. Errors in computation of â??Proceeds of Crimeâ?? and attachment of the same:,,,,,

(i) Non-computation of Taxes paid:,,,,,

a) Capital Tax paid by Mr. Y.S. Jagan Mohan Reddy: The respondents allege that Rs. 416.20 Crs was realized by Mr. Y.S. Jagan Mohan Reddy from,,,,,

sale of his shares in BCCL to PARFICIM SAS, France and the same is proceeds of crime. The respondents also record the factum that of the Rs.",,,,,

416.20 Crs, an amount of Rs. 84 Crs paid as Capital Gains Tax to the IT Department. Thus, the proceeds of crime available for attachment after the",,,,,

said payment of Capital Gains Tax, is only Rs. 332 Crs (Rs. 416.20 Crs â?" Rs. 84 Crs). The value of the crime proceeds allegedly in the hands of",,,,,

Mr. Y.S. Jagan Mohan Reddy are such monies which remain after factoring the monies paid towards tax, and to the extent of the amounts paid",,,,,

towards tax, there is reduction in the quantum of the proceeds of crime in the hands of Mr. Y.S. Jagan Mohan Reddy. Disregarding such payments",,,,,

and the effect of such payments on the quantified crime proceeds, by reasoning perverse in law, the respondents proceeded to attach the entire money",,,,,

of Rs. 416.20 Crs. against the law and can be permitted as the French Company is charge-sheeted. It is admitted that the amount by the said,,,,,

company was untainted money. Even profit made from selling the shares cannot be treated as proceed of crime unless the original investment was a,,,,,

bribe amount.,,,,,

b) Income Tax paid by Mrs. Y.S. Bharathi Reddy: In respect of remunerations paid to Mrs. Y.S. Bharathi Reddy which can, by no stretch of",,,,,

imagination, be called as proceeds of crime, the respondents deliberately chose not to exclude the income tax paid thereon, amounting to Rs. Rs.6.37",,,,,

Crs for computing any net amount as â??Proceeds of Crimeâ? for the purpose of causing of attachment. The respondents failed to notice that it is,,,,,

only in the cases of indirect taxes that the value of the property gets accretion to the extent of such indirect taxes. However, in the case of direct",,,,,

taxes, such as Income Tax, the value of the property, gets reduced to the extent of the IT paid and therefore, ought to have been subtracted from the",,,,,

overall alleged proceeds of crime, for the purpose of attachment. The reasoning to the contrary by the authority is not correct.",,,,,

97. Under-valuation of shares of BCCL held by Mr. Y.S. Jagan Mohan Reddy.,,,,,

Undisputedly, the respondent despite acknowledging that Mr. Y.S. Jagan Mohan Reddy had paid out of the total sale proceeds of Rs.416.20 Crs, an",,,,,

amount of Rs. 12.41 Crores towards purchase of shares of BCCL held by Sandur

Power, while quantifying the value for the purpose of attachment," ,,,,,
the shares were undervalued at Rs. 18,50,000/- rather than the consideration
value of Rs. 12.41 Crores paid by Mr. Y.S. Jagan Mohan Reddy as" ,,,,,
noted by the respondents in the Complaint itself.,,,,,

98. Double Attachments: ,,,,,

a) At the hands of Sandur Power, Classic Realty and Saraswati Power: As detailed
above, the attachments at the hands of Sandur Power for" ,,,,,

sale of shares owned by it in various companies to Mr. Y.S. Jagan Mohan Reddy
would constitute double attachment. Further attachments at the ,,,,,

hands of Classic Realty and Saraswati Power on the pretext of receiving monies
from Sandur Power constitutes triple attachment at the hands of ,,,,,

Classic Realty and Saraswati Power respectively.,,,,,

b) Equivalent value of Rs. 30 Crs already attached in VANPIC Attachment:
Further, an amount of Rs. 30 Crs was received by Mr. Y.S. Jagan" ,,,,,

Mohan Reddy from Mr. Nimmagadda Prasad and group, which has already been
attached in O.C 276 of 2014. Again, the attachments in the present" ,,,,,

proceedings to the tune of Rs. 416.20 Crs arise from sale of shares worth Rs. 6.2
Crs out of the same Rs 30 Crs. Therefore, as Rs. 30 Crs of" ,,,,,

equivalent value is already attached as being investments from Mr. Nimmagadda
Prasad and group companies, Rs. 30 Crs ought to be deducted here." ,,,,,

c) Rs. 15 Crs received by Carmel Asia from Beta Avenues already attached:
Carmel Asia had received Rs. 20 Crs in total from Beta ,,,,,

Avenues. The said Rs. 20 Crs are alleged to have been utilized by Carmel Asia in
purchasing shares in Jagati Publications Ltd. and therefore, Rs. 20" ,,,,,

Crs worth of shares in Jagati Publication held by Carmel Asia are already
attached in VANPIC Attachment. The respondents again seek to attach ,,,,,

Sr.

No.",Appellant,Property Attached,"Classified

as", "Attached

Value", "Guideline

Value

1., "M/s Utopia

Infrastructure

Private Limited", "Tangible Fixed Assets as detailed in the
Standalone Financial Statement for 2014-
15 (includes Company's asset at Plot
No.7,4&6, HUDA Heights, TS No.5(P),
Block-J, Ward No.12 and TS No.14(P)
Block-A, Ward No.12 of Hakimpet
Village
(Shaikpet) Golconda Mandal, Hyderabad", "Equivalent
to
Proceeds
of Crime", 58.40, 64.30
, "M/s Marvel
Infrastructure
Pvt Ltd", "Tangible Fixed Assets as detailed in the
Audited Balance Sheet for 2013-14", , ,
, "M/s Capstone
Infrastructure
Pvt Ltd", "Tangible Fixed Assets as detailed in the
Standalone Financial Statement for 2014-
15 (includes Company's asset at Plot
No.3,4&6, HUDA Heights, TS No.5(P),
Block-J, Ward No.12 and TS No.14(P)
Block-A, Ward No.12 of Hakimpet
Village
(Shaikpet) Golconda Mandal, Hyderabad." , , ,
, "M/s Harish
Infrastructure
Pvt Ltd", "Tangible Fixed Assets as detailed in the
Standalone Financial Statement 1 for
2014-15 (includes Company's asset at

Plot No.8, HUDA Heights, TS No.5(P),
Block-J, Ward No.12 and TS No.14(P)
Block-A, Ward No.12 of Hakimpet
Village
(Shaikpet) Golconda Mandal, Hyderabad.",,,
2.,"M/s Revan
Infra Pvt Ltd","Tangible Fixed Assets as detailed in the
Audited Balance Sheet for 2014-15
(includes company's asset 9 acres of
land situated in Nallur Village,
Channarayana Hobli, Devanahalli
Taluk, Bangalore Rural District,
Karnataka)","Equivalent
to
Proceeds
of Crime",6.79,13.50
3.,"Saraswati
Power &
Industries Pvt.
Ltd","903-28 acre of land situated at Guntur
District","Equivalent
to
Proceeds
of Crime",31.84,31.84
4.,"M/s Silicon
Infrastructure
Pvt Ltd","Tangible Fixed Assets as detailed in the
Audited Balance Sheet for 2013-14.
(Building at Koramangala, Bangalore
rented out to Amity College)","Equivalent

to

Proceeds

of Crime",6.54,13.88

5.,"M/s Shalom

Infrastructure

Pvt Ltd","Tangible Fixed Assets as detailed in the

Audited Balance Sheet for 2014-15

(includes company's asset Sakshi

Towers, Road No.1, Banjara Hills,

Hyderabad)","Part

Equivalent

to

Proceeds

of Crime

and Part

Proceeds

of Crime",43.70,43.70

6.,"M/s Silicon

Builders Pvt.

Ltd.,"Tangible Fixed Assets of M/s Silicon

Builders Private Limited as detailed in the

audited balance sheet for 2013-14

(include Company's assets " Land &

Building constructed at Sy No.195

Corporation No.34, PID No.99-1-34, 2nd

Main Road, Sadashiva Nagar, Nagalore

& 1 acre 30 guntas land at Sy No.13/2,

Harohalli, Yelhanka, Bangalore,

Karnataka)","Equivalent

to

Proceeds

of Crime",9.06,24.41

7.,"Smt YS

Bharathi Reddy","2500.69 square yards of land in Sy

No.79/P & 80/2 at Raidurg Pan Maktha

village, Serilingampally Mandal, Ranga

Reddy District, Telangana (Registered

vide sale deed No.20521/2005 dated

22.12.2005 at RO/Ranga Reddy)","Equivalent

to

Proceeds

of Crime",1.36,7.50

8.,"Bhagavath

Sannidhi Estates

Pvt Ltd","Tangible Fixed Assets as detailed in the

Audited Balance Sheet for 2014-15

(includes company's asset 59,070 Sft of

land in Sy No.55/1, situated at

Devarabeesanahalli Village,

VarthurHobli,

Bangalore East Taluk, Bangalore)","Equivalent

to

Proceeds

of Crime",2.64,35.80

9.,"Sandur Power

Company

Pvt Ltd","Tangible Fixed Assets as detailed in the

Audited Balance Sheet for 2013-14.

(plant and machinery)","Equivalent

to

Proceeds

of Crime",118.49,118.49

10., "M/s Classic

Reality Private

Limited", "Tangible Fixed Assets as detailed in Note

8 of the Audited Balance Sheet for 2013-

14 (Includes company's asset of

Building

named Commerce @ Mantri,

Bannerghatta Road, Bangalore)", "Equivalent

to

Proceeds

of Crime",49.45,181.62

TOTAL,,,,328.27,535.04

and group Companies. Therefore, attachment of Silicon Builders's shares is unsustainable. The said attachment is sought to be done on an entirely",,,,,

wrong factual premise of Nimmagadda Prasad's investment through Beta Avenues in Carmel Asia being used to fund Silicon Builders. The said,,,,,

amounts have been accepted by ED itself as monies used by Carmel Asia to acquire Jagati Publication shares and which shares are attached.,,,,,

51.20 Crs Consequently, on the contentions on Rs. 15 Crs. above, the dividends received by Silicon Builders from the shares held by it in BCCL.",,,,,

Many issues already dealt with in order being passed separately in OC 276/2014 in favour of appellants.,,,,,

103. By the impugned order dated November 23, 2016, the PAO dated June 29, 2016 was confirmed by the Adjudicating Authority, and the",,,,,

provisional attachment of 11 (eleven) fixed deposits of the Appellant bearing Nos. FD916040019493653, FD916040019494643, FD916040019033374,",,,,

FD916040019032627, FD916040019033154, FD916040019793652, FD916040019796172, FD916040028197351, FD916040022370240,",,,,

FD916040025115772, and FD916040034051975 (only partial attachment) aggregating to INR 152,84,61,315 (Rupees One Hundred and Fifty Two",,,,,

Crores, Eighty Four Lakhs Sixty One Thousand Three Hundred and Fifteen) held

in Axis Bank, Srinagar Colony, Hyderabad, stood confirmed as" ,,,,,

purported "proceeds of crime" within the meaning of Section 5 (1) of the PMLA.,,,,,

104. It is an admitted position by the Respondent that the Appellant has paid royalty and cess on the limestone extracted. It is submitted that the OC ,,,,,

and the PAO itself detail out the royalties and cess paid by the Appellant for the limestone extracted by it from commencement of operations in 2009- ,,,,,

2010 and till 2015-16, which totals to INR 122,77,05. The said royalty is paid as per fixed per tonne rates prescribed by the Government by" ,,,,,

notifications issued on a year on year basis, and is not variable from person to person. Therefore, irrespective of whether the Appellant was granted" ,,,,,

the mining lease or any other entity was granted the same, the rate at which the royalty would be paid would be the same without any adverse impact" ,,,,,

to the exchequer.,,,,,

105. The Respondent has, in passing, raised certain allegations as regards the valuation of the shares of the Appellant, which issue is already the" ,,,,,

subject matter in a separate OC No. 424 of 2015 out of which an appeal FPA-PMLA-1035/HYD/2015 titled M/s Bharathi Cement Corporation ,,,,,

Private Limited Vs. Joint Director, Directorate of Enforcement has also been filed. It is the admitted fact that the investment made by the various" ,,,,,

entities/ companies was a bona fide investment in the Appellant Company. Upon transfer of the shares of the various companies/ entities to ,,,,,

PARFICIM, France, they made a substantial gain on investment by way of a bona fide, unchallenged and arm's length sale of shares to a third party," ,,,,,

viz., PARFICIM, France, against which no allegations of any nature have been made. There was a substantial profit to each of the investors, which" ,,,,,

profit was based on a third party purchase, which transaction has clearly passed the scrutiny of the Respondent itself and the Reserve Bank of India" ,,,,,

without any shadow of doubt.,,,,,

106. There are no findings against the majority shareholder of the Appellant concerning any apprehended involvement in any of the alleged illegal ,,,,,

activities either in the present proceedings or in the proceedings of the CBI. In fact, in the order dated August 19, 2014 passed by the Adjudication" ,,,,,

Authority in OC No. 276 of 2015, it is unequivocally stated at Page 89, para 23(1) that there is no illegality on the part of PARFICIM, France and it is" ,,,,,

an innocent investor who is not found in any criminal activity.....

107. No doubt, when the lease was granted, the interim order was operating in the Revision petition filed by Gujarat Ambuja. No doubt the said.....

petition was later on dismissed as withdrawn. It is not correct to allege that the process was not completed within a day. When the lease was issued,.....

the same was granted subject to the final outcome of revision which was ultimately dismissed as withdrawn and for allotment, no interest was shown.....

by Gujarat Ambuja by filing of fresh application for grant of lease nor after grant of lease to BCCL, the said order was not challenged in any court of.....

law.....

108. The respondent's allegations are also that 21.11.2005 notification issued under MMDR Act was not issued for Mining Lease is unfounded as.....

Rule 59(1)(ii) of the Mineral Concession Rules, 1960 does not distinguish between as notification for grant of Prospecting License and notification for.....

grant of Mining Lease. Therefore, the attempt of the respondent to restrict one of the notified areas as that for mining and one for.....

Prospecting License is an attempt to give the notification as untenable interpretation. The respondent's allegation that the mining lease was.....

granted to BCCL without prior prospecting of the area is evidence of a criminal conspiracy and information. The BCCL has used the information and.....

data of Ambuja Cement without its permission. The lease was granted while the interim order was operated, though it was granted subject to the.....

decision of Review Petition. These are the main issues raised. The same are to be decided as to whether it is done deliberately or the act of appellants.....

was bonafide or these are technical discrepancies. These aspects have to be considered by the Special Act on the basis of evidence. However, at.....

present, it is difficult to conclude that due process has not been followed at all. These issues are either decided in quashing proceedings if initiated or.....

after trial by the Special Court.....

109. The Supreme Court held that the question of any undue haste in taking an administrative decision is a question of fact. It is held by the Supreme.....

Court that the States had devolved a policy of single window system with a view to get rid of red tapism generally prevailing in the bureaucracy. In the.....

present case, it also appears there are elements which would show the decision is taken after deliberations and upon due application of mind cannot be.....

held to be suffering from malice. Charges are yet to be framed in the matter.,,,,,,

110. It is also a matter of fact that despite of change of various Governments in the State by rival political parties, the lease has not been cancelled," ,,,,,

rather licensing fee has been accepted without any protest. There are also no allegations that some advantage is taken by BCCL by which the State.,,,,,

Government has lost revenue. In the impugned order, replies filed by all the appellants have not been discussed and dealt with. The Adjudicating" ,,,,,

Authority is duty bound to deal with each and every plea raised by the aggrieved party legally. The same cannot be ignored, otherwise, the order is not" ,,,,,

sustainable and liable to be set-aside.,,,,,,

111. In view of allegations in the charge-sheet filed by CBI and observation made in preceding paras, this Tribunal is of the view that it is appropriate" ,,,,,

to strike the balance at present, in order to secure the said amount by way of furnishing the Bank Guarantee instead of appropriating FDs." ,,,,,

112. In the light of above and the nature of business involved in the matter, the huge amount cannot be stalled in the facts and circumstances of the" ,,,,,

present case, hence, the impugned order is modified about the attachment of Rs.192 crores, instead of releasing the said amount to the appellants." ,,,,,

Therefore, it is directed that ED to release the said amount to the appellants, but subject to the condition that the appellants shall furnish the Bank" ,,,,,

Guarantee (BG) of Nationalised Bank for a sum of Rs.192/- crores in favour of the respondent to its satisfaction till the time final orders are passed in ,,,,,

the matter within the period of four weeks. Once the BG is furnished, the respondent without any delay shall release the said amount. The said" ,,,,,

condition is imposed without prejudice and without expressing any final opinion. It was merely a prima facie view.,,,,,,

113. Rest of all attachments are released by modifying the impugned order and provisional attachment order.,,,,,,

114. As far as allegations of CBI are concerned, this Tribunal does not wish to express any opinion on merit and the same have to be considered as" ,,,,,

per law. The present order has been passed only for the purpose of attachment of properties and confirmation thereof.,,,,,,

115. It is clarified that this proceedings in pending matters passed as per its own merit with order shall have no bearing in any other against the ,,,,,

appellants. This order has been regard to attachment of properties.,,,,,,

116. All the appeals are party allowed. The pending applications are also disposed off,,,,,

117. No costs.,,,,,,