

(2019) 06 ATPMLA CK 0007

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-4814, 4815/HYD/2018, FPA-PMLA-2473, 2474/HYD/2018

Joint Director Directorate Of
Enforcement, Hyderabad

APPELLANT

Vs

M/S. Embassy Property
Developments Pvt. Ltd

RESPONDENT

Date of Decision: June 11, 2019

Acts Referred:

- Prevention Of Money Laundering Act, 2002 - Section 2(1)(fa), 2(1)(u), 5(1), 50(3)
- Indian Penal Code, 1860 - Section 120B, 409, 420, 477A
- Prevention Of Corruption Act, 1988 - Section 13(1)(c), 13(1)(d), 13(2)

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Mohd. Faraz, Sudhir Nandrajog, Suraj, Shruti Shiv Kumar, Shantanu

Final Decision: Dismissed

Judgement

Date(s),Events,"Relevant

Page

No(s)." ,,

02.08.1994,"Erstwhile Embassy Realtors Pvt Ltd. (hereinafter referred to as
"ERPL") was incorporated for the purpose
of real estate development." ,,,

28.01.2004,"The Andhra Pradesh Housing Board (hereinafter referred to as
"APHB") invited Expression of Interest (hereinafter referred
to as "EOI") for taking up Joint Venture Projects at

Hyderabad, Vishakhapatnam, Warangal and Khammam.

That M/s CRISIL Limited was engaged by APHB for evaluating the EOIs, furnishing Evaluation Report for shortlisting of the proposal and confirming the minimum

eligibility criteria fixed in the notification of the EOI.", "Page 26,

Para 12 of

Complaint.",,

10.03.2004, "Upon being approached by Indu Projects Limited (hereinafter referred to as "Indu" ERPL entered into a Consortium

Agreement with (a) M/s Unity Infra Projects Limited, Mumbai; (b)

M/s Soma Enterprise Limited, Hyderabad; and (c) Indu Projects

Ltd. for the purposes of

participating in the above-mentioned APHB EOI process.", "Page 28,

Para 16 of

Complaint",,

15.03.2004, "Indu submitted the EOI, to undertake integrated townships at three locations including Kukatpally and commercial/residential

development at Gachibowli in Hyderabad and was subsequently

found to be eligible by CRISIL as qualified to take up Joint

Venture Projects

established by APHB.", "Page 27,

para 15 of the

Complaint.",,

05.07.2004

and

23.07.2004", "Request for Proposal ("RFP") were issued by CRISIL on

05.07.2004 to the 14 qualified companies/ consortia for

submission of proposals followed by a Pre-Bid Meeting convened

on 23.07.2004 wherein equity stake of the
technical member was introduced.", "Page 31,
Para 25 of the
Complaint",,

15.09.2004, "That I. Syam Prasad Reddy who was in charge of the entire
process vide his letter informed that the bid was being submitted by
Indu and that the consortium satisfies the legal requirements and
meets all the eligibility criteria laid down in
the RFP.", "Page 31,
para 26 of the
Complaint.",,

04.10.2004, "I. Syam Prasad Reddy vide his letter dated 04.10.2004 submitted
the RFP documents including MOU dated 29.09.2004.", "Page 33,
para 28 of the
Complaint.",,

Â 01.11.2004
and

19.11.2004", "The High-Powered Committee (HPC) approved selection of
bidders and Embassy Unity Consortium was the highest bidder,
based on which a Letter of award (LOA) was issued to M/s Indu
Projects Ltd. for 4.29 acres at Gachibowli and 50 acres at
Kukatpally along with
other successful bidders.", "Page 36, Para
32 of the
Complaint.
Page 38,
Para 36 of
Complaint.",,

07.12.2004,The share holding pattern of the Consortium was restructured., "Page 41,
Para 39 of
Complaint.",,

22.01.2005,"Shri I. Syam Prasad Reddy informed APHB of the incorporation
of Cyberabad Hitech Integrated Township Corporation Private
Limited (â€šCHIDCO') for
implementing the Kukatpally Housing Projects.", "Page 39,
Para 37 of

Complaint.",,

28.02.2005,"APHB signed the Development Agreements with SPVs viz. M/s
CHIDCO Private Ltd. and M/s Vasantha Projects Private Ltd.
which were represented by Shri I. Syam Prasad Reddy for
Kukatpally Housing Projects and Gachibowli Housing Projects
respectively conferring
on them the development rights of both the projects.", "Page 43
para 42 of the
Complaint.",,

01.07.2005,"The Prevention of Money Laundering Act, 2002 came
into force.",,,

10.03.2005,"A Technical Services Agreement was entered into
between Dynasty Developer Private Limited (â€šDDPL') and
CHIDCO.", "Page 53,
Para 55 of

Complaint",,

31.03.2005,"Restructuring of Allotment of shares of the Embassy Consortium
was submitted to APHB.", "Page 44,
para 43 of the
Complaint.",,

20.03.2007,"Letter by the Respondent herein was sent to APHB for exit of ERPL, predecessor of Embassy Properties Developers Pvt. Ltd. (hereinafter referred to as "EPDPL")

from the consortium.", "Page 52,

Para 54 of the

Complaint",,

23.03.2007,"Cancellation of the Technical Service Agreement between DDPL and CHIDCO.", "Page 53,

Para 55 of

Complaint",,

28.03.2007,"Payment of Rs. 29.40 Crore made by M/s Indu Projects Ltd to ERPL towards transfer of 6,95,000 equity shares of CHIDCO held by ERPL to M/s Indu Projects Ltd.", "Page 52,

Para 54 of

Complaint",,

2007,"Exit of ERPL, predecessor of EPDPL, from Consortium Agreement dated 10.03.2004.", "Page 85,

Para 89 of

Complaint.",,

25.01.2010,"Order dated 25.01.2010 passed by the Hon'ble High Court of Karnataka amalgamating ERPL into EPDPL.", "Volume 9
" Page No.

3158.",,

09.09.2014,"Final Report/Charge Sheet No. 20 filed by CBI in C.C.

No. 26/2014 on investigation by Enforcement of Directorate as

directed by the Hon'ble High Court of

Andhra Pradesh.", "Page 13,

Para 8 of the

Complaint.",,

03.01.2018,"Provisional Attachment Order No. 01/2018 issued by the Complainant in file no. ECIR/09/HZO/2011 (Copy of the said Provisional Attachment Order was not supplied to

Respondent).","Page 4,

Para 2 of the

complaint",,

22.01.2018,"On the basis of the charge sheet a Complaint was filed by Directorate of Enforcement.",,,

12.02.2018,"Order passed by the Adjudicating Authority recording the satisfaction in terms of Section 8(1) of PMLA and order issuance of notice. (Copy of the said Order was not supplied to Respondent).",,,

Sl.

No.",Consortium Member,"EOI

(Original

submission)","EOI

(Revised

submission)","RFP

1,"M/s Embassy Realtors Private

Limited",30,25,20

2,M/s Unity Infraprojects Limited,25,20,1

3,M/s Soma Enterprises Limited,25,20,14

4,M/s Indu Projects Limited,20,20,51

5,Shri Avinash Bhosale,--,15,14

(c) M/s Indu Projects Limited had replaced M/s Embassy Realtors Private Limited as the Lead Consortium Member from EOI submission to RFP,,,,

documents submission. These discrepancies had completely altered the structure of the Embassy-Unity Consortium in violation of condition in RFP,,,,

documents.,,,,

(d) In respect of Kukatpally Project, it was declared to APHB that a Special Purpose Vehicle (SPV) shall be formed for the successful completion of",,,,

the project on award of the project to the consortium with equity participation of (a) Indu-51% (b) Embassy-20% (c) Soma-14% (d) Unity-1% and (e),,,,

Avinash-14% with details of roles and responsibilities of each of the members was also mentioned. M/s Embassy Realtors Private Limited was,,,,

designated as the technical member for the purpose of satisfying the technical criteria.,,,,

(e) Embassy-Unity consortium formed an SPV in the name and style of M/s Cyberabad Hitech Integrated Township Development Corporation,,,,

Private Limited (M/s CHIDCO Private Limited) for implementing the housing project on Ac.50.00 at Kukatpally. Shri I Syam Prasad Reddy through,,,,

his letter to APHB sought approval for restructuring of the equity holding with (i) M/s Indu Projects Limited-51.25%; (ii) M/s Embassy Realtors,,,,

Private Limited - 34.75% and (iii) Mr. Avinash N. Bhosale - 14.00%,,,,

(f) The shares in M/s CHIDCO Private Ltd were allotted to M/s Embassy Realtors Private Limited & Other shareholders on 23.03.2005 i.e. after the,,,,

declaration made by I Syam Prasad Reddy regarding shareholding pattern of M/s CHIDCO Private Limited. It means that at the time declaration of,,,,

APHB, M/s Embassy Realtors Private Limited was not the shareholder of M/s CHIDCO Limited. However, Shri I. Syam Prasad Reddy had",,,,

fraudulently induced APHB to enter into Development Agreement conferring the development rights on the company by projecting it as the SPV,,,,

formed by Embassy-Unity Consortium with the shareholding pattern at (a) Indu - 51% (b) Embassy - 20% (c) Soma -14% (d) Unity - 1% and (e),,,,

Avinash - 14% .,,,

(g) In respect of Gachibowli Project, Shri I Syam Prasad Reddy submitted RFP documents and letters of acceptance for Gachibowli site with similar",,,,

clauses/ understandings as in the case of Kukatpally. Shri Jitendra Virwani representing M/s Embassy Realtors Private Limited, the technical member,",,,

signed the Letter of Commitment to provide the necessary technical and operational inputs for the successful execution of the projects.,,,,

(h) On 19.11.2004, Letters of Award (LOA) were issued to M/s Indu Projects Limited, for Ac.4.29 at Gachibowli and Ac.50.00 at Kukatpally. The",,,,,

letters had clearly stated that Embassy-Unity Consortium led by M/s Indu Projects Limited, and comprising members mentioned in table above, has",,,,,

been designated as the successful bidder to develop the housing projects and the award was subject to the terms and conditions in the RFP documents,,,,,

and Principles of Agreement to which Embassy-Unity Consortium had given their acceptance.,,,,,

(i) Thereafter, APHB was informed that the consortium has incorporated a Special Purpose Vehicle (SPV) in the name of M/s Vasantha Projects",,,,,

Private Limited for implementation of Gachibowli housing project whose shareholding pattern shall be as spelt out in the bid documents at (i) Indu -,,,,

51%; (ii) Embassy - 20% (iii) Unity - 1% (iv) Avinash - 14% and (v) Soma -14%. It was later revealed that as on the date of signing of the,,,,,

development agreements i.e., on 28.02.2005, M/s Vasantha Projects Private Limited, was owned by Shri V.V Krishna Prasad and his mother only.",,,,,

None of the members of Embassy-Unity consortium who submitted the bid was an equity holder of the company.,,,,,

(j) Shri I Syam Prasad informed APHB that M/s Embassy Realtors Private Limited wanted to offload their stake in the company owing to their other,,,,,

commitments. As per the RFP documents, technical consortium member needed to continue till completion of the project and exit midway through",,,,,

was not envisaged therein and the request was not in tune with the spirit of the agreement and also in the light of undertakings in the MOU and letter,,,,,

of acceptance by the individual consortium members. The company made a request on 23.03.2007 to become a 100% owned subsidiary of M/s Indu,,,,,

Projects Limited and enclosed a letter dated 20.03.2007 of M/s Embassy Realtors Private Limited indicating their inability to continue in the project,,,,,

due to their other commitments. APHB had not sent any reply to the company.,,,,,

(k) Without obtaining the approval from APHB, both Shri I. Syam Prasad Reddy and Shri Jitendra Virwani have negotiated between themselves and",,,,,

finalized the exit deal, in gross violation of the terms and conditions of allotment of the project.",,,,,

(l) Shri I. Syam Prasad Reddy representing M/s CHIDCO Private Limited and Shri Jitendra Virwani representing M/s Dynasty Developer Private,,,,

Limited, (M/s DDPL - presently renamed as M/s Embassy Property Developments Private Limited), entered into an agreement dated 10.03.2005 for" ,,,,

providing additional technical services to develop 30.00 Lakh Square Feet in the housing project at Kukatpally for a payment of Rs.30.00 Crore. Both,,,,

of them entered into cancellation deed 23.03.2007 i.e., on the date of Shri I. Syam Prasad Reddy addressed letter to APHB on converting M/s" ,,,,

CHIDCO Private Limited, as 100% owned company of M/s Indu Projects Limited. Through this deed, the parties mutually agreed to settle the" ,,,,

compensation for a sum of Rs.20.00 Crore as fee for the services rendered by M/s DDPL in respect of villas completely, partly for apartments and" ,,,,

commercial properties. However, no documents/ evidence substantiated or justified that any such technical services were provided by company of" ,,,,

Shri Jitendra Virwani in actual.,,,,

(m) In respect of project development at Bandlaguda site, the similar type of modus operandi was also adopted by Shri I Syam Prasad Reddy and Shri" ,,,,

Jitendra Virwani. Shri I Syam Prasad Reddy submitted EOI to APHB that thereby undertook to form a SPV for the development of the project in the,,,,

name & style of Indu Embassy Consortium with an equity contribution of 74% by M/s Indu Projects Limited and 26% by M/s Embassy Realtors,,,,

Private Limited, for successful completion of the said project on the award of the project. It was further stated that both of them shall be jointly and" ,,,,

severally liable to APHB and shall abide by the terms and conditions of the Agreement with APHB on the award of the said project until its,,,,

completion. Shri I. Syam Prasad Reddy and Shri Jitendra Virwani have also given letters of acceptance with complete knowledge and understanding,,,,

that no change in the membership in the bidding consortium, in the role and form of responsibility of any consortium member shall be permitted after" ,,,,

submission of the bid.,,,,

(n) The letter of award clearly stated that Embassy-Unity consortiums consisting of M/s Indu Projects Limited and M/s Embassy Realtors Private,,,,

Limited have been designated as the successful bidder to develop the modern township project at Bandlaguda in Andhra Pradesh. On 14.03.2006," ,,,,

approval of the Government was conveyed for awarding the project at Bandlaguda to Indu-Embassy Consortium, as recommended by HPC in its",,,,,
meeting held on 19.09.2005.,,,,,

(o) As per the bidding documents and RFP, Indu Embassy Consortium had to incorporate a special purpose vehicle company with M/s Indu Projects",,,,,

Limited, as the lead member with 74%. M/s Indu Projects Limited informed APHB that they have constituted a SPV i.e., M/s Indu Eastern Province",,,,,

Projects Private Limited, with shareholding by M/s Indu Projects Ltd - 74% and M/s Embassy Realtors Private Ltd - 26%, however, M/s Embassy",,,,,

Realtors Private Limited had never been the shareholder in their company and it never invested its funds in the purported SPV.,,,,,

(p) It is further submitted that no technical expertise was ever provided by M/s Embassy Property Realtors Private Limited in the development project.,,,,,

and it never participated in the project development at all. M/s Embassy Realtors Private Limited exited from the consortium even without the consent.,,,,,

of APHB and the same was in gross violation of the MOUs entered, development agreements undertaken and letter of acceptance submitted to",,,,,

APHB.,,,,,

(q) Therefore, Shri I. Syam Prasad Reddy and M/s Indu Projects Limited, who are otherwise not eligible to bid and win the housing projects on their",,,,,

own, as per the eligibility criteria notified in February 2004, became successful in getting housing projects at Kukatpally and Gachibowli from",,,,,

Government of Andhra Pradesh under the cover of Embassy-Unity consortium with the active connivance of other accused persons including Shri.,,,,,

Jitendra Virwani.,,,,,

10. Benefits received by Shri Jitendra Virwani as per the case of the appellants: -,,,,,

(a) After awarding of Housing Project at Kukatpally by APHB to Embassy Unity Consortium, as per the negotiations between Shri Jitendra Virwani",,,,,

and Shri I Syam Prasad Reddy, M/s Embassy Realtors Private Limited was allotted 6.95 Lakh equity shares in M/s CHIDCO Private Limited for a",,,,,

consideration of Rs.69.50 Lakh. Later, M/s Indu Projects Limited purchased such shares from M/s Embassy Realtors Private Limited, a company",,,,,

controlled and owned by Shri Jitendra Virwani, for a consideration of Rs.29.40 Crore thereby M/s Embassy Realtors Private Limited, owned and",,,,,

controlled by Shri Jitendra Virwani, was wrongly gained to the tune of Rs.28.70 Crore i.e. proceeds of crime." ,,,,

(b) Further, M/s Dynasty Developers Private Limited, another company controlled and owned by Shri Jitendra Virwani, received an amount of Rs.20" ,,,,

Crore i.e. proceeds of crime from M/s CHIDCO Private Limited as technical service as per the negotiations between Shri Jitendra Virwani and Shri I ,,,,

Syam Prasad Reddy. It is the modus operandi devised by the Shri I Syam Prasad Reddy and Shri Jitendra Virwani and received the amount in the ,,,,

name of compensation received from M/s CHIDCO Private Limited. ,,,,

(c) By lending the credentials of his group companies to grab the housing projects from APHB by Shri I. Syam Prasad Reddy and assisting him in ,,,,

getting such allotments, Shri Jitendra Virwani got benefits of aforesaid amounts. Apart from the above, Shri Jitendra Virwani also got allotted three" ,,,,

villas at Kukatpally project for himself and his family members and by selling them at a premium at later date, he benefitted to tune of Rs.1.46 Crore" ,,,,

i.e. proceeds of crime which were utilised by him over a period of time. ,,,,

(d) Since the awarding of housing project itself is under deception, the gains accumulated through such deception are nothing but wrongful gains and" ,,,,

Shri Jitendra Virwani benefitted to the tune of Rs.50.16 Crore i.e. proceeds of crime. The above amounts are nothing but proceeds of crime in terms ,,,,

of Section 2(1)(u) of PMLA, 2002." ,,,,

(e) From the above, it is evident that the proceeds of crime received by Shri Jitendra Virwani through his companies were utilised for the business" ,,,,

activities and such proceeds of crime are inseparable with the other monies involved with the companies, as such value equivalent to the proceeds of" ,,,,

crime are attached from the funds available with the aforesaid companies/ persons. ,,,,

(f) Further, it proves beyond doubt that Shri Jitendra Virwani used his companies as conduit to receive the Proceeds of Crime and projected the same" ,,,,

to be untainted and thus, ultimately enjoyed the fruits of proceeds of crime through the account of his companies." ,,,,

11. Beneficial Ownership as per appellant: ,,,,

i) M/s Embassy Realtors Private Limited and M/s Dynasty Developers Private Limited were the group companies of Embassy Group and Shri ,,,,

Jitendra Virwani was the Chairman of Embassy Group. These two companies got amalgamated and formed a new company namely M/s Embassy,,,,

Property Developments Private Limited. Shri Jitendra Virwani is the Managing Director of this company.,,,,

ii) Shri Jitendra Virwani was controlling the business affairs of M/s Dynasty Developers Private Limited and M/s Embassy Realtors Private,,,,

Limited and as such in terms of Section 2 (1) (fa), he was the beneficial owner of the said Proceeds of Crime which were received by his companies" ,,,,

i.e. M/s Embassy Realtors Private Limited and M/s Dynasty Developers Private Limited. Shri Jitendra Virwani in his voluntary statement under,,,,

Section 50 (3) of PMLA, 2002, admitted that he is looking after day-to-day affairs of the all companies of Embassy Group with the help of staff of" ,,,,

respective companies/ firms which amply substantiates that he was the beneficial owner in respect of these companies i.e. the person controlling the,,,,

affairs of M/s Dynasty Developers Private Limited and M/s Embassy Realtors Private Limited.,,,,

iii) From the above, it is contended on behalf of appellant that the proceeds of crime received by M/s Embassy Realtors Private Limited & M/s" ,,,,

Dynasty Developers Private Limited (presently known as M/s Embassy Property Developments Private Limited) and Shri Jitendra Virwani were,,,,

utilized for their business activities and such proceeds of crime are inseparable with the other monies involved with the companies, as such value" ,,,,

equivalent to the proceeds of crime are to be attached from the funds available with the aforesaid companies/ persons.,,,,

iv) Apart from the PoC received in his group companies, Shri Jitendra Virwani also got allotted 3 villas in Kukatpally Project in violation of clause" ,,,,

2.7.2 of the Development Agreement entered between Developer Consortium and APHB. Shri Jitendra Virwani also fetched remarkable profit i.e.,,,,

Rs.1.46 Crore on the sale of these villas in a span of less than 2 year. Thus clearly showing that he was personally involved in all decisions of M/s,,,,

Embassy Realtors Private Limited and M/s Dynasty Developers Private Limited and he was benefitted directly or indirectly as well.,,,,

12. The submission of the appellant:-,,,,

The Adjudicating Authority has passed the well-reasoned impugned order is based on the facts and law by observing that the Respondents do not,,,,
have any nexus whatsoever with any properties that have alleged to be proceeds of crime for the same. It is neither proceeds of crime nor have any,,,,
such proceeds ever come into the possession of the Jitendra Virwani who has no relation whatsoever with the factual circumstances of the projects or,,,,
the development agreements. He did not from DDPL and ERPL ever receive any proceeds of crime nor could they have passed the same onto the,,,,
Respondent Company as the Respondent Company herein was incorporated by virtue of the wholly legal and legitimate sanction of amalgamation,,,,
proceedings of ERPL into the Respondent Company by the Honâ€ble High Court of Karnataka and as such the Respondent Company cannot be,,,,
prosecuted for any criminal liability, if at all, either of the DDPL or ERPL." ,,,,

13. The learned senior counsel appearing on behalf of respondents has argued that the main job of the appellant is to trace out the proceed of crime,,,,
and take action as per law. It is not the duty of the authorized officer to patch the discrepancies, if any, occurred during the course of business" ,,,,
activities and change of hands.,,,,

14. As far as schedule offence is concerned, the said issue has to be decided by the Special Court as per its own merit. This Tribunal does not wish to" ,,,,
express any opinion on merit. The question in the present appeals is only to consider as to whether the respondents are involved in money laundering,,,,
or not or the respondents have acquired the properties from proceed of crime. The other aspects where the criminal liabilities are involved are to be,,,,
determined by the Special Court as per merit of the case.,,,,

15. The Adjudicating Authority in the present case found many gaps in the manner in which the Appellant herein had â€" without forming even the,,,,
remotest of reasonable beliefs â€" proceeded to attach the properties of the Respondent herein, against which the Adjudicating Authority has noted as" ,,,,
under:-,,,,

â€œThe Provisional Attachment Order in respect of the amount of Rs. 25,05,57,469 is illegal and cannot be permitted to be continued. The" ,,,,

Provisional Attachment Order for the said amount needs to be vacated and is hereby vacated. The PAO in respect of the said amount of Rs.,,,,

25,05,57,469 is not confirmed.â€",,,,

and,,,,

â€œThe PAO in respect of the sum of Rs. 1.46 Crore being not justified, the attachment of movable properties of D-8 to the extent of Rs. 19",,,,

Crore is unwarranted and unjust. The PAO for attachment of movable properties of D-8 as being the term Deposit of Rs. 19 Crore is,,,,

therefore not confirmed.â€",,,,

16. The above conclusions were arrived at by the Adjudicating Authority in the detailed-reasoned impugned order such as: (a) consideration of the,,,,

materials and evidences before the Adjudicating Authority; (b) in-depth analysis of the facts on hand; (c) application of the relevant legal principles to,,,,

the matter; and (d) adjudicating upon, in entirety, the matter by duly noting and deliberation over the following issues:",,,,

(a) Neither did ERPL or DDPL, and nor has the Respondent herein ever received any proceeds of crime, whatsoever. More so the Ld. Adjudicating",,,,

Authority has duly considered that the belief of the Appellant with respect to receipt of payments by DDPL from CHIDCO is misplaced for the same,,,,

were received for the execution of development works of the housing project.;,,,,

(b) The Provisional Order of Attachment dated 03.01.2018 of the properties of the Respondent herein was passed by the Appellant herein without,,,,

forming any reasonable belief as to why the properties of the Respondent herein, ought to be treated as proceeds of crime;",,,,

(c) Drawing from the above, the Adjudicating Authority found that an essential requirement under section 5(1) of the Prevention of Money",,,,

Laundering Act, 2002 (hereinafter referred to as â€œthe Actâ€) had not been met satisfactorily by the Appellant with respect to the Respondent",,,,

herein;,,,,

(d) Ss far back as in the year 2010, ERPL and DDPL came to be merged by virtue of the Judgment of the Honâ€ble High Court of Karnataka dated",,,,

25.01.2010, thereby negating the transfer of any criminal liability whatsoever to the Respondent herein. (Copy of the Order dated 25.01.2010 is",,,,

annexed with the Appeal).,,,,

(e) That the Adjudicating Authority has duly considered the balance sheets of DDPL and duly noted the expenditure incurred towards the,,,,

construction and development works under the purview of the technical services agreement between DDPL and CHIDCO.,,,,

(f) Adjudicating Authority has correctly noted that the purchase of the Villas by Mr. Jitendra Virwani cannot be said to be a criminal activity, as the",,,,

Appellant has failed to establish any illegality thereto for the said Villas had been sold legitimately and without lowering of prices from the market,,,,

value of the villas.,,,,

(g) Tthe Adjudicating Authority has analysed the application of key legal principles in various relevant judgments and legal precedents in arriving at the,,,,

conclusion that in the present set of facts and circumstances and the properties of the Respondent cannot be attached.,,,,

17. This tribunal is only concerned at this stage as to whether the impugned order passed by the Adjudicating Authority is sustainable or not.,,,,

18. The conclusions arrived at by the Adjudicating Authority of the properties of the Respondent not being involved in money laundering are results of,,,,

the extensively and eruditely employed reasoning of the Adjudicating Authority.,,,,

19. It is rightly held by the Adjudicating Authority by quashing the provisional attachment order and there is a valid argument of the respondent to the,,,,

following effect:-,,,,

(i) No reasonable belief was formed by the Appellant against the Respondent in the Provisional Attachment Order dated 03.01.2018 passed under,,,,

section 5(1) of the Prevention of Money Laundering Act, 2002." ,,,,

(ii) No criminal liability of the transferor company can be transferred to an entity formed by amalgamation of the transferor and transferee company," ,,,,

by virtue whereof the Respondent was incorporated in the instant matter.,,,,

(iii) The properties of the Respondent cannot be attached under the Act by retrospectively applying the Amendments to the Act.,,,,

20. It is submitted on behalf of respondents that the Appellant has without any substance is alleging that the Adjudicating Authority not having,,,,

appreciated the facts and circumstances and the material placed on record. On the other hand, it appears that the Adjudicating Authority in the" ,,,,

impugned order has gone through the all facts and circumstances and the findings are based on material facts and pleadings.,,,,

21. The next submission on behalf of the Appellant is that the Adjudicating Authority has failed to appreciate all the aspects pertaining to so-called.,,,,

alleged proceeds of crime, whereas the Adjudicating Authority has specifically dealt with the submission and noted same at Pages 187-188 of the",,,,

impugned order which are as under:-.,,,,

â€œThe Joint Director has for a conclusion that M/s Dynasty Developers Pvt. Ltd. received an amount of Rs. 20 Crore from CHIDCO as.,,,,

technical service. In this regard it needs to be noted that it is not the case that no development work has taken place. The fact that.,,,,

supplementary development agreement dated 02.12.2009 was executed between APHB and CHIDCO, which indicated that the APHB",,,,

extended the time for completion of the project indicated that development work has taken place. The fact that development took pace is.,,,,

also evident from the fact that several Villas could be sold. DDPL had entered into an agreement with CHIDCO on 10.03.2005, whereby",,,,

DDPL had agreed to share its expertise for the purpose of conceptualising, coordination in designing, development and marketing of",,,,

residential and commercial properties.,,,,

However, by agreement dated 23.03.2009, titled as cancellation agreement, DDPL expressed that it had rendered services as per the",,,,

agreement referred for Villas completely, partly for apartment and commercial properties and that DDPL be compensated for the services",,,,

already rendered. It was inter alia agreed by CHIDCO to compensate DDPL by paying compensation of Rs. 20 Crores. The said.,,,,

cancellation was acted upon as is indicated from the records relied upon and payment of Rs. 188780000 was made to Dynasty Developers.,,,,

Pvt. LTs. vide cheque dated 26.03.2007. A duly â€œdischarge receiptâ€ was issued by Sh. Narpat Singh Choraria, Director of DDPL. The",,,,

allegations made in the charge sheet goes to the extent of alleging that everything done in relation to the development agreements, after",,,,

procurement of the contracts, are all illegal activities. The said allegations cannot and need not be gone into conclusively by this Authority," ,,,,

but the fact remains that APHB has not made any grievances in the matter. The concerned V.C. and M.D. of APHB Sh. S.N. Mohanty is in,,,,

fact absolved of the charge under Section 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, in as much as by the order dated",,,,,

15.11.2017 of Hyderabad High Court, the proceedings against the said S.N. Mohanty for the offences punishable under Sections 13(2) r/w",,,,,

13(1)(c) and (d) of Prevention of Corruption Act are quashed. The said order of the Honâ€™ble High Court was passed on 15.11.2017 i.e.,,,,,

prior to the passing of the Provisional Attachment Order. The same assumed significance, as the Honâ€™ble High has thereby appreciated,",,,,

considered the material and gave the findings. [â€™] Irrespective of all the allegations made in the Charge-Sheet and in the PAO, there is",,,,,

nothing to disbelieve that DDPL received the sum of Rs. 188780000 from CHIDCO. No properties of CHIDCO are under attachment in the,,,,

present PAO. The payments received by DDPL are in any event absorbed and exhausted in the normal course of business, much prior to",,,,,

25.01.2010 i.e. date prior to its merger into EDPL. As explained earlier, the merger of DDPL into EPDPL cannot lead to attachment of",,,,,

properties of EPDPL, definitely not without formation of any reasonable belief in this regard, for the reasons stated above.â€™",,,,,

22. The above findings are from the impugned order were based on pleading and material available on record. There is no force in the contention of,,,,

the Appellant that the Respondent paid Income Tax on such income to give it corporate colour. It is clarified by the respondents that M/s CHIDCO,,,,

Limited is a company constituted as a special purpose vehicle for the purpose of completing the project and any amount given to M/s CHIDCO Ltd.,,,,,

was for the purpose of implementing the project. The entire transaction has been declared and the requisite taxes have also been paid as per the case,,,,

of the respondents.,,,,,

23. The other allegation of the Appellant that the Adjudicating Authority has erred in understanding the facts pertaining to the alleged proceeds of,,,,

crime has also no force as the Adjudicating Authority in the impugned order has expressly recorded at pages 185-190 while dealing with the said,,,,

submission, the same are reproduced hereunder:",,,,

As can be seen from the records adduced and relied upon, including the statement of Jitendra Virwani, that the amounts received from",,,,

Indu Group got exhausted in the same financial year or a year thereafter. Consequently there were no balance amounts remaining left with",,,,

M/s ERPL/DDPL from the payments received from M/s Indu Project Ltd./CHIDCO stated to be proceeds of crime, as such with the",,,,

ERPL/DDPL, much less in January stated to be proceeds of crime, which could not have been transferred being an illegal corpus and as",,,,

even otherwise pointed out in the facts and circumstances that no such proceeds of crime existed in the hands of ERPL on the date of",,,,

merger.â€",,,,

and",,,,

None of the proceeds have gone into any account of Jitendra Virwani from the receipt of Rs. 28.70 Crore by Embassy Realtors Pvt. Ltd.",,,,

Similarly none of the proceeds have gone into the account of Jitendra Virwani from the receipts of Rs. 20 crores by DDPL. It is not shown",,,,

to be so, i.e. that proceeds travelled to Jitendra Virwani. The PAO in respect of the amount of Rs. 28.70 Crore received by M/s Embassy",,,,

Realtors. Pvt. Ltd. and Rs. 20 Crore received by M/s Dynasty Developers Pvt. Ltd., is already considered above and it is concluded that in",,,,

respect of the PAO for the said proceeds, the proceeds having been gone to ERPL and DDPL and which were exhausted and both the",,,,

entities having been merged into EDPDL, the attachment for the said amounts cannot be sustained.",,,,

The attachment of the term deposit in the name of Jitendra Virwani to the extent of Rs. 19 Crore need to be examined with reference to the",,,,

allegations made against him, in his individual capacity. The Joint Director formed a conclusion that Sh. Jitendra Virwani got allotted three",,,,

villas bearing nos. 118, 218, and 219 at Kukatpally projects for himself and his family members and by selling them at a premium at a later",,,,

date, he benefitted to tune of Rs. 1.46 Crore, which proceeds of crime were utilized by him over a period of time. The Joint Director has also",,,,

concluded that the proceeds of crime received by Sh. Jitendra Virwani were utilized for business activities.",,,,

Jitendra Virwani having said to be benefitted to the tune of Rs. 1.46 Crore by the aforesaid transactions of acquisition and sale of three,,,,

villas, the attachment of the term deposit in the name of Jitendra Virwani to the extent of Rs. 19 Crores is not justified on the face of it. No" ,,,,

proceeds as aforesaid have travelled into the account of Jitendra Virwani from ERPL and DDPL. The attachment to the extent of Rs. 17.54,,,,

crore is thus on the face of it illegal as being in excess as against the proceeds of Rs. 1.46 crore. The reasonable belief formed for,,,,

attachment if the sum of Rs. 19 Crore in the hands of Sh. Jitendra Virwani thus gets vitiated. There was no material available in the hands of,,,,

the joint Director to form the belief that Jitendra Virwani was in any way beneficiary and/or recipient off the proceeds of crime to the extent,,,,

of Rs. 19 crore. The attachment of the sum of Rs. 19 crores in the hands of Jitendra Virwani, therefore cannot be sustained.â€" ,,,,

24. The Appellant has also contended that the Adjudicating Authority failed to appreciate that the equity participation of M/s Embassy Realtors Pvt.,,,,

Ltd. in M/s Indu Eastern Province Projects Private Limited & M/s Vasantha Projects Private Limited was bought back to M/s Indu Projects Ltd. at,,,,

cost and while selling their stake in M/s CHIDCO Private Ltd., Embassy Group claimed that they have calculated the share value, whereas in the" ,,,,

case of M/s Indu Eastern Province Projects Pvt. Ltd. & M/s Vasantha Projects Pvt. Ltd. they sold at cost price, which as per the Appellant depicts" ,,,,

that the inclusion of Embassy Group in getting Housing Projects is orchestrated by I. Syam Prasad Reddy along with Mr. Jitendra Virwani for which,,,,

the latter was paid handsome amounts.,,,,

25. In response whereto, it is submitted on behalf of respondents that the said presentation of facts are without any clear, cogent and direct evidence," ,,,,

the appellants are trying to twist the facts and giving the incomplete picture. It is stated that at the time of establishing M/s CHIDCO Pvt. Ltd., which" ,,,,

is an SPV, the company was yet to begin its operations, likewise the share value of the M/s Indu Eastern Province Project and M/s Vasantha Projects" ,,,,

Private Ltd. had not gained momentum for the reason that the entire project had not commenced then.,,,,

After commencement of the project and after executing the substantial works, the goodwill of the Respondent Company went up and sold their stake",,,,,

in M/s CHIDCO Ltd. at the market value that existed at that time. As by then the value of the shares has risen due to the effort of the Respondent,,,,,

Company, in the normal course the share fetched the said value, therefore the same cannot be termed as a plan hatched or orchestrated to grab the",,,,,

housing project, the allegation that Mr. Jitendra Virwani was paid handsome amount is denied.",,,,

26. It appears from the impugned order that the Adjudicating Authority has held that no proceeds of crime are available with the Respondents and as,,,,

such no property of the Respondents is involved in money laundering based on the facts and materials placed before the Adjudicating Authority. It is,,,,

also held by the Adjudicating Authority that the business transactions were fair, and in the normal course thereof did M/s Dynasty Developers Pvt.",,,,,

Ltd. and M/s Embassy Realtors Pvt. Ltd. had made profits, as is discernible from the above quoted excerpts of the impugned order.",,,,

27. The Appellant has also submitted that the proceeds of crime were ultimately received by the Respondent Company. Neither has the Appellant,,,,

was able in establishing any nexus of either the Respondent Company or of Mr. Jitendra Virwani with respect to the acts of the Defendants in O.C.,,,,,

No. 886 of 2018 the attachment of whose properties have been confirmed by the Adjudicating Authority.,,,,,

28. The Appellant has failed to establish any nexus whatsoever of the Respondent Company even remotely being linked to the alleged offences, and",,,,,

neither has the Appellant produced even a single document.,,,,,

29. The hearing of appeals were adjourned at the request of the learned counsel for the appellant to find out any evidence if left as to whether the,,,,,

respondents have any evidence to show to any proceed of crime has come in the account of Jitendra Virwani, after instruction, counsel appearing on",,,,,

behalf of appellant made the statement that there is no such evidence is available in this regard. Thereafter the order was reserved.,,,,,

30. It appears from pleading of the parties and material placed on record, it is evident that all the issues raised by the Appellant had been considered",,,,,

by the Adjudicating Authority who by the impugned order dated 26.06.2018 passed in O.C. No. 886/2018 adjudicated the same. All contentions made,,,,

by the appellant have been discussed and thereafter it is ruled that the movable properties of the Respondent herein are not proceeds of crime and,,,,

therefore cannot be attached by the Appellant herein.,,,,

31. The reference to the fact that ERPL and M/s Dynasty Developers Pvt. Ltd. amalgamated and are presently named as the Respondent cannot,,,,

substitute the requirement of the formation of the reasonable belief as to why the properties of the Respondent are liable to be provisionally attached.,,,,

It is noted by the Adjudicating Authority that the fact that the Appellant herein has formed a conclusion that M/s Dynasty Developers Pvt. Ltd.,,,,

received an amount of Rs. 20 crore from CHIDCO as technical service. In this regard it needs to be noted that it is not the case that no development,,,,

work has taken place. And thereupon conclusively holding that the provisional attachment order cannot be permitted to be continued and it ought to,,,,

be vacated.,,,,

32. It is a settled principle of law that upon amalgamation between two Companies the transferor Company dies a civil death which is akin to death of,,,,

an individual. Where after, the criminal proceedings if any stands abetted. Thus, the transferee Company can no longer be prosecuted or cannot be",,,,

held to be liable for the criminal acts of the transferor company.,,,,

33. The adjudicating authority has duly considered this position in law and its applicability to the facts and circumstances to the present matter is,,,,

evinced from perusal of the contents of the impugned order at Page Nos. 182 to 188, wherein prior to reaching the conclusion that the properties of",,,,

the Respondent herein cannot be provisionally attached, the Adjudicating Authority noted as below:",,,,

"The counsel has cited the decision of Delhi High Court in Nicholas Piramal India Ltd. vs. S. Sundranayagam D/o 23.08.2007. While,,,,

dealing with the effect of amalgamation between the companies, the Honable High Court pointed out decisions reported in re Skinner",,,,

(1958)3AllE.R.273, wherein it was opined as under:",,,,

"schemes and orders made by virtue of section 206 and section 208 of the Companies Act, 1948 can only transfer such rights, powers",,,,

duties and property as are capable on being lawfully transferred by a party to the scheme if no such sections of the companies Act existed.,,,,

It is not necessary in a scheme to exclude specifically from its operations things capable if such transfer as general words in the scheme and.,,,,

any order in furtherance must be taken to operate in a manner not repugnant to the general laws of England.,,,,

34. The Honâ€ble Delhi High Court has also pointed out decision reported as Oklahoma Natural Gas Co. v. State of Oklahoma 273US257(1927),",,,,

Supreme Court of United States wherein it is observed as under:.,,,,

â€œThere is no specific provision in our rules for the substitution as a party litigant of a successor to a dissolved corporation. It is well.,,,,

settled that a common law and in the federal jurisdiction a corporation which is being dissolved is as if it did not exit, and the result of the",,,,

dissolution cannot be distinguished from the death of the natural person in its effect.... It follows, therefore, that as the death of natural",,,,

person abates all pending litigation to which the corporation is appearing either as a plaintiff or defendant. To allow actions to continue.,,,,

would be to continue the existence of the corporation pro hac vice. But corporations exist for specific purposes, and only by legislative act," ,,,,

so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory.,,,,

authority for the prolongation.â€",,,,

The Honâ€™ble Delhi High Court summing up the principles laid down by the Judgments, concluded that the legal position which emerges",,,,

from afore-noted judicial decisions is that upon an amalgamation between two companies, the transferor company dies a civil death and the",,,,

entity which has evolved upon amalgamation cannot be prosecuted for an offence committed by the transferor company. To the same effect.,,,,

are the observations of the High Court of Himachal Pradesh in the decision Crl. Rev. No. 150/1994 M/s. Brooke Bond Lipton (India) Ltd.,,,,

and Anr. V. State of H.P. and Anr. Decided on 24.03.1995.,,,,

The Honâ€™ble Madhya Pradesh High Court (Hindustan Lever Ltd. V/s The State of Madhya Pradesh D/o 23.11.2017) while considering.,,,,

the impact of merger in the case of Brooke Bond Lipton India Ltd., merging with Hindustan Lever Ltd. concluded that:",,,,

It is settled law that a criminal liability of transferor company into the transferee company cannot be transferred or fastened on transferee,,,

company upon its amalgamation, because with the amalgamation, the transferor company suffers a civil death and it is ceased to exist. In",,,,

the present case, the offence is occurred on 21.12.1996 and the Brooke Bond Lipton India Ltd merged with the Hindustan Lever Ltd on",,,,

20.3.1997. Thus, the Brooke Bond Lipton India Co. Ltd. committed the alleged offence before its merger with the petitioner Hindustan Lever",,,,

India Co. Ltd. Consequently, the petitioner cannot be prosecuted. This view of mine is strengthened by a decision rendered in Hindustan",,,,

lever Co. Ltd.â€",,,,

35. There is a force in the submission of respondents that PMLA being a penal statute cannot have any retrospective effect or a retroactive operation.,,,,

It is apparent from the contents of the complaint that the alleged offences stated to have been committed between the years 2004-2005. The fact,,,

remains that if considered that the alleged offence if at all committed by Jitendra Virwani on behalf of ERPL, predecessor of Respondent by entering",,,,

into Development Agreements dated 28.02.2005 with APHB and forming SPVs for Kukatpally Housing Projects and Gachibowli Housing Projects,,,

was way before the PMLA came into force which was on 01.07.2005. Thus, the development agreements which is considered as the root of",,,,

â€œproceeds of crimeâ€ was entered not only before the inclusion of scheduled offence in PMLA but before the PMLA coming into force.,,,,

Thus, offences if any, under the PMLA could only have been committed in the years 2004-2005 i.e. prior to the promulgation of the PMLA itself.",,,,

Even assuming though not admitting that any offence was committed by ERPL due to its exit from the project in the year 2007, even then, the",,,,

offences of IPC alleged against ERPL u/s 120B and 420 were not included as scheduled offences under the PMLA. Section 120 B and Section 420,,,

of IPC were included as scheduled offences only by virtue of Prevention of Money Laundering Amendment Act, 2009 which came into force on",,,,

01.06.2009 when the said sections of Para 1 of part B of the Schedule to the PMLA.,,,,

As the Adjudicating Authority has decided all the issue on merit, therefore, in the present appeals, let the same has been discussed on merit with" ,,,,

regard to the finding arrived at by the Adjudicating Authority.

36. Even no valid reasonable belief was formed by the Appellant against the Respondent in the Provisional Attachment Order dated 03.01.2018, ,,,,

passed under section 5(1) of the Prevention of Money Laundering Act, 2002." ,,,,

The Adjudicating Authority has correctly noted that the Appellant did not adduce any reason for attaching the properties of the Respondent, which" ,,,,

was admittedly not the recipient of any proceeds of crime whatsoever. For attaching the properties of the Respondents was essential for the Appellant, ,,,,

to form and express the reasonable belief as to why the properties of the Respondent herein are being attached as value of the proceeds of crime.

37. No valid reason to belief were recorded by the Joint Director as it was a very casual approach. The said valid opinion has not formed on the basis, ,,,,

of settled law by the Supreme Court and various High Court. There is no reasonable belief formed with regard to the separate existence of the entities, ,,,,

involved and as to reasons why such individual corporate existence of each of the entities is acknowledged, though the said entities are legally, " ,,,,

independent, and separate entities. Without assigning any reason for the attachment of properties of the Respondent, the attachment cannot be" ,,,,

permitted mere repetition of language of Section in the last paras after recording the allegation and facts are no valid reason to belief. No separate, ,,,,

reason to believe were recorded. Copy was not produced, nor it was supplied." ,,,,

38. In the light of above, both appeals are dismissed." ,,,,

39. No costs.