

Indian Overseas Bank & Ors Vs Joint Director Directorate Of Enforcement, Delhi

Court: Appellate Tribunal Under Prevention Of Money Laundering Act

Date of Decision: June 28, 2018

Acts Referred: Constitution Of India, 1950 " Article 226

Prevention Of Money Laundering Act, 2002 " Section 2(u), 2(1)(u), 2(1)(y), 3, 5, 5(1)(c), 8, 8(1), 8(2), 8(8), 50, 71

Indian Penal Code, 1860 " Section 120B, 420, 467, 468, 471

Prevention Of Corruption Act, 1988 " Section 13(1)(d), 13(2)

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 " Section 13(2), 13(4), 26E

Recovery Of Debt Due To Banks And Financial Institutions Act, 1993 " Section 2, 31B, 34

Sick Industrial Companies (Special Provisions) Act, 1985 " Section 22, 32, 32(1)

Special Court (Trial Of Offences Relating To Transactions In Securities) Act, 1992 " Section 3, 3(4), 11(1), 11(2), 13, 22

Code Of Criminal Procedure, 1973 " Section 482

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Karan Khanna, Asmita Kumar, N.K. Matta

Final Decision: Disposed Of

Judgement

Sr. No.,Property Details,Value (Rs. Crore),,,,,,

1,"Plot No. FC-17 B & 17 C, Film City, Sector-16 A Noida,

U.P.",52.25,,,,,

2,"Unit No. 1 to 7 on 8th Floor, Lotus Nilkamal Business Park

at Condominium Dalla Industrial Estate, Andheri (West),

Mumbai",9.72,,,,,

3,"Unit No. 503 A on 5th Floor &Entire 6th Floor at Landmark

Condominium 149-150, Pall Road, Bandra (West), Mumbai",23.13,,,,,

4,"Unit No. 201 & 202, 2nd Floor, Carinthian Premises Owners

Association, Plot No. 370, Link Road Khar, Mumbai",7.20,,,,,

5,"Property bearing at 4.0125% undivided share in land with

area 2.183 acres in Old Sr. No. 32, 33/2, and 33/3, new

serial no. 33/2B, 33/2C1 and 32/2C\$ of Nandmbakkam

Village, Tambaram Taluk, Kanchipura District at Mount

Poonamallee Road, Chennai",7.16,,,,,,

6,"Property of Shri P.K. Tewari, Smt. Meena Tewari, Shri

Anand Tewari and Shri Abhishek Tewari situated at 6,

Southern Avenue,

Maharanj Bagh, New Delhi",12.50,,,,,,

,Total,111.96,,,,,,

.,09.12.2009,"By Ch. No.

584445 dtd

09.12.2009

issued to JOIND SUB

REGISTRAR,

ANDHERI IN

RESPECT OF

PROPERTY OF

LOTUS CHARGES

FROM CCL OBC

BANK A/C 1866

(MUMBAI)", "30,000.00" ,,,,

.,10.12.2009,"By Ch. No.

584454 dtd

10.12.2009

issued from CCL OBC

BANK A/C

1866(MUMBAI)", "96,000,000.00" ,,,,

.,10.12.2009,"By DD No.

414907 dtd

10.12.2009

issued to Ajay Devganj

from CCL IOB Bank

A/c New Delhi.", "90,000,000.00" ,,,,

.,10.12.2009,"By DD No.

414906 dtd.

10.12.2009

issued to Ajay Devgan

from CCL IOB Bank

a/c New Delhi." , "41,500,000.00" ,,,,

Amount Received

Detail" ,,, TOTAL, "238,905,000.00" ,,,,

By RTGS Recd. From CCL-IOB Non

Lien Bank A/c No. 011502000004910 to

CCL-Pixion Mumbai OBC Bank A/c No.

1866 on 09.12.2009." ,,, "12,000,000.00" ,,,,,

By RTGS Recd. From CCL-IOB CC

Bank A/c No. 011502000004804 to

CCL-Pixion Mumbai OBC Bank A/c No.

1866 on 09.12.2009." ,,, "96,000,000.00" ,,,,,

By DD issued (for Ajay Devgan) From

CCL-IOB Lien Bank A/c No.

011502000004910 to CCL-Pixion

Mumbai OBC Bank A/c No. 1866

on 18.12.2009." ,,, "131,500,000.00" ,,,,,

,,,,,04.08.2007,"By DD issued from

CCL Non- Lien A/c

No. 011502000004

910", "60,010.00",

,,,,,04.08.2007,"By DD issued in

favour of ICICI Bank

A/c from CCL Non-

lien A/c No.

011502000004

910 (For Stamp

Duty Charges)." , "957,610.00",

,,,,,08.08.2007,"By Ch. No. 458794

dated

04.08.2007 (DD

No. 534587940)

issued to Sandeep

Sharma from CCL

Non Lien A/c No.

011502000004

910", "9,500,000.00",

,,,,,08.08.2007,"By Ch. No. 458792

dated

04.08.2007 (DD

No. 534587726)

issued to JT Sub

Registrar Andheri ं, -

1, from CCL Non

Lien A/c No.

011502000049

10 for

Registration charges." , "30,000.00",

,,,,,08.08.2007,"By Ch. No. 458793

dated

04.08.2007 (DD

No. 534587933)

issued to JT Sub

Registrar Andheri ं, -

1, from CCL, NON

LIEN A/c No.

011502000049

10 die

Registration charges." , "5,000.00",

,,,,,08.08.2007,"By Ch. No. 458791

dated

04.08.2007 (DD

No. 534587919)

issued to ICICI Bank

A/c of Stamp Duty

from CCL, NON

LIEN A/c No.

011502000049

10 die

Registration charges", "25,010.00",

„Amount Received Details:,,,Total:,, "21,077,630.

00",

„By Ch. No. 619090 dated 03.07.2007

Received from Footcandles films Pvt.

Ltd. to CCL OBC Bank A/c 1866

(CCL-PIXION MUMBAI) on

05.07.2007" ,,,, "500,000.00" ,,

„By Ch. No. 921220 dated 21.07.2007,

Received from Via Earth Pvt. Ld. To

CCL-OBC Bank A/c No. 1866 (ICCL-

Pixion Mumbai on 23.07.2007" ,,,, "10,000,000.00" ,,

CENTURY COMMUNICATION Ltd.,,,,,,,,

„Name of

Property

(iv) „, "Amount of Property

/

Registration" „,Date,Mode of Payment,,Amount

Century communication Ltd.,,,,,,,,

„Name of Property

(V) „, "Amount of

Property /

Registration",Date,"Mode of

Payment",Amount,,,

,"Property of Century

Communication

Ltd. 5th& 6th

Floor including

7th Floor Terrace

Portion Landmark,

Bandra (West

Mumbai -

400050) (1433 Sq.

Ft. 1913

Sq. Ft. & 4319 Sq.

Ft. Terrace Portion)

on

18.03.2004", "6,08,42,700.00", 19.10.2006, "By Cheque

No. 714171

issued to Sajal

Kumar Jain

from CCL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "5,00,000.00",,,

,,, 19.10.2006, "By Cheque

No. 714170

issued to S.

K. Jain from

CCI OBC

Bank A/c

1866 (Pixion

Mumbai)", "6,00,000.00",,,

,,,28.10.2006,"By Cheque

No. 741385

issued to Sajal

Kumar Jain

from CCL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "18,00,000.00",,,

,,,28.10.2006,"By Cheque

No. 741386

issued to

Shreelekha

Jain from CL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "23,00,000.00",,,

,,,28.10.2006,"By Cheque

No. 741384

issued to

Sushila Jain

from CCL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "27,00,000.00",,,

,,,28.10.2006,"By Cheque

No. 741383

issued to

Sushil Kumar

Jain from

CCL OBC

Bank A/c

1866 (Pixion

Mumbai)", "21,00,000.00",,,

,,,22.11.2006,"By Cheque

No. 493683

issued to Sajal

Kumar Jain

from CCL

IOB Bank

A/c 1530

(fund Trfd.

From IOB

Worli to CCL

A/c in Favour

of Bank of

Rajasthan A/c

Stamp Duty

for Plot 2 at

Khar

Corinthian

Bldg.", "14,00,000.00",,,

,,22.11.2006,"By Cheque

No. 493685

issued to

Sushila Jain

from CCL

IOB Bank

A/c 1530

(fund Trfd.

From IOB

Worli to CCL

A/c in Favour

of Bank of

Rajasthan A/c

Stamp Duty

for Plot 2 at

Khar

Corinthian

Bldg", "16,45,000.00",,,,

„29.11.2006, "By Cheque

No. 695172

issued to Sajal

Kumar Jain

from CCL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "1,17,00,000.00",,,,

„29.11.2006, "By Cheque

No. 695173

issued to Sajal

Kumar Jain

from CCL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "1,17,00,000.00",,,,

„29.11.2006, "By Cheque

No. 695171

issued to

Sushila Jain

from CCL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "1,37,00,000.00",,,,,

,,29.11.2006,"By Cheque

No. 695170

issued to

Sushila

Kumar Jain

from CCL

OBC Bank

A/c 1866

(Pixion

Mumbai)", "1,38,00,000.00",,,,,

,Amount Received Details,Total:,"6,39,45,000.00",,,,,

,"By Cheque 577490 dated 20.10.2006

issued from CCL OBC CC Bank A/c

02174010000220 to OBC Bank A/c No.

1866 (Pixion Mumbai in Favour of S.K.

Jain", "5,00,000.00",,,,,,

,"By Cheque 577504 dated 30.10.2006

issued from CCL OBC Bank A/c No.

1866 (Pixion Mumbai) in favour of Sajal

Kr. Jain, Shree Lekha Jain, Sushila Jain

&

Sushil Kr. Jain", "90,00,000.00",,,,,,

,"By Cheque 493683, 493684, 493685 &

493686 dated 23.11.2006 issued from

CCL "IOB Bank A/c " 1530 to

OBC Bank A/c No. 1866 for (Rs.

1400000 + 30000 +1645000 + 30000

=3105000/- (Pixion Mumbai) in Favour of

Sajal Kr. Jain & Sushila Jain and Stamp

& Duty charges." , "31,05,000.00" ,,,,,,

,"Cheque No. 442050 dated 27.11.2006

issued from Pearl Vision Pvt. Ltd. CITI

Bank A/c No. 0802742223 to OBC Bank

A/c No. 1866 for Rs. 17244877/-(Pixion

Mumbai)" , "1,72,44,877.00" ,,,,,,

,"Cheque No. 442048 dated 27.11.2006

issued from Pearl Vision Pvt. Ltd. CITI

Bank A/c No. 0802742223 to OBC Bank

A/c No. 1866 for Rs. 265000477.80

(Pixion Mumbai)" , "2,65,00,477.80" ,,,,,,

Communication Ltd. at 5th& 6th Floor including 7th Floor Terrace Portion Landmark, Bandra (West Mumbai -" 400050) (1433 Sq. Ft. 1913 Sq. Ft." ,,,,,,,,

& 4319 Sq. Ft. Terrace Portion) the payment trail is shown to be made in 2006, whereas the Enforcement Directorate/ Respondent no. 1, itself" ,,,,,,,,

records that fact the ownership of the said property is with Respondent No.4/Century Communication is since 18.03.2004. The said property is under,,,,,,,

the control of the Appellant through mortgage since 13.08.2004 and the said fact which has been stated by the Appellant in its appeal has not been,,,,,,,

disputed by the Enforcement Directorate/ Respondent no. 1. Thus, leaving no scope of doubt as to how the provisional order and the conformation of" ,,,,,,,,

the same has been passed.,,,,,,,,

18. The most important issues involved in the present appeal are whether the properties mortgaged with the Appellant Bank are -"proceeds of,,,,,,,

crime" as defined u/s 2(1)(u) of PMLA. Secondly, whether the PMLA has priority over SARFEASI and RDDB & FI Act." ,,,,,,,,

19. The three member Bench of this Tribunal, to which we were part of the said Bench, decided the appeals on 14.07.2017 in the group of matters i.e." ,,,,,,,,

State Bank of India vs. Joint Director, Directorate of Enforcement, Kolkata in appeal no. FPA-PMLA-1026/KOL/2015 followed by several other" ,,,,,,,,

decision in different matters including recently decided in the matter of IDBI Bank Ltd. Vs. Deputy Director, Directorate of Enforcement, Delhi in" ,,,,,,,,

FPA-PMLA-2147/DLI/2018 on 10.05.2018. In all the aforesaid matters the aforesaid legal issues were involved and decided. The relevant portions of,,,,,,,

the orders passed in aforesaid appeals are re-produced below: -,,,,,,,

“16. The most important issues involved in the present appeal are whether the properties mortgaged with the Appellant Bank are,,,,,,,,,

“proceeds of crime” as defined u/s 2(1)(u) of PMLA. Secondly, whether the PMLA has priority over SARFEASI and RDDB & FI Act.”,,,,,,,,,

The three member Bench of this Tribunal, to which we were part of the said Bench, decided the appeals on 14.07.2017 in the group of”,,,,,,,,,

matters i.e. State Bank of India vs. Joint Director, Directorate of Enforcement, Kolkata in appeal no. FPA-PMLA-1026/KOL/2015 followed”,,,,,,,,,

by several other decision in different matters including recently decided in the matter of IDBI Bank Ltd. Vs. Deputy Director, Directorate of”,,,,,,,,,

Enforcement, Delhi in FPA-PMLA-2147/DLI/2018 on 10.05.2018. In all the aforesaid matters the aforesaid legal issues were involved and”,,,,,,,,,

decided. The relevant portions of the orders passed in aforesaid appeals are re-produced below:-,,,,,,,,,

“FPA-PMLA-1026/KOL/2015,,,,,,,,,

7. Coming to the second question, there is no doubt that the 1985 Act is a special Act. Section 32(1) of the said Act reads as follows:”,,,,,,,,,

“32. Effect of the Act on other laws. (1) The provisions of this Act and of any rules or schemes made there under shall have effect,,,,,,,,,

notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act,”,,,,,,,,,

1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum of”,,,,,,,,,

Articles of Association of an industrial company or in any other instrument having effect by virtue of any /law other than this Act.”,,,,,,,,,

8. The effect of this provision is that the said Act will have effect notwithstanding anything inconsistent therewith contained in any other law,,,,,,,,,

except to the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. A similar”,,,,,,,,,

non obstante provision is contained in Section 13 of the Special Court Act which reads as follows:,,,,,,,,,

“13. Act to have overriding effect. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith,,,,,,,,,

contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any”,,,,,,,,,

decree or order of any Court, tribunal or other authority.”,,,,,,,,,

9. It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act,,,,,,,,,

which must prevail. The decisions cited in the above context are as follows: “Maharashtra Tubes Ltd. v. State Industrial & investment,,,,,,,,,

Corpn. Of Maharashtra Ltd.; Sarwan Singh v. Kasturi Lal; AllahabadBankv.Canara Bank and Ram Narain v. Simla Banking & Industrial,,,,,,,,,

Co. Ltd.,,,,,,,,,,

10. We may notice that the Special Court had in another case dealt with a similar contention. In *Bhoruka Steel Ltd. v. Fairgrowth Financial*,,,,,,,,,,

Services Ltd. it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the,,,,,,,,,

1985 Act. Rejecting this connection, the Special Court had come to the conclusion that the Special Court Act being a later enactment would" ,,,,,,,,,,

prevail. The headnote which brings out succinctly the ration of the said decision is as follows:,,,,,,,,,

“Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of,,,,,,,,,

enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers" ,,,,,,,,,,

the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not,,,,,,,,,

want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment,,,,,,,,,

continue to apply. ,,,,,,,,,,

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in Section 13. that its provisions are to" ,,,,,,,,,,

prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had" ,,,,,,,,,,

the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have" ,,,,,,,,,,

specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the,,,,,,,,,

provisions of the said Act were to prevail even over the provisions of the Sick Companies Act. Under Section 3 of the 1992 Act, all properly" ,,,,,,,,,,

of notified persons is to stand attached. Under Section 3(4), it is only the Special Court which can give directions to the Custodian in" ,,,,,,,,,,

respect of property of the notified party. Similarly, under Section 11(1), the Special Court can give directions regarding property of a" ,,,,,,,,,,

notified party. Under Section 11(2), the Special Court is to distribute the assets of the notified party in the manner set out thereunder." ,,,,,,,,,,

Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand attached. These are assets" ,,,,,,,,,,

which have to be collected by the Special Court for the purposes of distribution under Section 11(2). The distribution can only take place,,,,,,,,,

provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are siphoned off from hanks and,,,,,,,,,

financial institutions into private pockets are returned to the banks and financial institutions. The time and manner of distribution is to be,,,,,,,,,

decided by the Special Court only. Under Section 22 of the 1985 Act, recovery proceedings can only be with the consent of the Board for" ,,,,,,,,,

Industrial and Financial Reconstruction or the appellate authority under that Act. The Legislature being aware of the provisions of Section,,,,,,,,,

22 under the 1985 Act still empowered only the Special Court under the 1992 Act of the 1992 Act to give directions to recover and to,,,,,,,,,

distribute the assets of the notified persons in the manner set down under Section 11 (2) of the 1992 Act. This can only mean that the,,,,,,,,,

Legislature wanted the provisions of Section 11(2) of the 1992 Act to prevail over the provisions of any other law including those of the,,,,,,,,,

Sick Industrial Companies (Special Provisions) Act, 1985." ,,,,,,,,,

It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be" ,,,,,,,,,

harmoniously constructed then the latter must be adopted. If an interpretation is given that the Sick Industrial Companies (Special,,,,,,,,,

Provisions) Act 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is" ,,,,,,,,,

to prevail. On such an interpretation the objects of both would be fulfilled and there would be no conflict. It is clear that the Legislature,,,,,,,,,

intended that public monies should be recovered first even from sick companies. Provided the sick company was in a position to first pay,,,,,,,,,

back the public money, there would be no difficulty in reconstruction. The Board for Industrial and Financial Reconstruction whilst" ,,,,,,,,,

considering a scheme for reconstruction has to keep in mind the fact that it is to be paid off or directed by the Special Court. The Special,,,,,,,,,

Court can, if it is convinced, grant time or installments." ,,,,,,,,,

There can, therefore, be no stay of any proceedings for recovery against a sick company so far as the Special Court under the 1992 Act is" ,,,,,,,,,

concerned. " ,,,,,,,,,

11. We are in agreement with the aforesaid decision of the case, more so when we find that whenever the legislature wishes to do so it" ,,,,,,,,,

makes appropriate provisions in the Act in that behalf. Mr Shiraz Rustomjee has drawn our attention to Section 34 of the Recovery of Debts,,,,,,,,,

Due to Banks and Financial Institutions Act, 1993 wherein after giving an overriding effect to the 1993 Act it is specifically provided that" ,,,,,,,,,

the said Act will be in addition to and not in derogation of a number of other Acts including the 1985 Act. Similarly under Section 32 of the,,,,,,,,,

1985 Act the applicability of the Foreign Exchange Regulation Act and the Urban Land (Ceiling and Regulation) Act is not excluded. It is,,,,,,,,,

clear that in the instant case there was no intention of the legislature to permit the 1985 Act to apply, notwithstanding the fact that" ,,,,,,,,,,

proceedings in respect of a company may be going on before the BIFR. The 1992 Act is to have an overriding effect notwithstanding any,,,,,,,,,

provision to the contrary in another Act.Ã¢â¬â¢,,,,,,,,,

31. The similar view was taken by the Bombay High Court in the case of Bhoruka Steel Ltd. Vs. Fairgrowth Financial Services Ltd. The,,,,,,,,,

judgment rendered on 09.02.2016 reported in 1997 (89) company cases 547 (BOM) para 15 of the said judgment read as under:,,,,,,,,,

15. To be noted that in both the judgments, relied upon by counsel, the Supreme Court has held that generally where there are two special" ,,,,,,,,,,

statutes, which contain non-obstante clauses, the later statute must prevail. This is because at the time of enactment of the later statute, the" ,,,,,,,,,,

Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non-,,,,,,,,,

obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail,,,,,,,,,

then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply. In the present case, the" ,,,,,,,,,,

said Act is later. The said Act provides that its provisions are to prevail over any other Act. This would include the Sick Companies Act. If,,,,,,,,,

the legislature wanted to provide otherwise, they would have specifically so provided.Ã¢â¬â¢" ,,,,,,,,,,

32. Recently, the Parliament has amended the twin legislations viz. (i) the SARFAESI Act, 2002 and (ii) the DRT Act, 1993(after amendment" ,,,,,,,,,,

titled as the Recovery of Debts and Bankruptcy Act, 1993) by the Enforcement of Security Interest and Recovery of Debts Laws and" ,,,,,,,,,,

Miscellaneous Provisions (Amendment) Act, 2016 and its provisions have been given effect from 01.09.2016." ,,,,,,,,,,

33. The amended provisions give overriding effect over any other law and priority to the secured condition for the time being in force,,,,,,,,,

including the provisions of PMLA in so far as recovery of the loan by the secured creditors is concerned.,

The amended provisions are reproduced as under:.....,

(i) Section 26E of the SARFAESI Act, 2002 : " ,,,,,,,,,,

Ã¢â¬â¢26E. Priority to secured creditors Ã¢â¬â¢ Notwithstanding anything contained in any other law for the time being in force, after the" ,,,,,,,,,,

registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, " ,,,,,,,,,,

cesses and other rates payable to the Central Government or State Government or local authority.,

Explanation : For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy",,,,,,,,,,

Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, ",,,,,,,,,,

priority to secured creditors in payment of debt shall be subject to the provisions of that Code.Ã¢â¬â,,,,,,,,,

(ii) Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 :",,,,,,,,,,

31B. Priority to secured creditors Ã¢â¬â" Notwithstanding anything contained in any other law for the time being in force, the rights of secured",,,,,,,,,,

creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and",,,,,,,,,,

shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and other rates due to the Central",,,,,,,,,,

Government, State Government or local authority.",,,,,,,,,,

Explanation : For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy",,,,,,,,,,

Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, ",,,,,,,,,,

priority to secured creditors in payment of debt shall be subject to the provisions of that Code.Ã¢â¬â,,,,,,,,,

34. In Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 after the words ""the date of the application"" ,",,,,,,,,,,

and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower",,,,,,,,,,

by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;""",,,,,,,,,,

is added which makes the said amendment or the 1993 Act applicable to all the debts which remains unpaid.,,,,,,,,,,

35. Thus, it is very clear from above that the secured creditor, get a priority over the rights of Central or State Government or any other",,,,,,,,,,

Local Authority. The amendment has been introduced to facilitate the rights of the secured creditors which are being hampered by way of,,,,,,,,,

attachments of properties, belonging to the financial institutions/secured creditors, done by/in favour of the government institutions." ,,,,,,,,,,

36. The Full Bench of the Madras High Court while acknowledging the amount of losses suffered by the Banks and while approving the,,,,,,,,,

latest amended Section 31B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 held in the case Ã¢â¬â"The Assistant",,,,,,,,,,

Commissioner (CT), Anna Salai-III Assessment Circle Vs. The Indian Overseas bank and Ors.Ã¢â¬â that",,,,,,,,,,

Ã¢â¬â"There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which",,,,,,,,,,

security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the",,,,,,,,,,

Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and" ,,,,,,,

has come into force from 01.09.2016. Further it was also held that the law having now come into force, naturally it would govern the rights" ,,,,,,,

of the parties in respect of even a lis pending.Ã¢â¬â¢ ,,,,,,,

37. The Assistant Commissioner (CT) Vs. The Indian Overseas Bank, Madras High Court, WP No. 2675 of 2011 (Full Bench)" ,,,,,,,

Ã¢â¬â¢2 We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and" ,,,,,,,

Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in" ,,,,,,,

the Principle Act, Which reads as under:-" ,,,,,,,

Ã¢â¬â¢31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize secured" ,,,,,,,

debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over" ,,,,,,,

all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local" ,,,,,,,

authority. ,,,,,,,

Explanation. Ã¢â¬â¢ for the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy" ,,,,,,,

Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to" ,,,,,,,

secured creditors in payment of debt shall be subject to the provisions of that Code.Ã¢â¬â¢ ,,,,,,,

Ã¢â¬â¢3 There is, thus, no doubt that the rights of a secured creditor to realize secured debts due and payable by sale of assets over which" ,,,,,,,

security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the" ,,,,,,,

Central Government, State Government or Local Authority. This section introduced in the Central Act is with Ã¢â¬â¢notwithstandingÃ¢â¬â¢ clause" ,,,,,,,

and has come into force from 01.09.2016Ã¢â¬â¢ ,,,,,,,

Ã¢â¬â¢4 The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.Ã¢â¬â¢ ,,,,,,,

Ã¢â¬â¢5 The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of" ,,,,,,,

the mortgaged property.Ã¢â¬â¢ ,,,,,,,

38. In another Madras High Court judgment in the case of Ã¢â¬â¢Dr. V. M. Ganesan vs. The Joint Director, Directorate of EnforcementÃ¢â¬â¢ has" ,,,,,,,

explained the grievances faced by the financial institutions while holding that ,,,,,,,

Ã¢â¬ÅFor instance, if LIC Housing Finance Limited, which has advanced money to the petitioner in the first writ petition and which" ,,,,,,,

consequently has a right over the property, is able to satisfy the Adjudicating Authority that the money advanced by them for the purchase of" ,,,,,,,

the property cannot be taken to be the proceeds of crime, then, the Adjudicating Authority is obliged to record a finding to that effect and to" ,,,,,,,

allow the provisional order of attachment to lapse. Otherwise, a financial institution will be seriously prejudiced. I do not think that the" ,,,,,,,

Directorate of Enforcement or the Adjudicating Authority would expect every financial institution to check up whether the contribution made ,,,,,,,

by the borrowers towards their share of the sale consideration was lawfully earned or represent the proceeds of crime. Today, if the" ,,,,,,,

Adjudicating Authority confirms the provisional order of attachment and the property vests with the Central Government, LIC Housing" ,,,,,,,

Finance Limited will also have to undergo dialysis, due to the illegal kidney trade that the petitioner in the writ petition is alleged to have" ,,,,,,,

indulged in. This cannot be purport of the Act.Ã¢â¬Å ,,,,,,,

39. In a case contested by one of the branches of the Appellant Bank, the High Court of Madras Ã¢â¬ÅState Bank of India Vs. The Assistant" ,,,,,,,

Commissioner, Commercial Tax, Puraswalkam Assistant Circle and Ors.Ã¢â¬Å, while upholding the Amendment Act, 2016 to Section 26E of" ,,,,,,,

the SARFAESI Act and reaffirming the view of the Full Bench of the same court in The Assistant Commissioner (CT), Anna Salai-III" ,,,,,,,

Assessment Circle (supra) lifted the attachment entry and held that- ,,,,,,,

Ã¢â¬ÅIn other words, not only should the amendment apply to pending lis, but the declaration that the right of a secured creditor to realise the" ,,,,,,,

secured debts, would have priority over all debts, which would include, Government dues including revenues, taxes, etc., should hold good" ,,,,,,,

qua 2002 Act as well.Ã¢â¬Å ,,,,,,,

40. B. RAMA RAJU V. UOI AND ORS. Reported in (2011) 164 company case 149(AP)(D Bw)ho has dealt with the aspect of bonafide ,,,,,,,

acquisition of property in para 103. The same read as under:- ,,,,,,,

Ã¢â¬Å103. Since proceeds of crime is defined to include the value of any property derived or obtained directly or indirectly as a result of ,,,,,,,

criminal activity relating to a scheduled offence, where a person satisfies the adjudicating authority by relevant material and evidence" ,,,,,,,

having a probative value that his acquisition is bona fide, legitimate and for fair market value paid therefor, the adjudicating authority must" ,,,,,,,

carefully consider the material and evidence on record (including the Reply furnished by a noticee in response to a notice issue under ,,,,,,,

Section 8(1) and the material or evidence furnished along therewith to establish his earnings, assets or means to justify the bona fides in the" ,,,,,,,

acquisition of the property); and if satisfied as to the bona fide acquisition of the property, relieve such property from provisional attachment" ,,,,,,,

by declining to pass an order of confirmation of the provisional attachment; either in respect of the whole or such part of the property ,,,,,,,

provisionally attached in respect whereof bona fide acquisition by a person is established, at the stage of the section 8(2) process" ,,,,,,,

41. The Supreme Court in (2010)8 Supreme Court Cases 110 (Before G.S. Singhvi and A.K. Ganguly, JJ) in the case of United Bank of" ,,,,,,,

India V/s. Satyawati Tondon and Ors. In paras no. 6, 55 & 56 has held as under:-" ,,,,,,,

6. To put it differently, the DRT Act has not only brought into existence special procedural mechanism for speedy recovery of dues of banks" ,,,,,,,

and financial institutions, but also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of the civil" ,,,,,,,

courts for frustrating the proceedings initiated by the banks and other financial institutions. ,,,,,,,

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of" ,,,,,,,

statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have ,,,,,,,

serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High ,,,,,,,

Courts will exercise their discretion in such matters with greater caution, care and circumspection." ,,,,,,,

56. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking" ,,,,,,,

action in furtherance of notice issued under Section 13(4) of the Act. In the result, the appeal is allowed and the impugned order is set aside." ,,,,,,,

Since the respondent has not appeared to contest the appeal, the costs are made easy." ,,,,,,,

In the subsequent changes in law and amendment in the another Special Act i.e. SARFAESI Act, 2002 the decisions referred by Mr. Matta" ,,,,,,,

in the case of Solidaire (Supra) and Bhoruka Steel (Supra) does not help the case of the respondent no. 1 because the effect of overruling the ,,,,,,,

PMLA loses its validity once the amendment is made which even has been interpreted subsequently by the Full-Bench of the Chennai High ,,,,,,,

Court in the case of Assistant Commissioner CT (Supra) and other decision in the nature of the facts in the present matter. ,,,,,,,

42. It is also a matter of fact that after passing the impugned order the borrowers have also settled the loan amount with the complainant ,,,,,,,

" i.e. Union of India in order to pay the remaining out-standing amount. The undertaking in this regard is recorded in Court. It is written ,,,,,,,

agreement and the statement of the parties were recorded. Counsel for the borrowers has also informed us that his client also intent to pay,,,,,,,,,

the remaining out-standing amount to the State Bank of India in order to clear their liabilities once the attached properties are sold and even,,,,,,,,,

otherwise,,,,,,,,,

Copy of the settlement of the borrowers and the complainant Bank of India was filed before us. As far as the schedule offence is concerned," ,,,,,,,,,,

we do not wish to make any comment. But we can only observe that in case of settlement, joint petition for quashing of FIR in the High Court" ,,,,,,,,,,

u/s 482 Cr. P.C. could be filed.,,,,,,,,,,

43. It is not denied on behalf of department that these provisional attachment was made, the proceedings of recovery of amount were" ,,,,,,,,,,

pending before the DRT for recovery against the borrowers and for sum of the properties, possession were with the bank. The mortgaged" ,,,,,,,,,,

deeds are also not disputed or/and validity of the same are not challenged on behalf of ED.,,,,,,,,,,

44. It is settled law that generally when the civil dispute between the parties are settled before the court particularly pertaining to the,,,,,,,,,

recovery of out-standing amount, on joint petition, the High Court while exercising its discretion may quash the criminal petition u/s 482 Cr. " ,,,,,,,,,,

P.C. at the joint request of the parties.,,,,,,,,,,

45. Three Judge Bench in Narendra Lal Jain & Ors., (supra) held that during the investigation pertaining to the culpability of the accused" ,,,,,,,,,,

in the crime, the concerned bank had instituted suits for recovery of the amount claimed to be due from the respondents and the said suits" ,,,,,,,,,,

were disposed of in terms of the consent decrees. On the basis of the said consent decrees an application for discharge was filed which was,,,,,,,,,

rejected by the trial court but eventually was allowed by the High Court. The charges in the matter were framed under Section 120-B/420,,,,,,,,,

IPC by the learned trial Judge against the private parties. As far as bank officials are concerned, charges were framed under different" ,,,,,,,,,,

provisions of the Prevention of Corruption of Act, 1988. Being dissatisfied with the said order,, the CBI had preferred an appeal by" ,,,,,,,,,,

obtaining special leave and in that context the court observed that the accused respondent had been charged under Section 120-B/420 IPC.,,,,,,,,,,

and the civil liability of the respondent to pay the amount had already been settled and further there was no grievance on the part of the,,,,,,,,,

bank. Taking note of the fact that offence under Section 420 of IPC is compoundable and Section 120-B is not compoundable, the Court" ,,,,,,,,,,

eventually opined thus:-,,,,,,,,,

“11. In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the bank had been”

mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its”

power under Section 482 Cr.P.C. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code,

inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of”

law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the,

contours of the power available under Section 482 CR.P.C.it must be remembered that continuance of a criminal proceeding which is likely,

to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under,

Section 482 Cr. P.C.,

In Sanjay Bhandari V/s. CBI, Cri. M.C. 5798/2014, Delhi High Court, dated 29.06.2015”

“69. By consent the parties have settled all disputes in the recovery suit, the consent decree of DRT stood to be disposed off as duly”

satisfied. There is hence no force in the submission of respondents that the complainant bank has not exonerated the petitioners, first being”

the Civil Procedure Code, and the second being the OTS Scheme of the Reserve Bank of India, which the petitioners have extensively”

referred to in the original petition. The provisions of OTS Scheme prevent the complainant bank from entering into any compromise or,

settlement under the said OTS Scheme in the cases of willful default, fraud and malfeasance. The complainant bank in choosing to enter”

into such consent terms under the provisions of OTS Scheme has not only exonerated the petitioners, but for all intents and purposes given”

up the perusal of the complaint and having no grievance against them in any other proceeding whether civil or criminal on the same set of

issues.”

“70. There is no doubt that the trial has been proceeding for offences for the last about 20 years ago. The dispute between the petitioner,

and complainant Bank 33 years old. A long time has in fact been elapsed since the alleged commission of offences. Still the trial continues,

The present petition is maintainable as the same has been filed also on additional grounds and circumstances. No useful purpose would be,

served if such oppressive trial may continue for many more years. Thus, ends of justice are served by quashing such a proceeding, as the”

parties cannot be allowed to go through the rigmarole of criminal prosecution for long numbers of years in a matter, it is doubtful in the" ,,,,,,,

mind of the Court in whose favour it would be decided.Ã¢â¬â, ,,,,,,,

Ã¢â¬â71. In view of above mentioned reasons, this Court is inclined to quash the proceedings pending against the petitioners, arising out of" ,,,,,,,

R.C. No. 4A/94/SIU(X) dated 23rd May, 1994, titled Ã¢â¬âCBI vs. N. Bhojraj Shetty & Ors.Ã¢â¬â, being C.C. No.65/11, pending in the Court of" ,,,,,,,

Spl. Judge (CBI), Tis Hazari Courts, Delhi.Ã¢â¬â The said decision has been upheld by the HonÃ¢â¬âble Supreme Court." ,,,,,,,

46. In the present case, it is undisputed facts that the attached property were purchased much prior to the period when the facility of loan" ,,,,,,,

sanctioned to the borrowers. The banks while rendering the facilities were boanfide parties. It is not the case of the respondent that the,,,,,,

attached properties were purchased after the loan was obtained. The mortgaged of the properties were done as bonafide purposes. None of,,,,,,

the bank is involved in the schedule offence. No PMLA proceedings are pending except the complainant bank was arrayed as Column;-11 ,,,,,,,

at the time of framing charges. Union Bank of India has not granted sanction against its employee to proceed against him in criminal,,,,,,

complaint. There is no criminal complaint under the schedule offence and PMLA is pending against the two banks. In case of failure on the,,,,,,

part of borrowers to comply with the terms of settlement, the contempt proceedings are maintainable in the Court where the settlement was" ,,,,,,,

recorded. ,,,,,,,

47. In view of the entire gamut of the dispute, we are of the considered opinion that the conduct of the banks are always bonafide. Both" ,,,,,,,

banks are innocent parties. They were legally entitled to inform the Adjudicating Authority about their innocence and they rightly did so but,,,,,,

their contention was rejected as appeared from the impugned order. ,,,,,,,

48. This Tribunal in the case of IPRS in appeal no. FPA-PMLA-1302/MUM/2016 decided on 22.06.2017 had dealt with the similar issue as ,,,,,,,

to whether the innocent party whose immovable properties are attached by the ED can approach the Adjudicating Authority for release of ,,,,,,,

the same in para no. 55 to 60 the same read as under:- ,,,,,,,

Ã¢â¬â55. Whether innocent party whose properties i.e. movable or immovable are attached can approach the Adjudicating Authority for ,,,,,,,

release of attached property. ,,,,,,,

The Scheme of Prevention of Money Laundering Act clearly provides the mechanism whereby the innocent parties can approach the ,,,,,,,

Adjudicating Authority for the purposes of release of properties which have been attached in terms of the provisions of Section 5 of the Act.,,,,,,,

This can be seen by reading Section 8(1) and the proviso to Section 8(2) of the Act whereby Adjudicating Authority has to rule whether all or ,,,,,,,

any of the properties referred to in the notice are involved in money laundering or not.,,,,,,,

“8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section” ,,,,,,,

17 or under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence” ,,,,,,,

under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to” ,,,,,,,

indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-” ,,,,,,,

section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information” ,,,,,,,

and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-” ,,,,,,,

laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being ,,,,,,,

held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that” ,,,,,,,

where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.” ,,,,,,,

(2) The Adjudicating Authority shall, after- (a) considering the reply, if any, to the notice issued under subsection (1); (b) hearing the” ,,,,,,,

aggrieved person and the Director or any other officer authorised by him in this behalf, and (c) taking into account all relevant materials” ,,,,,,,

placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-” ,,,,,,,

section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice” ,,,,,,,

had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-” ,,,,,,,

laundering, section 58 B or sub-section (2 A) of section 60 by the Adjudicating Authority (4) Where the provisional order of attach” ,,,,,,,

56. There are judicial pronouncements whereby it has been laid down that the innocent parties can approach the Adjudicating Authority for ,,,,,,,

release of property by showing their bonafides in their dealings with the property. In the case of Sushil Kumar Katiyar (Appellants) Vs UOI ,,,,,,,

and Ors. (Respondents) MANU/UP/0777/2016 decided on 10.05.2016 by Allahabad High Court, it has been observed by the Ld. Single” ,,,,,,,

Judge after noticing the judgment of Karnataka High Court that the element of knowingly or mens rea have been provided under the Act so,,,,,,,,,

that the aspect of implicating any innocent person can be ruled out. Relevant para 26 of judgment is reproduced below:-,,,,,,,,,

“26. Thus, upon consideration of the law laid down by the Hon'ble Karnataka High Court, it is clear that the amendment incorporated in",,,,,,,,,

the Money Laundering Act was not held unconstitutional and ultra virus, but it was observed by the Karnataka High Court that the property",,,,,,,,,

of a person can be attached without there being any prosecution for the offence of Money Laundering, but so far as the prosecution of a",,,,,,,,,

person for the offence of money laundering is concerned, the proceedings under section 3 of the PML Act can be initiated only in case the",,,,,,,,,

person is held guilty of receiving proceeds of crime as a result of commission of scheduled offence. The Karnataka High Court has also held,,,,,,,,,

that the complainant in such a case is not required to wait for the result of trial being held for the scheduled offence. A complaint can still be,,,,,,,,,

filed against such person, but if ultimately the person is acquitted of the charge for the scheduled offence, his prosecution under section 3 of",,,,,,,,,

the Act for the offence of Money-Laundering would also come to an end. It has also been kept open by the Karnataka High Court that a,,,,,,,,,

person against whom complaint under section 3 of the PML Act has been filed and he is being prosecuted for the offence of money-,,,,,,,,,

laundering, he can show before the court that he is innocent and has not received any proceeds of crime. “26. Thus, upon consideration of the law laid down by the Hon'ble Karnataka High Court, it is clear that the amendment incorporated in",,,,,,,,,

It is clear that innocent person can approach the Adjudicating Authority of any competent court to demonstrate his innocence that he has not,,,,,,,,,

received any proceeds of crime. The consequence of this is that while considering whether all or any of the properties provided under notice,,,,,,,,,

issued u/S 8(1) are involved in money laundering, the Adjudicating Authority can take into consideration the plea of innocence raised by any",,,,,,,,,

person and also the fact as to whether the property which has been attached has any nexus whatsoever with that of money laundering or not,,,,,,,,,

if the person before the Tribunal/ Adjudicating Authority is able to demonstrate that he neither directly nor indirectly has attempted to,,,,,,,,,

indulge nor with knowledge or ever assisted any process or activity in connection with proceeds or crime and the question of his involvement,,,,,,,,,

does not arise as he is third party, then the Tribunal/ Adjudicating Authority can consider the said plea depending upon whether there exist",,,,,,,,,

bona fide in the said plea or not and proceed to adjudicate the plea of innocence of the said party,,,,,,,,,

57. This is due to the reason that Section 8 allows the Adjudicating Authority to only retain the properties which are involved in money,,,,,,,,,

laundering which means as to whether properties attached are involved in money laundering or not is a pre-condition prior to confirming or,,,,,,,,,

attachment by Adjudicating Authority. Therefore, at that time, if the plea is raised that the party whose property is attached is innocent or is" ,,,,,,,,,,

without knowledge of any such transaction with respect to money laundering, then the Tribunal can consider the said plea and proceed to" ,,,,,,,,,,

release the said property out of the properties by holding that the said property is not involved in money laundering.,,,,,,,,,,

58. For the purposes of determining whether the property is involved in money laundering, the Court may consider the ingredients of Section" ,,,,,,,,,,

3 which define offence of money laundering. The aspect of knowledge or involvement has been discussed by Ld. Single Judge of Gujarat,,,,,,,,,

High Court in the case of Jafar Mohammed Hasanfatta and Ors (Appellants) Vs Deputy Director and Ors. (Respondents),,,,,,,,,,

MANU/GJ/0219/2017 wherein Ld Single Judge has observed as under:-,,,,,,,,,

Ã¢â¬Å37. A holistic reading of this definition of 'proceeds of crime' and the penal provision under Section 3 of PMLA, which uses conjunctive" ,,,,,,,,,,

'and', makes it luminous that any persons concerned in any process or activity connected with such ""proceeds of crime"" relating to a" ,,,,,,,,,,

scheduled offence"" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two" ,,,,,,,,,,

prerequisites are satisfied i.e.-,,,,,,,,,

Ã¢â¬Å(i) Firstly, if he-" ,,,,,,,,,,

(a) directly or indirectly 'attempts' to indulge, " ,,,,,,,,,,

(b) Ã¢â¬ÅknowinglyÃ¢â¬Å either assists or is a party, " ,,,,,,,,,,

or ,,,,,,,,,,

(c) is Ã¢â¬Åactually involvedÃ¢â¬Å in such activity;,,,,,,,,,

and,,,,,,,,,

(ii) Secondly, if he also projects or claims it as untainted property;"" ,,,,,,,,,,

38. The first of the two pre-requisite to attract Section 3 of PMLA shall thus satisfy any of the following necessary ingredients-,,,,,,,,,

Ã¢â¬ÅA. RE: DIRECT OR INDIRECT ATTEMPT:,,,,,,,,,

In State of Maharashtra v. Mohd.Yakub, MANU/SC/0239/1980 : (1980) 3 SCC 57, the Hon'ble Supreme Court observed that-" ,,,,,,,,,,

Ã¢â¬Å13. Well then, what is an Ã¢â¬ÅattemptÃ¢â¬Å? ...In sum, a person commits the offence of ""attempt to commit a particular offence"" when (i)" ,,,,,,,,,,

he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act" ,,,,,,,,,,

towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the,,,,,,,,,

course of committing that offence."",,,,,,,,,

Thus, an "attempt to indulge" would necessarily require not only a positive "intention" to commit the offence, but also preparation for",,,,,,,,,

the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to,,,,,,,,,

produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such 'intention' and 'attempt' on the part of",,,,,,,,,

any of the petitioners.,,,,,,,,,

B. RE: KNOWINGLY ASSISTS OR KNOWINGLY IS A PARTY:.,,,,,,,,,

In Joti Parshad v. State of Haryana, MANU/SC/0161/1993 : 1993 Supp (2) SCC 497 the Hon'ble Supreme Court has held as follows-",,,,,,,,,

"5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" ,,,,,,,,,

or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an",,,,,,,,,

awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind.,,,,,,,,,

"Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing." ,,,,,,,,,

"Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to",,,,,,,,,

"believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to",,,,,,,,,

believe if he has sufficient cause to believe the same.",,,,,,,,,

The same test therefore applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or",,,,,,,,,

documentary, to show that any of the petitioners, 'Knowingly', assisted or was a party to, any offence." ,,,,,,,

C. Actually involved:.,,,,,,,,,

Actually involved would mean actually involved into any process or activity connected with the proceeds of crime and thus scheduled",,,,,,,,,

offence, including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever," ,,,,,,,,,

oral or documentary, to substantiate any such allegation qua the petitioners," ,,,,,,,

D. Neither any of the petitioners is arraigned as accused in the 'Scheduled Offences' punishable under Indian Penal Code for direct or",,,,,,,,,

indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of" ,,,,,,,,,

them."",,,,,,

39. The second of the two pre-requisite to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of,,,,,

crime as untainted property. For making such claim or to project 'proceeds of crime' as untainted, the knowledge of tainted nature i.e. the",,,,,,

property being 'proceeds of crime' derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence," ,,,,,,

would be utmost necessary, which however is lacking in the instant case."",,,,,,

59. These are four ingredients which are determinative factors on the basis of which it can be said that whether any person or any property,,,,,

is involved in money laundering or not. If there is no direct / indirect involvement of any person or property with the proceeds of the crime,,,,,

nor there is any aspect of knowledge in any person with respect to involvement or assistance nor the said person is party to the said,,,,,

transaction, then it cannot be said that the said person is connected with any activity or process with the proceeds of the crime. The same" ,,,,,,

principle should be applied while judging the involvement of any property of any person in money laundering. This is due to the reason that,,,,,

if the property has no direct involvement in the proceeds of the crime and has passed on hands to the number of purchasers which includes,,,,,

the bona fide purchaser without notice, the said purchaser who is not having any knowledge about the involvement of the said property" ,,,,,,

with the proceeds of the crime nor being the participant in the said transaction ever, cannot be penalized for no fault of his. Therefore, it" ,,,,,,

cannot be the Scheme of the Act whereby bona fide person without having any direct/ indirect involvement in the proceeds of the crime or its,,,,,

dealings can be made to suffer by mere attachment of the property at the initial stage and later on its confirmation on the basis of mere,,,,,

suspicion when the element of mens rea or knowledge is missing,,,,,

60. Similar principle has been laid down by Chennai High Court in the case of C. Chellamuthu (Appellants) Vs The Deputy Director, " ,,,,,,

Prevention of Money Laundering Act, Directorate of Enforcement (Respondent) MANU/TN/4087/2015 decided on 14.10.2015, relevant" ,,,,,,

portion of which are reproduced below:-,,,,,

“ 20. The said sections read as follows:--,,,,,

“23. Presumption in inter-connected transactions Where money-laundering involves two or more interconnected transactions and one or,,,,,

more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation (under" ,,,,,,

section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or" ,,,,,,,

the Special Court), be presumed that the remaining transactions form part of such inter-connected transaction." ,,,,,,,

24. Burden of proof,,,,,,

In any proceeding relating to proceeds of crime under this Act, " ,,,,,,,

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is" ,,,,,,,

proved, presume that such proceeds of crime are involved in money-laundering; and" ,,,,,,,

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering." ,,,,,,,

21. In the present case, one G. Srinivasan is accused of having played fraud and obtained a loan of Rs. 15,00,00,000/- by producing bogus" ,,,,,,,

and fabricated documents. From and out of the said amount, the property in question was purchased by him in the names of his Benamies." ,,,,,,,

One Ayyappan was appointed as their Power Agent. One Gunaseelan purchased the property through the Power Agent Ayyappan. The said,,,,,,

Gunaseelan was examined and his statement was recorded Under Section 50 of the Act. He had stated that he purchased the property for,,,,,,

cultivation. He developed the property but geologist gave opinion that property will not yield proper income. In the circumstances, he sold" ,,,,,,,

the property to appellants. The respondent has not produced any document or material to disprove the statement of Gunaseelan. There is,,,,,,

nothing on record to show that the transaction in favour of the said Gunaseelan, is not genuine. It is not the case of respondent that the said" ,,,,,,,

Gunaseelan is a Benami or employee of G. Srinivasan and that Gunaseelan did not pay any amount as sale consideration or the sale,,,,,,

consideration paid by Gunaseelan was not legitimate money. There is no material to show nexus and link of Gunaseelan with G. Srinivasan,,,,,,

and his Benamies. In the absence of any verification or investigation by respondent with regard to genuineness or otherwise of the purchase,,,,,,

by Gunaseelan; whether he was connected with G. Srinivasan or the sale consideration is legitimate or not the property in the hands of,,,,,,

Gunaseelan cannot be termed as proceeds of crime.,

22. Further, the appellants have given statements under Section 50 of the Act. They have categorically stated that they possess agricultural" ,,,,,,,

lands, cultivate GloriosaSuperba seeds and sell the same and derive considerable income. They have named the persons to whom they have" ,,,,,,,

sold the GloriosaSuperba seeds and produced Bank statements. Some of the Appellants have stated that they sold their lands and borrowed,,,,,,

monies to purchase the property in question. There is nothing on record to show that the respondent had verified these statements.....

Especially, the respondent has not verified the Bank statement produced by the Appellants to ascertain the genuineness of the same and"

whether the money deposited came from genuine purchasers or from the persons involved in fraud and Money Laundering. The respondent.....

does not allege that Appellants are Benamies of G. Srinivasan or no sale consideration passed to the vendor.....

23. Considering the materials on record and judgments reported in MANU/MH/1011/2010: 2010 (5)Bom CR 625 [supra] and : [2011] 164.....

Comp Cas 146(AP) [supra], I hold that appellants have rebutted the presumption that the property in question is proceeds of crime. The"

respondent failed to prove any nexus or link of Appellants with G. Srinivasan and his benamies. Once a person proves that his purchase is.....

genuine and the property in his hand is untainted property, the only course open to the respondent is to attach sale proceeds in the hands of"

vendor of the appellants and not the property in the hands of genuine legitimate bona fide purchaser without knowledge.....

24. Before the Adjudicating Authority it was admitted by complainant that appellants had no knowledge that properties in the hands of their.....

vendor was proceeds of crime. It was also not disputed by complainant that the appellants did not have financial capacity to buy properties.....

Paragraphs 21, 22, 23 and 24 of order of Adjudicating Authority is extracted herein for better appreciation."

“21. The CBIBS & FC (BLR) has filed a charge sheet in the court of Spl. Judge for CBI cases Coimbatore, against Sh. Arivarasu, Sh. R."

Manoharan, Sh. R. Selvakumar, Sh. G. Srinivasan, Sh. K. Martha Muthu, Sh. V. InduNesan, Sh. K. Vignesh, Sh. A. Sainthil Kumar, Sh. M."

Ram Krishnan, for the offences punishable under Section 120-B read with 420, 467, 471 IPC and section 13(2) read with 13(1)(d) of PC"

Act 1988. The offences punishable under section 120-B, 420, 471 are schedule offence under Section 2(1)(y) of the PMLA and therefore on"

of the condition for issuing provisional attachment order is satisfied. The other important point to be determined is whether the properties.....

attached vide Provisional attachment order are involved in money-laundering. The only defense or explanation raised by Defendants,"

particularly Def No. 2 to 8 is that the landed properties attached by the complainant are not proceeds of crime. These properties were.....

purchased by these defendants without having any knowledge, whatsoever, that these properties were derived or obtained through criminal"

activities relating to schedule offence. It has been demonstrated by them that they verified the title deeds relating to the properties and after.....

due verification of every details entered into the sale transactions as such these are bona fide deals entered by them against proper sale,,,,,,,,,

consideration and the money paid to the seller is also well explained,,,,,,,,,

22. Against the above arguments vehemently raised by the defendants, the complainant without disputing that the deals are bona fide" ,,,,,,,,,,

heavily relied on the judgment of the Bombay High Court, dated 05.08.2010 in Mr. Radha Mohan Lakhotia Vs. Deputy Director, PMLA," ,,,,,,,,,,

Directorate of Enforcement, Mumbai in first appeal No. 527/2010. In this case it held by the Bombay High Court that the property bought" ,,,,,,,,,,

without the knowledge that the same is tainted could be subjected to Provisional Attachment Order,,,,,,,,,

23. In the instant case the only point to be decided is whether the properties bought by any person against clean money and without any ,,,,,,,,,,

knowledge that properties have been acquired directly or indirectly through scheduled offence could be subject matter of provisional ,,,,,,,,,,

attachment order. ,,,,,,,,,,

24. It is an admitted position that the Defendants (D-2 to D-8) had no knowledge that the properties in the hands of the vendor was proceeds ,,,,,,,,,,

of crime. They have also verified the papers relating to these properties before the deal. No point has been raised with regard to the ,,,,,,,,,,

financial capability of these Defendants to buy these properties. However, the Bombay High Court decision in Radha Mohan Lakhotia has" ,,,,,,,,,,

been pressed into service to make out a plea that the properties could be attached in such circumstances under the PMLA. """" ,,,,,,,,,,

Provisional attachment was sought to be continued only based on the judgment of Bombay High Court in Radha Mohan Lakhotia's case. ,,,,,,,,,,

25. A reading of paragraphs 21 to 24 clearly reveals that both the Adjudicating Authority as well as Appellate Authority failed to properly ,,,,,,,,,,

appreciate the facts and findings in Radha Mohan lakhotia's case. In that case, the Department had placed substantial and acceptable facts" ,,,,,,,,,,

to prove that the property in the hands of third party was proceeds of crime. It is pertinent to note that in Mr. Radha Mohan Lokatia's case," ,,,,,,,,,,

Department had proved the nexus and link between the person possessing the property and person accused of having committed an offence. ,,,,,,,,,,

All the persons involved in that case were close relatives. ,,,,,,,,,,

26. In the present case, the respondent failed to prove that the appellants did not have sufficient financial capacity to buy the property or" ,,,,,,,,,,

that the money paid by them as sale consideration was not legitimate money derived by agricultural activities. No material was produced to ,,,,,,,,,,

show that the appellants are close relatives of person, who involved in criminal activities and the person, who sent monies to purchase the" ,,,,,,,,,,

property did not possess financial capacity to provide such huge amounts and that they are not genuine purchasers of agricultural products,,,,,,,,,

of appellants. The respondent has not made any such investigation and has not produced any such material. Further, the Appellate" ,,,,,,,,,,

Authority in fact considered the additional documents produced before it, but rejected the same on the ground that Appellants have not given" ,,,,,,,,,,

any valid reasons for not filing the same before the Adjudicating Authority. Having considered the Additional documents, the appellate" ,,,,,,,,,,

authority failed to give any finding on merits after verifying with the concerned Bank.Ã¢â¬â¢,,,,,,,,,

FPA-PMLA-2147/DLI/2018 :,,,,,,,,,

In appeal no. FPA-PMLA-2147/DLI/2018 this tribunal not only relied on the judgment and order of this tribunal passed in State Bank of,,,,,,,,,

India (supra) matter but also discussed and considered the judgment of Hon'ble Supreme Court passed in the matter of KSL & Industries vs.,,,,,,,,,,

Arihant Threades Ltd. & Ors. in civil appeal no. 5225/2008 passed in the year 2014 as well as the Judgment & order of this Tribunal in the,,,,,,,,,

matter of Cheif Manager of Syndicate Bank vs. Deputy Director, PMLA in appeal no. FPA-PMLA/A-34/CAL/2009." ,,,,,,,,,,

18. In the present case it is an admitted fact that the properties in question were acquired much prior to the period of alleged money,,,,,,,,,

laundering. The said properties are also mortgaged prior to the said period of money laundering. No credible evidence has been adduced,,,,,,,,,

by the Enforcement Directorate that the mortgaged properties have been acquired out of Ã¢â¬â¢proceeds of crimeÃ¢â¬â¢,,,,,,,,,

19. That though some of the bank officials are alleged to have been involved in the commission of the alleged crime, the appellant banks as" ,,,,,,,,,,

an institution cannot be punished.,,,,,,,,,,

20. The Appellant Bank had initially unearthed the commission of alleged crime and has taken prompt action against the borrower and,,,,,,,,,

others and lodged complaint with the CBI for investigation and prosecution. The Appellant Bank is infact the victim in this case in the given,,,,,,,,,

fact and circumstances. The Appellant Bank's huge money is at stake and unless they are allowed to recover the same through legal process,,,,,,,,,

they will be put to huge financial loss. The money that has been advanced to the borrower is public money.,,,,,,,,,,

23. From the above i.e. the principle enunciated in the judgments discussed by us and the observations made by Hon'ble Supreme Court in,,,,,,,,,

the matter of KSL & Industries Ltd. (supra) we do not find any departure. When two special Acts have non-obstante clauses, the later statue" ,,,,,,,,,,

will prevail over the earlier statute. At the same time the aim and object of both the special Acts are to be looked into to decide such issue in,,,,,,,,,

the manner and harmonious construction has to be arrived,,,,,,,,,

24. In the present case, the SARFAESI Act, RDDB Act and PMLA are special Acts. The SARFAESI Act and RDDB Act are enacted earlier to",,,,,,,,,,

PMLA. The RDDB Act and PMLA have non-obstante clause. Recently in 2016 the parliament has amended the twin legislations viz. (i) the,,,,,,,,,

SARFAESI Act, 2002 and (ii) the DRT Act, 1993 (after amendment titled as the Recovery of Debts and Bankruptcy Act, 1993) by the",,,,,,,,,

Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 and its provisions have",,,,,,,,,

been given effect from 01.09.2016. The Parliament in its wisdom has not excluded the application of the amended provisions to the,,,,,,,,,

proceedings under PMLA. In other words, had the Parliament intended to exclude the application of non-obstante clause of SARFAESI Act",,,,,,,,,

and RDDB Act to PMLA then it would have done so expressly as has been specifically prescribed in the amended provisions. It may also be,,,,,,,,,

noted here that the judgment of Hon'ble Supreme Court in the matter of KSL & Industries Ltd (supra) has been delivered in the year 2014,,,,,,,,,

whereas the amendment in aforesaid two Acts have been brought in the year 2016.,,,,,,,,,,

25. One more important thing to be noted that Hon'ble Supreme Court in the aforesaid case KSL & Industries Ltd. (supra) matter has held,,,,,,,,,

that the provisions of SICA, in particular section 22, shall prevail over the provisions for the recovery of debts in the RDDB Act because of",,,,,,,,,

the fact that the non-obstante provision of RDDB Act has specifically excluded SICA from its application.,,,,,,,,,,

26. The conflict of non-obstante clause arising in respect of two or more enactments then the same have to be resolved by taking into,,,,,,,,,

consideration of policy underlying the enactment and the language used in them. The Prevention of Money Laundering Act has been,,,,,,,,,

enacted for forfeiture of crime involved in the money laundering which was considered necessary to deprive persons engaged in serious,,,,,,,,,

illegal activities and have thereby been increasing their resources for operating in clandestine manner. The PML Act was created to forfeit,,,,,,,,,

illegal properties and to prevent the money laundering activities which are threat to financial system of the country and its integrity and,,,,,,,,,

sovereignty. Further the question of prevalence of a subsequent legislation will only come into picture when there is a conflict between the,,,,,,,,,

two statutes. The Securitization Act has been enacted for the purpose of establishing a expeditious system for recovery of debts due to,,,,,,,,,

Banks and for matters connected therewith or incidental thereto. It only lays down a procedure for recovery of debts due to Banks. The,,,,,,,,,

Prevention of Money Laundering act vests the statutory authorities with a power to forfeit proceeds of crime involved in money laundering,,,,,,,,,

to the State. There is thus no apparent conflict between the two statutes. The two statutes operate in their exclusive fields. The question is only,,,,,,

who will have his first claim on any property where the claim of the State concurs with the claim of any other person. In the light of above a,,,,,,

harmonious construction has to be arrived at keeping in view the facts of the case vis. a vis the statutes involved. In the present case the,,,,,,

aforesaid principle suggest that the amendments carried out in SARFAESI Act and RDDB Act in 2016 will prevail over PML Act, 2002" ,,,,,,

because the properties involved in the present appeal were untainted when the same were acquired. Even when the properties were,,,,,,

mortgaged with the Appellant Bank the same were not tainted. The allegation of commission money laundering is after the mortgage of the,,,,,,

said properties with the Appellant Bank. After the mortgage of the aforesaid properties a legal right has been accrued in favour of the,,,,,,

Appellant Bank over the said properties which cannot be taken away in the given facts and circumstance of the case. As far as borrowers,,,,,,

are concerned (who are the accused parties) even we stress that as per law, they must face the trial in the charge sheet filed against them." ,,,,,,

20. In the present case, the SARFAESI Act, RDDB Act and PMLA are special Acts. The SARFAESI Act and RDDB Act are enacted earlier to" ,,,,,,

PMLA. The RDDB Act and PMLA have non-obstante clause. Recently in 2016 the Parliament has amended the twin legislations viz. (i) the,,,,,,

SARFAESI Act, 2002 and (ii) the DRT Act, 1993 (after amendment titled as the Recovery of Debts and Bankruptcy Act, 1993) by the Enforcement" ,,,,,,

of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 and its provisions have been given effect" ,,,,,,

from 01.09.2016. The Parliament in its wisdom has not excluded the application of the amended provisions to the proceedings under PMLA. In other,,,,,,

words, had the Parliament intended to exclude the application of non-obstante clause of SARFAESI Act and RDDB Act to PMLA then it would have" ,,,,,,

done so expressly as has been specifically prescribed in the amended provisions. It may also be noted here that the judgment of Hon'ble Supreme,,,,,,

Court in the matter of KSL & Industries Ltd (supra) has been delivered in the year 2014 whereas the amendment in aforesaid two Acts have been,,,,,,

brought in the year 2016.,,,,,,

21. The Hon'ble Supreme Court in the aforesaid case KSL & Industries Ltd. (supra) matter has held that the provisions of SICA, in particular section" ,,,,,,

22, shall prevail over the provisions for the recovery of debts in the RDDB Act because of the fact that the non-obstante provision of RDDB Act has" ,,,,,,

specifically excluded SICA from its application.,,,,,,

22. The conflict of non-obstante clause arising in respect of two or more enactments then the same have to be resolved by taking into consideration of,,,,,,,,,

policy underlying the enactment and the language used in them. The Prevention of Money Laundering Act has been enacted for forfeiture of crime,,,,,,,,,

involved in the money laundering which was considered necessary to deprive persons engaged in serious illegal activities and have thereby been,,,,,,,,,

increasing their resources for operating in clandestine manner. The PML Act was created to forfeit illegal properties and to prevent the money,,,,,,,,,

laundering activities which are threat to financial system of the country and its integrity and sovereignty. Further the question of prevalence of a,,,,,,,,,

subsequent legislation will only come into picture when there is a conflict between the two statutes. The Securitization Act has been enacted for the,,,,,,,,,

purpose of establishing a expeditious system for recovery of debts due to Banks and for matters connected therewith or incidental thereto. It only lays,,,,,,,,,

down a procedure for recovery of debts due to Banks. The Prevention of Money Laundering act vests the statutory authorities with a power to forfeit,,,,,,,,,

proceeds of crime involved in money laundering to the State. There is thus no apparent conflict between the two statutes. The two statutes operate in,,,,,,,,,

their exclusive fields. The question is only who will have his first claim on any property where the claim of the State concurs with the claim of any,,,,,,,,,

other person. In the light of above a harmonious construction has to be arrived that keeping in view the facts of the case vis. a vis the statutes,,,,,,,,,

involved. In the present case the aforesaid principle suggest that the amendments carried out in SARFAESI Act and RDDB Act in 2016 will prevail,,,,,,,,,

over PML Act, 2002 because the properties involved in the present appeal were untainted when the same were acquired. Even when the properties",,,,,,,,,

were mortgaged with the Appellant Bank the same were not tainted. The allegation of commission money laundering is after the mortgage of the said,,,,,,,,,

properties with the Appellant Bank. After the mortgage of the aforesaid properties a legal right has been accrued in favour of the Appellant Bank,,,,,,,,,

over the said properties which cannot be taken away in the given facts and circumstance of the case. As far as borrowers are concerned (who are,,,,,,,,,

the accused parties) even we stress that as per law, they must face the trial in the charge sheet filed against them." ,,,,,,,,,,

23. It is an admitted fact that the properties herein are mortgaged with the Appellant Bank. It is also a fact that the mortgaged properties are not,,,,,,,,,

acquired out of any "proceeds of crime". It has come on record that the properties mortgaged were acquired prior to the alleged commission of,,,,,,,,,

crime. It appears that the only thing was in his mind that section 71 of PMLA has an overriding effect. The provisions of PMLA shall have effect and,,,,,,,,,

prevail over provisions of any other Act or its provisions. To this we are not in agreement with the Adjudicating Authority because of the amendments,,,,,,,,,

of 2016 made in SARFAESI Act RDB Act and discussion made in the preceding paras.,,,,,,,,,,

24. The Hon'ble Supreme Court of India in the case of Attorney General of India and Ors. (AIR 1994 SC 2179) while dealing with the matter under,,,,,,,,,

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act has defined the illegally acquired properties and held that such,,,,,,,,,

properties are earned and acquired in ways illegal and corrupt, at the cost of the people and the state, hence these properties must justly go back" ,,,,,,,,,,

where they belong, the state. In the present case as the money belongs to the Appellant Bank which is public money. The Appellant Bank has the" ,,,,,,,,,,

right to property under the Constitution of India. The property of the Appellant Bank cannot be attached or confiscated if there is no illegality in the,,,,,,,,,

title of the appellant and there is no charge of money laundering against the appellant. The mortgaged of property is the transfer under the Transfer of,,,,,,,,,

Property Act. Even the respondent is not denying the fact that the Bank is a victim party who is also innocent and is entitled to recover the loan,,,,,,,,,

amount. It is also not disputed by the respondent that the properties in dispute are mortgaged with Bank and it has to go to the Bank ultimately. I do,,,,,,,,,

not agree with the argument in this regard in view of amendments in the two statutes. Even otherwise the trial would take number of years. The public,,,,,,,,,

money cannot be stalled otherwise Banking system would collapse.,,,,,,,,,,

25. That the definition of "proceeds of crime" as per Section 2(u) of the PML Act comprises of the property which is derived or obtained as a,,,,,,,,,

result of criminal activity. In the present case, all the properties have been mortgaged with the Appellant Bank much prior to the date of alleged" ,,,,,,,,,,

offence which shows that no "proceeds of crime" are involved in acquiring of these properties and hence the same cannot be attached.,,,,,,,,,,

26. The Adjudicating Authority has failed to consider that the ED has attached the properties without examining the case of the bank. The evidence,,,,,,,,,

on record suggests that the properties were acquired by the borrower/guarantors much before the alleged date of crime. No money disbursed by the,,,,,,,,,

Bank from its loan account, has been invested in acquiring these properties. Furthermore, the Appellant Bank had created charge over the property" ,,,,,,,,,,

prior to the date of the crime. The Bank has already filed the suit for recovery and has also taken the action under SARFAESI Act. The Adjudicating,,,,,,,,,

Authority failed to appreciate that depriving the Appellant Bank from its funds/property, without any allegations or involvement of the Bank in the" ,,,,,,,,,,

alleged fraud, would be legally unjustified." ,,,,,,,,,,

27. The properties attached at serial no. (ii) to (vi) cannot be attached under Section 5 of the PML Act because the properties are not purchased from,,,,,,,,,

the alleged proceeds of crime. As per the provisions of Section 5(1) (c) the primary requirement for the attachment is that the proceeds of crime are,,,,,,,,,

likely to be concealed, transferred or dealt with in any manner. In this case there was absence of such requirement. The said properties are already in",,,,,,,,,

the symbolic possession of the Appellant Bank under the SARFAESI Act,,,,,,,,,

28. The property of the Appellant Bank cannot be attached or confiscated when there is no illegality or unlawfulness in the title of the Appellant Bank,,,,,,,,,

and there is no charge of money laundering against the Bank. The mortgage of property is the transfer under the Transfer of Property Act as there is,,,,,,,,,

no dispute as regards the origin of funds or the title of the properties. As far as the Appellant Bank is concerned, the Bank has to recover its",,,,,,,,,

outstanding dues by taking over the possession of the mortgaged properties in case the concerned Respondents are not able to pay back the credit,,,,,,,,,

facilities availed by them and by way of the SARFAESI provisions these properties are being taken in possession by the Appellant Bank so that,,,,,,,,,

recovery can be made from the accounts which have become NPA,,,,,,,,,

29. From the discussion made above, I am of the view that there is no nexus whatsoever between the alleged crime and the Appellant Bank who is",,,,,,,,,

the mortgagee of the properties in question which were purchased before sanctioning the loan. Thus, no case of money-laundering is made out against",,,,,,,,,

Appellant Bank who has sanctioned the amount which is untainted and pure money. They have priority right to recover the loan amount/debts by sale,,,,,,,,,

of assets over which security interest is created, which remains unpaid.",,,,,,,,,

30. The Adjudicating Authority has not appreciated the facts and law involved in the matter. The primary objective of section 8 of PMLA is that the,,,,,,,,,

Adjudicating Authority to take a prima facie view on available material and facts produced. The contentions raised by the Respondent's Advocate,,,,,,,,,

have no substance. The provisional attachment in the present matter is bad in law hence liable to be set aside,,,,,,,,,

31. Recently there are amendments in the Prevention of Money Laundering Act, 2002 (15 of 2003) as amended by Finance Act, 2018 (13 of 2018)",,,,,,,,,

including in the proviso of Sub-section 8 of Section 8 of PMLA, 2002 by adding another proviso which is read as under:-",,,,,,,,,

“Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has,,,,,,,,,

suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:,,,,,,,,,

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such",,,,,,,,,

properties during the trial of the case in such manner as may be prescribed. ,,,,,,,,,,

32. It is in the present ten appeals i.e. (serial no. 1 to 10). It is an admitted position that the loan was given by the banks in good faith who have suffered a ,,,,,,,,,,

loss because of non-return of money by the borrowers i.e. serial no. 11 (as an appellant). The borrower is also arrayed as one of the respondents in the ,,,,,,,,,,

appeal filed by the banks. It is evident from the said proviso that in case the claimant would be able to satisfy the Special Court that it has acted in good ,,,,,,,,,,

faith and suffered the loss despite of having taken all the reasonable precautions and is also not involved in the offence of money laundering then the ,,,,,,,,,,

Special Court is empowered to restore such property during the trial of the case. In the facts of the present case, the mortgaged properties are not" ,,,,,,,,,,

purchased from the proceeds of crime. Those were purchased prior to FIR against borrower/accused and even prior to execution of mortgaged deed ,,,,,,,,,,

agreement. The question of proceeds of crime qua those properties does not arise. ,,,,,,,,,,

33. Even the stand of the respondent in almost all the cases where it was found that the attached properties are mortgaged properties which were ,,,,,,,,,,

not purchased from proceeds of crime, the Bank are victim parties and are innocent parties who are entitled to recover the loan amount from the said" ,,,,,,,,,,

mortgaged properties, but the banks be allowed to dispose the properties after the trial and final outcome of criminal complaints filed against the" ,,,,,,,,,,

borrowers under schedule offence and prosecution complaint. The said argument cannot be accepted in view of settled law and new amendment in ,,,,,,,,,,

sub-section 8 of section 8 of the Act. Thus, the stand earlier taken by the respondent no. 1 is wholly vague and without any substance. The provisional" ,,,,,,,,,,

attachment order thus apparently bad and against the scheme of the Act. ,,,,,,,,,,

34. I am of the considered opinion that in case the Special Court passes the order to release the property of the victim and innocent party is mortgaged ,,,,,,,,,,

property could be disposed of for the purpose of adjustment of the amount due from the borrowers. ,,,,,,,,,,

35. I am of the view that once it was found that the appellant is an innocent party who is not involved in the money laundering directly or indirectly or ,,,,,,,,,,

assist any party and the mortgaged property is also not purchased from the proceeds of crime then the question of provisional attachment order and ,,,,,,,,,,

confirmation thereof does not arise and the victims/innocent party i.e. innocent party would be entitled to dispose of the said property. ,,,,,,,,,,

36. In view of the reasons amendment in the PMLA and once the provisional attachment order is set aside, the property is released the" ,,,,,,,,,,

borrower/accused and the banks can only dispose of the said property after passing the order by the special court in favour of the complaint. In case ,,,,,,,,,,

the provisional attachment order and impugned orders are set-aside, the complainant may not be able to dispose of the property in order to recover the" ,,,,,,,,,,

loan amount even if the special court restore such properties during the trial.,,,,,,,

37. In view of the amendment of sub section 8 of Section 8 proviso (1) and (2) the bank is at liberty to move its claim in relation to mortgaged property.,,,,,,,

before the Special Court for disposing in accordance with the law. The present ten appeals are at serial no. 1 to 10 accordingly disposed of in view of.,,,,,,,

aforesaid directions. Till that time, the order is passed, all parties to the appeal shall not sell and dispose of the property in any manner directly or" ,,,,,,,

indirectly.,,,,,,,

38. FPA-PMLA-1528/DLI/2016.,,,,,,,

The appellant in the above said appeal has also challenged the impugned order on merit. As far as properties attached at serial no. 2 to 6 are.,,,,,,,

concerned; the appeal is accordingly disposed of in view of the order passed in the appeal no. serial no. 1 to 10. With regard to the property no. (i),,,,,,,

Land & Building, consisting of basement (area- 22,586 sq. ft.), ground floor (area-22910 sq. ft.), first floor (area-9216 sq. ft.), second floor (area-" ,,,,,,,

3416 sq. ft.) and third floor (area- 3416 sq. ft.) situated at Plot No.17B & 17C, Sector-16A, Film City, Noida, District Gautam Budh Nagar, U.P.-" ,,,,,,,

201301, there is no denial on behalf of respondent no. 1 that the same was bought by the Borrower/Accused Company much before the enactment of" ,,,,,,,

the PMLA and also much before the Borrower/Accused Company approached the Appellants for financial assistance. The year of purchase being.,,,,,,,

1994, the said property clearly falls out of the preview of the act. The question of attachment of the said property of the borrowers does not arise." ,,,,,,,

39. The property attached at serial no. (i) is accordingly release in favour of the appellant as mentioned above as the said property was purchased in.,,,,,,,

the year 1994. There is no valid discussion and finding as to how this property was purchased from the proceeds of crime. Admittedly, the complaint" ,,,,,,,

was filed by the appellant no. 1 on 22nd February, 2012. The ECIR was registered and recorded on 20th June, 2013. The said property was purchased" ,,,,,,,

in the year 1994, therefore the impugned order in relation to the above said property at serial no. (i) is set aside. Consequently the provisional" ,,,,,,,

attachment order with regard to the said property is also quashed.,,,,,,,

40. All the appeals and pending applications are accordingly dispose of.,,,,,,,

41. No costs.,,,,,,,

42. Copy of order be given "Dasti" to all parties.,,,,,,,