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(2023) 04 ATPMLA CK 0001

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: FPA-PMLA-189/LKW/2011

M/S Smridhi Sponge

Ltd.

APPELLANT

Vs

Deputy Director

Directorate Of

RESPONDENT

Enforcement, Lucknow

Date of Decision: April 5, 2023

Acts Referred:

- Prevention Of Money Laundering Act, 2002 Section 2(1)(u), 3, 4, 5, 5(1), 8, 23, 24, 26
- Companies Act, 1956 Section 108(1A)
- Income Tax Act, 1961 Section 132(4), 143(3), 148

Citation: (2023) 04 ATPMLA CK 0001

Hon'ble Judges: V. Anandarajan, Member; Rajesh Malhotra, Member

Bench: Division Bench

Advocate: Devesh Poddar, Shubham Aggarwal, Mrinal Kumar

Final Decision: Dismissed

Judgement

SI.

No.", Transferee, No. of Shares, Amount Rs.,,

1,"Keshav Tradecom Pvt.

Ltd., Room No. 19, 6th

Floor, 23A, Netaji Shubhash

Road

Kolkata- 700001",2642835,"2,64,28,350.00",

2,"Parmatma Mercantile Pvt. Ltd. Room No. 19, 6th Floor, 23A, Netaji Shubhash Road, Kolkata-700001",2500000,"2,50,00,000.00",, 3,"Dayalu Vincom Pvt. Ltd. Room No. 6A, 8th Floor, 23A, Netaji Shubhash Road, Kolkata-700001.",2500000,"2,50,00,000.00",, 4,"Padmalya Dealcom Pvt. Ltd. Room No. 6A, 8th Floor, 23A, Netaji Shubhash Road, Kolkata-700001",2935000,"2,93,50,000.00", ,Total,10577835,"10,57,78,350.00",, 154. We find several suspicious features with regard to these transactions as detailed hereunder:,,,,, 1. All these four companies are operating from two rooms in the same address 23A, N.S. Road, Kolkata, as the copies of their letters dated",,,,, 11.07.2009 addressed to Creative Fiscal indicate. Keshav Tradecom and Pramatama Mercantile are operating from Room No. 19 on the 6th Floor of,,,,, the same building. (Incidentally Defendant No. 21, Majestic Vinicom is also operating from the same room). Other two companies are operating from",,,, Room No. 6A, 8th Floor at the same address. This is highly unusual raising serious doubts about genuine existence of these companies, for any",,,, genuine purpose.,,,, 2. The authorized signatory on the cheques for Keshav Tradecom and Pramatma

Mercantile is the same person i.e. Krishna K. Parshurmka.,,,,

Authorised signatory for Dayalu Vincom and Padmalaya Vincom is the same person i.e. Virendra Kumar.,,,,

3. All the cheques by all these companies (except six cheques by Padmalaya Dealcom i.e. cheques No. 714760 to 714765) clearly appear to have,,,,,

been written by the same person as the hand writing clearly shows. This is highly unusual.....

5. Each company issued seven cheques from the same account (each cheque not exceeding Rs. 50 lakhs) on the very same day instead of one,,,,,

cheque each. Probably this was to avoid attention of regulatory and enforcement agencies.,,,,,

- 5. All these companies are using their current account in IndusInd Bank at same branch i.e. Kolkata stock Exchange Branch.,,,,
- 6. All these cheques clearly show that these are form new accounts. The term ââ,¬Å"new accountââ,¬â€≀ is printed on the cheques.,,,,
- 7. All these companies have applied to Creative Fiscal on the same date i.e. 11.07.2009. It is too much of a coincidence.,,,,
- 8. Letters of all these four companies dated 11.07.2009 are identical in language (except for the difference in the figures). The letter heads which,,,,,

appear to be computer printouts are identical in shape. Even the front of all these letters is identical.,,,,

- 155. The above facts clearly show that is a well-planned and coordinated action to avoid the long arms of law.,,,,
- 156. A collection evaluation of the suspicious features indicated above casts serious doubts about the activities of these companies.,,,,
- 157. Most notable feature which stares at our face is that all along it was presented before us that Binod Sinha (operating through Creative Fiscal),",,,,,

transferred his shares to Manohar Paul whereas in the written submission it is stated that the sale by Creative Fiscal was to these four Pvt. Ltd.,,,,

Companies.,,,,

158. Further, the alleged share transfers efforts were initiated soon after the FIR was filed in this case on 02.07.2009. The time of alleged transfer is",,,,,

extremely important to draw the necessary inferences.,,,,

159. In view of the above facts we conclude that no bona fide transfer of shares has taken place. Assuming that the shares transfers have taken,,,,,

place these appear not to be with bona fide intentions and therefore should be treated as non est.,,,,,

160. Secondly, the copies of documents produced before us merely speak of application to Creative Fiscal for transfer of shares. Whether really the",,,,

shares have been transferred is not proven. Whether these companies are doing any business or are paper companies operating form single rooms is,,,,,

not clear. Did these companies have enough of balance for issue of these cheques? If they had, wherefrom these nondescript companies got so much",,,,

money in their bank accounts? If presented, were these honoured? These very relevant questions remain unanswered raising a huge question mark on",,,,,

the genuineness of the claim of the alleged share transfers.ââ,¬â€<,,,,,

3. Based on their findings as above, the Ld. Adjudicating Authority concluded that proceeds of crime were still with the appellant company and the",,,,,

same were much more than the fixed assets amounting to Rs.6,65,16,129/- attached by the respondent Directorate. Consequently, the Ld.",,,,

Adjudicating Authority proceeded to confirm the order of the Deputy Director attaching the fixed assets of the appellant company.,,,,

4. Aggrieved by the said order of the Adjudicating Authority, the appellant company has preferred the present appeal praying that the impugned order",,,,,

of the Adjudicating Authority be set aside, and also praying for consequential relief.",,,,,

5. Detailed factual and legal submissions have been presented before us on behalf of the appellant. It is submitted that the appellant company was,,,,,

incorporated on 6.1.1995 and is engaged in the manufacture of sponge iron since 2004, with its plant situated at Jamshedpur. Initially, the companyââ,¬s",,,,

shares were held by Sh. Om Prakash Garg, his family members, and his group companies. It is pointed out neither the appellant company nor its",,,,

directors, namely, Mr. Mrinal Kanti Paul, Mr. Tarun Kanti Paul, Mr. Tushar Kanti Paul (since expired), Mr. Om Prakash Garg, are accused in any",,,,

scheduled offence.,,,,

6. It is further submitted that Mr. Binod Sinha and Mr. Vijay Joshi (persons who are alleged to have played a pivotal role in the Madhu Koda group of,,,,

cases) were never directors of the appellant company, and they never held any shares in their personal capacity. Late Sh. Manohar Lal Paul, it",,,,,

submitted, was a businessman for more than three decades running a factory in Naini Industrial Area, Allahabad engaged in the manufacture of high-",,,,

grade special smokeless fuel and Mr. Mrinal Kanti Paul, Mr. Tarun Kanti Paul, Mr. Tushar Kanti Paul who are accomplished engineers from IIT, are",,,,

his sons. Sh. Manohar Paul family, it is submitted, never had any association or link with Mr. Binod Sinha, Mr. Vijay Joshi, Mr. Madhu Koda or any of",,,,

the accused persons.,,,,

7. It is further submitted that the 1,05,78,350 shares of Appellant company held by Creative Fiscal were purchased by four group companies owned by",,,,

Late Sh. Manohar Lal Paul in July 2009 after long negotiations, by making payment through banking channels and Creative Fiscal exited its investment",,,,

in Appellantââ,¬s shares. The share sale transactions were between the seller, Creative Fiscal and four buyer companies. Creative Fiscal received the",,,,,

entire consideration in its bank account from the four companies and the Appellant did not receive any money out of the said consideration. Thus, after",,,,

July 2009, Creative Fiscal, Lacky Project Pvt. Ltd., Binod Sinha, Vijay Joshi or any other accused had no investment in Appellant. The entire money",,,,

used for investment in shares of the appellant company was received back by Creative Fiscal/Lacky Projects as has been categorically admitted by,,,,,

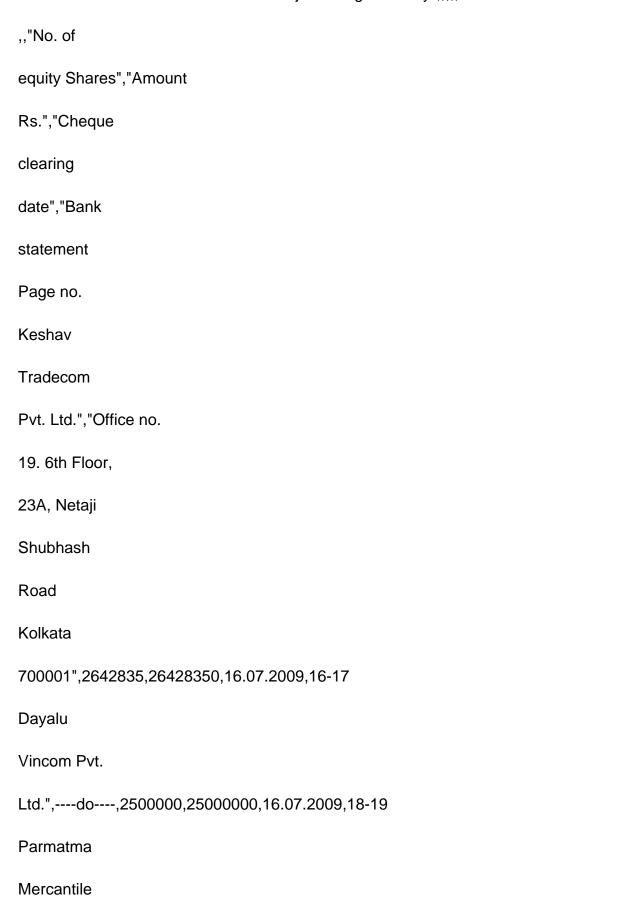
Mr. Vijay Joshi in his statement dt 4.11.2009 which has been relied upon by Respondent. The Respondent Directorate, it is contended, did not trace",,,,

the money in their hands though it was under a statutory duty to do so, but illegally attached legitimate property of the Appellant without jurisdiction.",,,,

8. Creative Fiscal, it is further submitted, is neither accused of any scheduled offence nor accused of money-laundering offence. No complaint under",,,,,

section 3 read with section 4 has been filed against it. Moreover, attachment against Creative Fiscal was set aside by the Ld. Authority vide the same",,,,

impugned order. With regard to the sale of shares of the appellant company by Creative, it is submitted before us that the Ld. Adjudicating Authority",,,,,



Pvt. Ltd.",----do----,2500000,25000000,16.07.2009,20-21

Padmalya

Dealcom

Pvt. Ltd.",----do----,2935000,29350000,16.07.2009,22-23

,,10577835,105778350,,

brief and make new baseless allegations in order to confirm the attachment. Ld. Authority was to adjudicate whether the Respondent, on the day of",,,,,

attachment had material in its possession on the basis of which it could have had reasons to believe that the Appellant was in possession of proceeds,,,,,

of crime. Thus, the impugned order qua attachment of properties of the Appellant is wrong, illegal, without jurisdiction and liable to be set aside.",,,,

15. Based on the above submissions, the appellant contends, it is clear that since Appellant was not in possession of any amount out of alleged",,,,

proceeds of crime and its asset could not have been attached. The respondent was not in possession of material on the basis of which could have held,,,,,

the requisite belief in terms of the provisions of section 5(1) of the Act. Thus, the attachment of assets of the Appellant is wrong, illegal, against the",,,,

provisions of law, and void ab initio.",,,,,

16. Without prejudice to the above submissions and as an alternative plea, it is contended by the appellant that in the present case, admittedly, the total",,,,,

amount of alleged proceeds of crime, i.e., disproportionate assets in the hands of accused Mr. Madhu Koda as quantified in the charge sheet is Rs.",,,,,

1,40,10,333/- and properties attached in the hands of the accused are more than the total amount of proceeds of crime of Rs. 1.4 crore as is evident",,,,

from Annexure-A of the Provisional Attachment Order. When the entire proceeds of crime are already attached in the hands of accused Mr Madhu,,,,,

Koda, Mr. Binod/Sunil/Vikas Sinha etc., the Respondent Directorate could not have attached legitimate properties of Rs. 6.65 crore owned by the",,,,

Appellant because they do not represent proceeds of crime as submitted in paras above and the Respondent has no power to attach properties more,,,,,

than the proceeds of crime. Reliance is placed by the appellant in this context on judgment dt. 6.5.2019 of the Appellate Tribunal-PMLA (since,,,,,

merged into this Appellate Tribunal) in the case of Sh. Baldev Raj Arora vs Dy. Director, ED, Lucknow in FPA/PMLA/2568/LKW/2019 wherein it",,,,,

was held that the Respondent Department is not entitled to attach immovable property more than the value of proceeds of crime.,,,,

17. Our attention is drawn in this to the following observations contained in the judgment dt. 27.07.2022 passed by the Honââ,¬ble Supreme Court in,,,,

Vijay Madanlal Choudhary & Ors vs. Union of India & Ors. SLP Crl No. 4634 of 2014:,,,,

 \tilde{A} ¢â,¬Å"31. The \tilde{A} ¢â,¬Å"proceeds of crime \tilde{A} ¢â,¬ being the core of the ingredients constituting the offence of money-laundering, that expression needs to be",,,,

construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a",,,,

scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the,,,,,

commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of",,,,,

crime within the meaning of Section 2(1)(u) of the 2002 Actââ,¬" so long as the whole or some portion of the property has been derived or obtained by,,,,,

any person $\tilde{A}\phi\hat{a}, \neg A$ "as a result of $\tilde{A}\phi\hat{a}, \neg$ criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be",,,,

derived or obtained, directly or indirectly, $\tilde{A}\phi\hat{a}$, $\neg A$ "as a result of $\tilde{A}\phi\hat{a}$, \neg criminal activity relating to a scheduled offence. To put it differently, the vehicle used in",,,,,

commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning",,,,,

of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet,",,,,

will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in,,,,,

the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived",,,,

or obtained by a person $\tilde{A}\phi\hat{a},\neg \mathring{A}$ as a result of $\tilde{A}\phi\hat{a},\neg$ criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while,...,

reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by,,,,,

way of any process or activity constitutes offence of money-laundering under Section 3 of the Act. \tilde{A} ¢ \hat{a} , $\neg \hat{a}$ \in <,,,,,

- 18. Based on its submissions as above, the appellant prays that attachment of its properties may be quashed/set aside and the appeal be allowed.",,,,,
- 19. The Respondent Department, on the other hand, strongly contested the averments and submissions made on behalf of the appellant on factual as",,,,

well as legal grounds. To begin with, the Respondent has reiterated the broader allegations contained in the impugned order that Shri Madhu Koda,",,,,

during his tenure as Minister and Chief Minister, had amassed assets in excess of his income from legal sources by abuse of public office; that the",,,,

illegal money earned by him was channelized into various assets in his own name as well as in the names of his associates and into certain companies,,,,

which were floated for the purpose of investing the illegal earnings, and that Shri Binod Kumar Sinha, Shri Sunil Kumar Sinha, Shri Vikas Sinha and",,,,,

others played a pivotal role in this process along with Shri S.K. Naredi, Chartered Accountant who organized accommodation entries through various",,,,

companies which included Lacky Projects Private Limited and Creative Fiscal Services Limited whose names figure in the present appellantââ,¬s case.,,,,

It was also reiterated that the proceeds of crime generated were invested in several companies of which the present appellant is one.,,,,

20. Referring to the appellant companyââ,¬s contention that on the date of attachment, no investment by Shri Binod Sinha was existing in the company",,,,,

and, therefore, no proceeds of crime can be said to be still subsisting in the company in the form of any assets, it is submitted that the statement of the",,,,,

appellant companyââ,¬s director, Shri Mrinal Kanti Paul indicated the various sources of funds, including by way of accommodation entries from paper",,,,,

companies located in Kolkata. Family members of Mr. Paul were directors in those paper companies.,,,,

21. Strong reliance is placed by the respondent on the factual findings contained in the impugned order of the Ld. Adjudicating Authority as well as the,,,,,

conclusions based thereon.,,,,

The Appellant, it is contended by the respondent, was one of the frontline companies used by Mr Binod Sinha to park and launder his tainted money.",,,,

Statements made by various persons before the authorities clearly reflected the use of money for laundering and also the participation of the applicant,,,,,

company in the offence of money-laundering. There were reasons to believe that Mr. Binod Sinha infused the proceeds of crime into the appellant,,,,

company through a circuitous route which establishes the fact that the appellant company was used in layering of the tainted money.,,,,

22. It is reiterated before us by the Respondent that the capital base of the appellant company was increased by Rs. 15,00,00,000 in the year 2007-",,,,,

2008 and substantial investment was made by Mr Binod Sinha precisely during this period. Furthermore, the impugned order, specifically para 152 and ",,,,,

para 153, reflect that share purchase of the appellant company by four companies is highly suspicious and perusal of records indicates that these",,,,

transactions were sham.,,,,

23. It is contended that the material on record satisfies the condition laid down in section 5(1). In view thereof, it is contended by the Respondent that",,,,,

it was incumbent upon the Appellant to indicate the sources of income, earning or assets out of which or by means of which the property attached has",,,,,

been acquired, the evidence on which he/it relies and other relevant information and particulars, 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. The above information would,,,,,

have enabled the Adjudicating Authority to make a determination on which of the properties in question are properties $\tilde{A}\phi\hat{a}, \neg \hat{A}^3$ /involved in money-,,,,,

laundering \tilde{A} ¢ \hat{a} , \neg . and which are not. The Appellant failed to bring adequate material on record to discharge the burden cast upon them under the PMLA,,,,,

and has failed to do so even in the memorandum of appeal. It is strongly contended that the Appellant herein has completely failed to discharge its,,,,

burden of proof under Sections 23 and 24 of PMLA. Considering the number of inter-connected transactions in the instant case, our attention is drawn",,,,,

to the text of Section 23 which states:,,,,

 \tilde{A} ¢â,¬Å"23. Presumption in inter-connected transactions. \tilde{A} ¢â,¬"Where money-laundering involves two or more inter-connected 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 from part of such inter-connected transactions.ââ,¬â€⟨,,,,,

24. Our attention is also drawn to the Second Proviso to Section 5 of the PMLA which states:....

 \tilde{A} ¢â,¬Å"Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the",,,,

Director or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section has reason to believe (the,,,,,

reason for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not",,,,,

attached immediately the non-attachment of the property is likely to frustrate any proceedings under this Act.ââ,¬â€⟨,,,,,

25. It has been submitted that this proviso allows the attachment of property involved in money laundering even if such property is in the possession of,,,,

a person not charged with having committed a scheduled offence under the PMLA.,,,,,

26. To sum up, it is the contention of the Respondent that the impugned order which confirms the provisional attachment Order of the Deputy Director",,,,,

dated 10.11.2010 is sound, well-reasoned, justified and completely impregnable as it amply satisfies the reason to believe $\tilde{A}\phi\hat{a}$, $\neg \hat{A}$ "test under the PMLA,",,,,

and the same was confirmed by the Ld. Adjudicating Authority after carefully considering all the material evidence on record. In light of these,,,,,

circumstances, it is submitted that the instant appeal is liable to be dismissed with exemplary costs.",,,,,

27. We have given careful consideration to the contents of the impugned order, the material before us, and the rival contentions of the parties. Our",,,,

findings and observations with regard to the various contentions raised on behalf of the parties are as set out in the succeeding paragraphs.,,,,

28. Firstly, with regard to the contentions that none of the members of the Paul family, including Mr. Mrinal Kanti Paul, Mr. Tarun Kanti Paul, Mr.",,,,

Tushar Kanti Paul who were managing the affairs of the appellant company had any association or link with Mr. Binod Sinha, Mr. Vijay Joshi, Mr.",,,,

Madhu Koda or any of the accused persons, that after July 2009, Creative Fiscal, Lacky Project Pvt. Ltd., Binod Sinha, Vijay Joshi or any other",,,,,

accused had no investment in Appellant company, that the entire money used for investment in shares of the appellant company was received back by",,,,,

Creative Fiscal/Lacky Projects, and also that Creative Fiscal is neither accused of any scheduled offence nor accused of money-laundering offence",,,,,

and no complaint has been filed against it, we do not find any merit in these contentions. As has been categorically held by the Apex Court in Vijay",,,,

Madanlal Choudhary & Ors. Vs. Uol & Ors., SLP(Crl.) No. 4634 Of 2014, SC (para 65), the precondition for being proceeds of crime is that the",,,,

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

of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not,,,,,

necessarily being accused in the scheduled offence) if he is involved in any process or activity connected with the proceeds of crime. Furthermore, as",,,,

pointed out by the appellant, the presumption in inter-connected transactions under section 23 is also against the appellant.",,,,

29. We also do not find any merit in the contention of the appellants that since the payments in respect of the share transactions were made through,,,,

banking channels and Creative Fiscal received the entire consideration in its bank account, therefore, the transactions were genuine and above board.",,,,,

It is well known that one of the fundamental features of the companies involved in the entry-providing business is that on paper, they adhere",,,,

meticulously to all legal procedural requirements under various laws, including the Companies Act, the I-T Act etc. Further, entry-providing operations",,,,

are always carried out through banking channels. Indeed, Shri S.K. Naredi, Chartered Accountant and the alleged brain behind the web of",,,,,

transactions involved in the Madhu Koda group of cases, in his statement which has been extracted in para-19 (page-17) of the impugned order, stated",,,,,

as follows:,,,,

ââ,¬Å"Q.23 Please give details regarding manner in which such accommodation entries are arranged through Kolkata based companies.,,,,

Ans. Some chartered accountants/entry operators maintain several files of companies registered in Kolkata through which they provide,,,,,

accommodation entries to various beneficiaries. These companies exist only on paper and no business activity is carried on by them. The CA/Entry,,,,

operator regularly files IT return of these companies. Whenever a business concern wants accommodation entries arranged in their books of accounts,,,,,

in the form of share capital/unsecured loan these CA/Entry operators are approached Cash is given by the business concern/beneficiary to these,,,,

CA/Entry operators and in return they issue cheque/DD in the name of the beneficiary from one of such paper/investment companies in which,,,,

balance is available. The cash so received by these CA/Entry operators are generally routed in their paper/investment companies through banking,...,

channels.,,,,

As a result the beneficiary is able to induct his undisclosed income in his regular books of account as share capita/unsecured loan in the name of these,,,,,

paper/investment companies. The CA/Entry operators receives commission/service charges in return which generally varies between 2 to 10 4% of,,,,

the cheque amount.ââ,¬â€⟨,,,,,

- 30. Accordingly, the above contentions of the appellant are hereby rejected.",,,,,
- 31. The next contention of the appellant is that the share sale transactions were between the seller, Creative Fiscal and four buyer companies.",,,,

Creative Fiscal received the entire consideration from the four companies and the Appellant did not receive any money out of the said consideration.,,,,

We are not persuaded by this argument either. It is pointed out by the respondent that proceeds of crime were infused into the appellant company,,,,

through a circuitous route for the purpose of layering the tainted money. It is the contention of the respondent that in the financial year 2007-08 capital,,,,,

base of the company was increased from Rs. 10 cr. to Rs. 25 cr. and the investment in shares by Mr. Binod Sinha was made at this time. The,,,,,

appellant company, while claiming that it did not benefit in any way from the transaction between Creative Fiscal and the four companies, seeks to",,,,

gloss over this important fact. It is important to bear in mind that the definition of $\tilde{A}\phi\hat{a}$, \tilde{A} "proceeds of crime $\tilde{A}\phi\hat{a}$, under section 2(u) of the Act takes within,,,,,

its ambit not only property derived or obtained directly as a result of criminal activity relating to a scheduled offence but also the property derived or,,,,,

obtained indirectly as a result of criminal activity relating to a scheduled offence, and also the value of such property. These arguments, therefore, do",,,,,

not help the appellant in discharging its burden of proving that proceeds of crime were not involved.,,,,,

32. Next, it is contended that the Ld. Authority relied upon the wrong fact that Sh. Mrinal Kanti Paul was a Director of M/s Creative Fiscal Services",,,,

Ltd. and drew adverse inference based thereupon. It is also contended that this is contrary to the findings of $Hon\tilde{A}\phi\hat{a}$, $\neg ble$ Appellate Tribunal in the case,,,,,

of Parbati Devcon Pvt. Ltd. wherein it was categorically held that Sh. Mrinal Kanti Paul is not director of M/s Creative Fiscal Services Ltd. We find,,,,

that this contention has no fundamental bearing on the issue at hand. It has no doubt been mentioned by the Ld. Authority that the Deputy Director, in",,,,,

his complaint has written that as per the statement of Sh. Mrinal Kanti Paul, Director of M/s Creative Fiscal Services Ltd. before the Income Tax",,,,,

Authorities on 17.02.2010, Binod Sinha is out of M/s Smridhi Sponge and his share have been purchased by Manohar Paul for Rs. 12 Crores.",,,,

However, none of the subsequent discussions or conclusions is based on that fact of Sh. Mrinal Kanti Paul being a Director of the said company or",,,,,

otherwise. The conclusions of the Ld. Adjudicating Authority stand on the foundation of independent evidence which has been discussed at length in,,,,

the order. Therefore, this contention also does not assist the appellant in any manner.",,,,,

33. It is next contended that the Ld. Adjudicating Authority exceeded its brief and made new and baseless imaginary allegations insofar as it,,,,,

concluded that the investment in share capital of the Appellant by Creative Fiscal was out of the tainted money and the return of this money on the,,,,,

purchase of shares of Smridhi by the four companies is not established by documentary evidence. The questions raised and the conclusions drawn by,,,,

the Ld. Authority as to whether the shares of the appellant were really transferred by Creative Fiscal to the four companies, whether the four",,,,

companies were doing any business or were only paper companies, whether they had sufficient balance to issue the cheques, whether the cheques",,,,,

were ever presented, and if so, whether they were honoured, etc. (see para __ above), have been assailed and called into question. Having perused",,,,,

the contents of the impugned order thoroughly, we do not find any case of the Ld. Adjudicating Authority exceeding its brief. Under Section 8 of the",,,,,

Act, the Ld. Adjudicating Authority is mandated, after considering the reply to the notice issued by it, after hearing the aggrieved person and the",,,,,

Directorate, and after taking into account all relevant materials placed before it, to record a finding whether all or any of the properties in the notice",,,,

issued under the Section are involved in money laundering. In passing the impugned order, the Ld. Authority has only fulfilled its mandate through a",,,,

detailed, speaking order. Raising of certain questions by the Ld. Adjudicating Authority in their order and proceeding to answer them based on the",,,,,

evaluation of the evidence before them is merely a judicious process of arriving at relevant conclusions. We, therefore, do not find any fault with the",,,,,

process through which the Ld. Adjudicating Authority decided the matter before them. Moreover, the issues discussed by them such as the common",,,,,

address of the companies, same authorized signatory, having accounts in the same bank, same handwriting on cheques, similar transactions undertaken",,,,,

on identical dates, the identical language of the letters etc., were relevant and germane to the question of the genuineness of the alleged share",,,,,

transactions. The further contentions of the appellant in this regard, namely, that the sale consideration was paid by four companies through banking",,,,

channels, that the same was credited to the bank account of Creative Fiscal, and that the share transfer was duly approved and recorded by the",,,,,

Appellant company in its statutory books/records from the name of Creative Fiscal to the name of the four companies, that the four companies are",,,,,

group companies controlled and managed by Paul family, and, therefore, their office addresses are the same, bank accounts are in the same bank, that",,,,,

they are not paper companies, and are not accused of either any scheduled offence or the offence of money-laundering etc., have already been dealt",,,,,

with elsewhere in this order and are not repeated here for the sake of brevity.,,,,

34. It is also pointed out to us that while confirming the attachment of assets of Lacky Projects Pvt. Ltd., the Ld. Adjudicating Authority in para 149 of",,,,

the same order has held that the sale proceeds of 50% shares of Smridhi Sponge represent proceeds of crime. From the above, the appellant submits,",,,,

it is crystal clear that on the date of attachment, i.e., 10.11.2010, Creative Fiscal was not holding any shares of the Appellant as it has sold its",,,,,

investment in shares in July 2009 to the four companies and received sale consideration in its bank account from their bank. That being the case, the",,,,,

sale consideration received by Creative Fiscal and, in turn, by Lacky Project, would be the proceeds of crime.",,,,,

Judgment of the Honââ,¬ble Andhra Pradesh High Court in its judgment dt. 4.3.2011 in B. Rama Raju vs UOI Writ Petition Nos. 10765, 10769 and",,,,,

23166 of 2010 is cited in this regard. This contention of the appellant pre-supposes that the transactions between Lacky Projects and Creative Fiscal,,,,

and in turn between Creative Fiscal and the four companies were genuine and bonafide since they were through bank transactions and the necessary,,,,,

procedural requirements were followed. This proposition has already been discussed and rejected in para-___ of this order. Accordingly, this",,,,

contention of the appellant also does not hold any merit.,,,,

35. The final contention of the appellant which is without prejudice to the main submissions already discussed at length in the foregoing paragraphs,",,,,

and which has been presented as an alternative plea is that, in the present case, admittedly, the total amount of alleged proceeds of crime",,,,

(disproportionate assets) in the hand of the accused Mr. Madhu Koda as quantified in the charge sheet is Rs. 1,40,10,333/- only, and properties",,,,

attached in the hands of the accused are more than the total amount of such proceeds of crime of Rs. 1.4 crore as is evident from Annexure A of the,,,,,

Provisional Attachment Order. When the entire proceeds of crime are already attached in the hands of accused Mr. Madhu Koda, Mr.",,,,,

Binod/Sunil/Vikas Sinha etc., the Respondent Department, it is contended, could not have attached properties of Rs. 6.65 crore owned by the",,,,,

Appellant. The Respondent has no power to attach properties more than the proceeds of crime. Reliance is placed by the appellant in this regard on,,,,

the judgment dt. 6.5.2019 of the Appellate Tribunal-PMLA in Baldev Raj Arora vs Dy. Director, ED, Lucknow in FPA/PMLA/2568/LKW/2019.",,,,

36. The Ld. Counsel for the Respondent Directorate, on the other hand, submitted before us that proceeds of crime in the present case are not limited",,,,,

to Rs.1.04 crores and there is nothing on record to show that this is the case.,,,,

37. We have given careful consideration to this alternative contention of the appellant. We find that this issue has been discussed in detail in the,,,,,

impugned order of the Ld. Adjudicating Authority. In para-95 of the said order, the Ld. Authority noted as below:",,,,,

 \tilde{A} ¢â,¬Å"95. This case involves a number of factual and legal issues. Some issues are common to all Defendants. Some are common to some Defendants.,,,,

Identical arguments have been presented in respect of number of Defendants. To avoid repetitive references and overlapping we propose to identify,,,,,

them before proceeding further in an effort to find answers to them. The conclusions we will reach will be applied to individual cases of Defendants.,,,,

The broad issues which call for answers are:,,,,,

B. Whether the total quantum of attachment should be limited to the quantum of disproportionate assets of Sh. Madhu Koda (about Rs.1.40 crores),,,,

computed in the charge sheet filed, on the reasoning that that much is the proceeds of crime detected $\tilde{A}\phi\hat{a}, \neg\hat{a}\in \langle ", .,., \rangle$

38. The answer to the above question which the Ld. Authority posed before itself is provided in paragraphs 101 to 104 of the order which too, are",,,,

reproduced below for reference:,,,,

ââ,¬Å"101. Coming to issue B, there is no provision in PMLA which enjoins limiting the attachment of proceeds of crime to the quantum worked out in",,,,,

the charge sheet filed for the scheduled offence. There are many offences where the quantum of money generated out of the scheduled offence is,,,,,

not relevant for the purpose of the charge sheet and therefore may not be mentioned there. For various offences when police or any other concerned,,,,,

authorities file charge sheet there may not be any reference to money earned out of such crimes because such authorities for the purpose of the Act,,,,,

under which they would be acting may not consider it relevant to do so or may not find it necessary to investigate the money generation aspect. Even,,,,

if they do their investigations into the money generation aspect may not be exhaustive but may be only incidental. But if the Director of Enforcement,,,,

on his own investigation finds more money to have been earned out of such scheduled offences than shown in the charge sheet he is entitled to attach,,,,,

the whole of such proceeds of crime. There is no bar in PMLA for doing so. The Director's jurisdiction is not confined to tip of the ice-berg but the,,,,,

whole of the ice berg, above and under water.",,,,,

102. Para (b) of section 5(1) has a limited relevance in so far as it puts a condition for provisionally attaching the property. Once that condition is,,,,,

satisfied its relevance, including the quantum of proceeds from the scheduled offence, if any, comes to an end.",,,,,

103. Further, as held by the Hon'ble Bombay and Andhra Pradesh High courts it is permissible to attach a property if it represents proceeds of crime",,,,,

even if the person in possession of the property was not charged for any scheduled offence. In such a case there is no charge sheet against him to,....

serve as a point of reference.,,,,

104. In view of the above discussion we hold that attachment order cannot be faulted on the ground that the total quantum of attached properties,,,,

exceeded the disproportionate assets computed in the charge sheet filed against Sri Madhu Koda.ââ,¬â€⟨,,,,,

39. Having given careful consideration to the issue raised in this alternative contention of the appellant, we find ourselves in full agreement with the",,,,,

Ld. Adjudicating Authority on this issue. Insofar as the investigation of the offence of money laundering, including the quantum thereof under the",,,,,

PMLA is concerned, the findings recorded in the charge sheet filed in the scheduled offence are only the starting point or the trigger and not the final",,,,,

and binding conclusions. Otherwise, there would be no need for a separate and specialized authority bestowed with vast investigative powers to look",,,,,

into the offence of money laundering separately if they were to merely rely on the findings of the agency which investigated the scheduled offence.,,,,

The focus of the agency investigating the predicate (scheduled) offence will obviously be on the investigation of that offence. Moreover, as pointed",,,,,

out by the Ld. Adjudicating Authority, not all offences are amenable to ready quantification of monetary gain, that too, by an agency not specialized to",,,,,

carry out financial investigation. It is only after a detailed financial investigation is carried out by a specialized agency that the financial implication of,,,,

the offence will become clear in full measure.,,,,

40. In the present case, a mere perusal of the impugned order reveals that though the initial trigger or the starting point of the PMLA investigation may",,,,,

have been the FIR filed by the State Vigilance Department of Jharkhand under the Indian Penal Code, 1860 and Prevention of Corruption Act, 1988",,,,

wherein the proceeds of crime were quantified at Rs.1,40,10,333/-, the investigation carried out by the respondent Directorate revealed the actual",,,,,

quantum of proceeds of crime generated by the individuals and entities belonging to the group was exponentially higher than that amount.,,,,

41. In this context, it is not out of place to mention that provisional attachment based on reason to believe that any person is in possession of proceeds",,,,,

of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any",,,,

proceedings relating to the confiscation of such proceeds of crime is an interim measure to prevent the person from alienating or encumbering the,,,,,

property in any manner until his culpability under the Act is finally established by a court of competent jurisdiction. It does not prevent the person,,,,

interested in the enjoyment of the property from enjoying it. Such provisional attachment of property can be done by the director or other officer,,,,,

specified under section 5 on the basis of $\tilde{A}\phi\hat{a}$, $\neg A$ "reason to believe $\tilde{A}\phi\hat{a}$, $\neg A$ on the basis of $\tilde{A}\phi\hat{a}$, $\neg A$ " material in his possession $\tilde{A}\phi\hat{a}$, $\neg A$ ". Considering the contents of the,,,,,

impugned order we are of the view that the same constituted sufficient material for the director or other competent officer to have the requisite reason,,,,,

to believe.,,,,

42. That being the case, we do not find any merit in this alternative contention of the appellant either and, accordingly, the same is also dismissed.",,,,,

Consequently, the appeal is also hereby dismissed..",,,,,

No costs.,,,,