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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 15.09.2025***

Judgment pronounced on: 17.10.2025

\+ LPA 588/2022

DIRECTORATE OF ENFORCEMENT .....Appellant

Through: Mr. Zoheb Hossain, Spl Counsel for ED with Mr. Vivek Gurnani, Panel Counsel with Mr. Pranjal Tripathi, Mr. Kartik Sabharwal and Mr. Sheikh Raqueeb, Advs.

versus

M/S. HI-TECH MERCANTILE INDIA PVT LTD & ORS. & ORS. .....Respondents

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Ankur Chawla, Mr. Chander B. Bansal, Mr. Gurpreet Singh, Mr. Jatin S. Sethi, Mr. Bukul Jain, Mr. Kunal Aggarwal, Mr. Shivam Bansal and Mr. Yash Pandey, Advs.

\+ LPA 590/2022

DIRECTORATE OF ENFORCEMENT .....Appellant

Through: Mr. Zoheb Hossain, Spl Counsel for ED with Mr. Vivek Gurnani, Panel Counsel with Mr. Pranjal Tripathi, Mr Kartik Sabharwal and Mr Sheikh Raqueeb, Advs.

versus

M/S. PRAKASH INDUSTRIES LTD AND ANR & ANR. .....Respondents

Through: Mr. Kapil Sibal, Sr. Adv. with Mr. Shivam Tandon, Mr Ankur Chawla, Mr. C. B. Bansal, Mr. Gurpreet Singh, Mr. Aamir

Khan and Mr. Atif Akhtar, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

ANIL KSHETARPAL, J.

1. These Appeals assail the correctness of the Judgement and Order dated 19.07.2022 [hereinafter referred to as 'IJ'] passed by the learned Single Judge [hereinafter referred to as 'LSJ'] in Writ Petitions which raised substantially similar challenges. Since, both the Appeals arise from the same *lis* and turn upon overlapping issues; they are with the consent of learned counsel for the respective parties, being disposed of by this consolidated judgment. However, for the sake of convenience and with the consent of the parties, the LPA 590/2022 is being treated as the lead case to extrapolate our decision in both the Appeals.

BRIEF BACKGROUND:

2. The dispute between the parties arises out of an allocation of the Chotia Coal Block in favour of M/s Prakash Industries Limited [hereinafter referred to as 'PIL']. The primary allegation against PIL was that they have attained the allocation, though fraudulent activities resulting in financial gains leading to proceeds of crime. The allocation of the Coal Block was made in favour of PIL on 04.09.2003. However, such allocation as on date stands cancelled by the Supreme Court *via* its judgment in W.P.(Crl) 120/2012 captioned

Manohar Lal Sharma v Union of India [hereinafter referred to as 'ML Sharma'], the said judgment declared the coal block allotments to be illegal and arbitrary. The Supreme Court further directed the Central Bureau of Investigation [hereinafter referred to as 'CBI'] to continue with its investigation into all such allotments. The dispute in the present round of litigation finds its genesis in two different chargesheets filed by CBI, on account of alleged misrepresentations by PIL in attaining such allocation, leading to multiple consequential proceedings which is being set out distinctly hereinbelow for easy reference.

First Chargesheet and its consequential proceedings

3. The first chargesheet was registered by CBI on 17.11.2012 *vide* CC No. 3/2012 and charges were framed against PIL and other accused persons on the basis of First Information Report ('FIR') bearing no. RC/AC2/2010/A0001 dated 07.04.2010 under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'PCA'], and Sections 120-B, 420, 467, 468, and 471 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC']. The allegations in the said FIR broadly pertained to the alleged illegal and fraudulent allotment of coal blocks during the relevant allocation period and its subsequent financial gain.

4. Aggrieved by the filing of the first chargesheet, PIL approached this Court challenging its validity. This Court by way of an Order dated 05.09.2014, allowed the Petition and quashed the FIR and the consequential chargesheet. Thereafter, CBI preferred a SLP(Crl) No.

2756/2015, before the Supreme Court, assailing the order of this Court which is pending adjudication.

Second Chargesheet and its consequential proceedings

5. Following the Supreme Court's direction *vide* judgment dated 24.09.2014 and further investigations conducted, CBI registered a second FIR bearing no. RC 221/2016/E0035 on 02.12.2016 for offences under Section 120-B read with Section 420 of the IPC. Subsequently, CBI also filed a chargesheet bearing no. 01/2020 on 23.01.2020 before the Special Judge. Thereafter, on 16.10.2021, a supplementary chargesheet under Section 173(8) of Code of Criminal Procedure, 1806 [hereinafter referred to as "CrPC"] was filed to place additional material on record. On the basis of the material placed on record, the Special Judge, on 22.10.2021, proceeded to frame charges against the listed accused, including PIL, in relation to the second FIR. Resultantly, PIL instituted a SLP (Crl) 656-657/2022, wherein the Supreme Court *vide* Order dated 06.05.2022 has stayed further proceedings before the Trial Court.

6. Consequent to the registration of the second FIR by CBI, the Directorate of Enforcement (Appellant herein) [hereinafter referred to as 'Directorate'] initiated simultaneous proceeding under Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'] on 03.03.2017 and registered ECIR No. ECIR/01/CDZO/2017, alleging generation of proceeds of crime by way of illegal coal block allotment and related fraudulent misrepresentation made to attain the allocation. Resultantly, on 01.12.2021, the Directorate issued a

Provisional Attachment Order [hereinafter referred to as "PAO"] under Section 5(1) of the PMLA, attaching assets valued at approximately Rs. 227 Crores, as being proceeds of crime arising out of illegal acts connected to the allocation.

7. Aggrieved, by the said attachment, PIL filed a petition on 22.12.2021 assailing the correctness of the PAO. Meanwhile, on 28.12.2021, the Directorate filed an Original Complaint [hereinafter referred to as "OC"] before the Adjudicating Authority under Section 5(5) of the PMLA seeking confirmation of the PAO. Subsequently, a Show Cause Notice [hereinafter referred to as "SCN"] was also issued under Section 8(1) of the PMLA. As a result, an amendment application was preferred by PIL to include the said proceedings initiated by the Adjudicating Authority as a matter for adjudication, which was allowed on 03.03.2022. However, the said order was then challenged in a Letter Patent Appeal ('LPA') and was dismissed accordingly.

8. The LSJ *vide* the IJ allowed the Writ Petition, thereby setting aside and quashing the PAO and the consequential proceedings, holding that the allocation of a coal block cannot be construed either as a property or conferment of right in property and further holding the allocation, per se, cannot be recognised as representing proceeds of crime.

9. The Appellant, has now approached this Court in Appeal, seeking to challenge the correctness of the judgment.

10. This Court has heard learned senior counsel for the parties at length and with their able assistance perused the paper book.

11. Learned senior counsel for the parties have filed their respective written submission and have relied upon judgements thereof. The contentions of the parties are examined hereinafter.

12. The submissions advanced by the learned counsel for the parties pertain to both the procedural aspects including a preliminary objection regarding the maintainability of the Appeal as well as the substantive merits of the case. Therefore, this Court deems it appropriate to bifurcate the submissions under two distinct heads:

I. Submissions relating to maintainability of the Appeals; and

II. Submissions concerning the merits of the case.

I. SUBMISSION ON BEHALF OF THE PARTIES ON MAINTAINABILTY OF THE APPEAL

Preliminary objection on maintainability by PIL

13. Learned senior counsel for PIL, while raising preliminary objection, has made the following submissions:

13.1 It is contended that no intra court appeal is maintainable under Clause X of the Letters Patent against the judgment passed by the LSJ in exercise of jurisdiction under Article 227 of the Constitution of India [hereinafter referred to as "COI"], as it was not acting in its original jurisdiction.

13.2 It has been submitted that initially only the PAO was challenged under Article 226 of the COI. However, due to the change in circumstances namely, the issuance of SCN under Section 8(1) of the PMLA coupled with complaint bearing No. 1586/2021 being filed under Section 5(5) of the PMLA, an amendment was made to the Writ Petition. The said amendment was allowed by the LSJ, taking into consideration the infirmities in the order passed under Section 8(1) of PMLA.

13.3 In view of the aforestated, it has been argued that the LSJ exercised its supervisory jurisdiction under Article 227 of the COI, thereby setting aside the proceedings and the order of the subordinate authority, with a finding that the same was, without jurisdiction and without authority of law.

13.4 It has also been argued that the SCN was issued by the Adjudicating Authority after due application of mind and in form of a judicial order, and that the LSJ, while exercising supervisory jurisdiction, has set aside such an order. Reference in this regard was made to a Division Bench judgement of Telangana in ***Enforcement Directorate v Karvy India Realty Limited and Others***[1]; ***Abdul Kuddus v Union of India & Ors.***[2]*;* and ***Ajay Singh and Anr and Etc v State of Chattisgarh and Anr***[3].

13.5 With respect to ***ML Sharma*** *(Supra)*, it is contended that the bar imposed in the said judgement pertains solely to criminal proceedings.

[1] 2024 SCC Online TS 18
[2](2019) 6 SCC 604
[3] 2017 (3) SCC 330

If the reliance placed by the Directorate on ***ML Sharma*** is accepted, it would imply that once a PAO is issued under Section 5(1) of PMLA, the only available remedy against it would be to approach the Supreme Court under Article 136 of the COI.

13.6 The aforesaid interpretation is argued to effectively leave the Adjudicating Authority with no discretion to reject the confirmation of the attachment. It would render the confirmation process under Section 5(1) of the PMLA a mere formality, thereby mandating automatic confirmation of the PAO. This would result in the conferment of unchecked and unregulated power on an executive authority, which is impermissible in law and would also be in violation of Article 14 of the COI, which could never have been the intent and purpose of the Supreme Court while rendering its decision in ***ML Sharma*** judgment under Article 142 of the COI.

Response on behalf of the learned counsel for the Directorate to the Preliminary objection on maintainability of Appeal

14. In support of his case, learned counsel has made the following submissions:-

14.1 It is the case of the Directorate that the IJ was passed in exercise of jurisdiction Article 226 of the COI and therefore, the present LPA is maintainable. Reliance in this regard has been placed on the prayer clauses in both the original and amended Writ Petitions filed by PIL. It is submitted that the reliefs sought included the issuance of writ, a relief that can only be granted in the exercise of jurisdiction under

Article 226 of the COI. The prayer clauses are reproduced hereinbelow:

"Original prayer sought:

a) call for the records relating to the impugned proceedings initiated under Section 5 of the Prevention of Money Laundering Act, 2002 emanating out of ECIR/0l/CDZO/2017 dated 03.03.2017; [Copy of ECIR not available with the Petitioners.]

b) Issue a Writ of Quo Warranto to the Respondent as to show under what authority of law the impugned proceedings have been initiated;

c) Issue a Writ of Certiorari or any similar Writ to quash and set aside the very proceedings under Section.5 of the Prevention of Money Laundering Act, 2002 for attachment of the properties of the Petitioner emanating out of ECIR/01/CDZO/2017 dated 03.03.2017; [Copy of ECIR not available with the Petitioners.]

d) Issue a Writ to Quash and set aside the Provisional Attachment order no.8337, 8338, 8339, 8340 / 2021dated 01.12.2021 passed in ECIR/01/CDZO/2017 dated03.03.2017 by the Respondent.[Copy of ECIR not available with Petitioners.]

e) Pass such further/other relief, in favour of the Petitioners, which this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.

Amended prayer sought:

a) Call for the records relating to the impugned proceedings initiated under Section.5 of The Prevention of Money Laundering Act, 2002 emanating out of ECIR/01/CDZO/2017 dated 03.03.2017;

b)Issue a Writ of Quo Warranto to the Respondent as to show under what authority of law the impugned proceedingshave been initiated;

c) Issue a Writ of Certiorari or any similar Writ to quash and set aside the very proceedings under Section.5 of the Prevention of Money Laundering Act, 2002 for attachmentof the properties of the Petitioner emanating out ofECIR/01/CDZO/2017 dated 03.03.2017;

d) Issue a Writ to Quash and set aside the Provisional Attachment order no. 8337, 8338, 8339, 8340 / 2021 dated01.12.2021 passed in ECIR/01/CDZO/2017 dated03.03.2017 by the Respondent.

e) Issue a Writ of Certiorari or any similar Writ to quash andset aside the Complaint filed under Sub – Section (5) of Section 5 of the Prevention of Money Laundering Act,2002 registered as Original Complaint No. 1586/2021 titledas Surjeet Kumar Mishra, Deputy Director Versus M/sPrakash Industries Limited & Others pending before the Ld. Adjudicating Authority under Prevention of Money Laundering Act, 2002;

f) Issue a Writ of Certiorari or any similar Writ to quash and set aside the Show Cause notice dated 13.01.2022 issued by the Ld. Adjudicating Authority under Prevention of Money Laundering Act, 2002 in Original Complaint No.1586/2021;

g) Pass necessary orders and Directions as deem fit by this Hon'ble Court in view of the facts and circumstances of the captioned matter.

Interim Prayers:

i. Grant ex parte ad-interim orders and directions thereby staying further proceedings in OC No. 1586 of 2021 initiated on the Complaint filed under Section 5 (5) of the Prevention of Money Laundering Act, 2002 pending before the Ld. Adjudicating Authority, New Delhi

ii. Grant ex parte ad-interim order staying the operation and effect of the Show Cause Notice dated 13.01.2022 issued bythe Adjudicating Authority in OC No. 1586 of 2021 filed under Section 5 (5) of the Prevention of Money Laundering Act, 2002 pending before the Ld. Adjudicating Authority(under the Prevention of Money Laundering Act, 2002) New Delhi.

iii. Grant interim orders and directions thereby staying further proceedings in OC No. 1586 of 2021 initiated on the Complaint filed under Section 5 (5) of the Prevention of Money Laundering Act, 2002 pending before the Ld. Adjudicating Authority, New Delhi and

iv. Pass any other order(s) as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case."

To substantiate the above submission regarding the maintainability of the present Appeals, reliance has been placed on the judgment of the Supreme Court in ***Sushilabai Laxminarayan Mudliyar v. Nihalch and Waghajibhai Shaka & Ors.***[4].

14.2 Additionally, *arguendo*, it is submitted that the LSJ, even while exercising its supervisory jurisdiction under Article 227 of the COI, cannot assume jurisdiction over the Adjudicating Authority under the PMLA. By virtue of Section 6 of PMLA, the Adjudicating authority is neither a Tribunal nor a Court within the meaning of Article 227 of the COI. Therefore, supervisory powers of the High Court under

[4]1993 Supp (1) SCC 11

Article 227 of the COI cannot be invoked against such an authority. In this regard, reliance has been placed on ***Sukesh Gupta v Government of India***[5] and ***M. Sobhana v. The Assistant Director, Directorate of Enforcement***[6].

14.3 Further, reliance has been placed on the judgment of ***ML Sharma*** *(Supra)* to submit that the Supreme Court has categorically held that in matters arising out of the coal block allocation cases, only the Supreme Court has the jurisdiction to entertain any plea that may impede or delay the progress of investigation or trial. This exclusive jurisdiction is stated to be subsequently reaffirmed in ***Girish Kumar Suneja v. CBI***[7], by this Court and subsequently by the Supreme Court itself in ***Girish Kumar Suneja v. CBI***[8], wherein it was held that such a restriction was justified in the larger public interest and does not violate the constitutional scheme.

14.4 Further reliance has also been placed on a decision of the Bombay High Court wherein a similar view was taken in ***Ashok Sundar Lal Daga v. Union of India***[9]. In this case, writ petitions filed under Article 226 of the COI challenging the proceedings under PMLA, including ECIR and provisional attachment orders, were dismissed on the ground that such challenge, when related to coal block matters, could only be entertained by the Supreme Court.

14.5 Relying on the aforestated decision, it is submitted by the learned counsel for the Directorate that the PAO under PMLA is a

[5]2022 SCC OnLine TS 3411
[6]2013 SCC Online Mad 2961
[7]2016 SCC OnLine Del 5751
[8](2017) 14 SCC 809
[9]2017 SCC OnLine Bom 10204

measure taken in aid of criminal proceedings, aimed at the ultimate confiscation of proceeds of crime. Accordingly, any interference in such matters, particularly those arising from the coal block allocation cases falls exclusively within the jurisdiction of the Supreme Court.

14.6 Further, it is the case of the Directorate that the PAO was pending confirmation before the Adjudicating Authority at the relevant time. Therefore, the LSJ ought not to have interfered especially when Section 8 of the PMLA provides a complete mechanism for adjudication and confirmation of such orders.

II. SUBMISSIONS BY THE PARTIES ON THE MERITS OF THE CASE

Submissions on behalf of the Directorate:

15. Before turning to the submissions advanced by the learned counsel for the Directorate, this Court deems it appropriate to reproduce certain paragraphs from the IJ which have been relied upon by the learned counsel for the parties during their submissions, which are as follows:

> ***"83**. The proceedings initiated by the Enforcement Directorate and impugned in these writ petitions emanate from a second FIR registered by the CBI on 02 December 2016 and was numbered as **R.C. No. 221/2016/E0035**. Investigation undertaken in terms of the second FIR has culminated in the filing of a chargesheet numbered 1/2020 before the competent court on 23 January 2020 alleging commission of offenses under Section 120 B read with Section 420 of the Penal Code. The allegations in the second chargesheet essentially are that the petitioners submitted false and forged documents in support of their application for allocation of the coal block, misrepresented facts pertaining to proceedings pending before the BIFR and thus fraudulently and dishonestly obtained the coal allocation. As noted hereinbefore, the aforesaid chargesheet and the proceedings relating to the same form subject matter of challenge in Special Leave to Appeal (Crl.) Nos. 656-657/2022 in which by an*

order of 06 May 2022, further proceedings before the Trial Court have been stayed. The impugned proceedings emanate from the second chargesheet and relate to the provisional attachment of properties held by sister concerns and entities of PIL. It becomes pertinent to highlight here that while the second chargesheet restricts itself to events which occurred upto 04 September 2003 when the coal block was allocated to PIL, the impugned show cause notices and the provisional attachment orders cover properties acquired prior to as well as post that date.

84. *A reading of the second chargesheet establishes that the principal allegations levelled against the petitioners is of having submitted false and forged documents in support of their application for allocation of a coal block. It is alleged that the false, incorrect and misleading particulars were provided by them for the purposes of obtaining the allocation. The allegation of commission of offenses relatable to Section 420 and 120 B IPC is premised on the aforesaid allegations. While it is not for this Court to comment or enter any finding on whether a commission of those offenses is evidenced from the aforesaid allegations, the question which falls for determination is whether even if it were assumed that the said allegations constitute the commission of a scheduled offense and criminal activity, whether the allocation represents or can be understood as proceeds of crime as defined in Section 2(1)(u) of the Act.*

xxxx xxxx xxxx xxxx

86. *The allocation letter was thus recognised to be a grant of largesse by the Government entitling the holder thereof to obtain a mining lease and consequently a right to win minerals falling in a particular block. The holder of the allocation letter thus became entitled to the grant of a lease or a permission to win minerals which always did and continued to vest in the State. The mining lease embodied the conferment of a right by the State which owned the land and the mineral deposits to enjoy that property, to extract minerals on terms and conditions specified in the lease. The position of the lessee under the provisions of the* ***Coal Mines (Special Provisions) Act, 2015*** *essentially remains the same with the ownership of the land and the mineral deposit vesting in the appropriate government and a right to obtain a lease for excavation of mineral alone being conferred and parted with. On a consideration of the procedure for allotment of coal blocks and their allotment, it is manifest that the allocation of a coal block cannot stricto sensu be construed either as property or conferment of a right in property. It becomes pertinent to note that the expression property is defined by Section 2(1)(v) as property or assets of every description. The allocation at best represents a right conferred by the Union enabling the holder thereof to apply to the concerned State Government for grant of a mining lease. The allocation cannot per se be recognised as representing proceeds of*

crime. It would be the subsequent and consequential utilisation of that allocation, the working of the lease that may be granted, the generation of revenues from such operations and the investment of those wrongfully obtained monetary gains that can possibly give rise to an allegation of money laundering. It is the financial gains that may be derived and obtained or proceeds generated from such allocation which could be considered as falling within the net of Section 2(1)(u).

xxxx xxxx xxxx xxxx

88. *It is therefore evident that the Act essentially seeks to confiscate properties and assets that may be obtained from criminal activity and which may then be concealed and legitimised through processes which are described as placement, layering and integration. The Act is motivated by the aim to confiscate the monetary advantage that may be obtained or derived from criminal activity. When viewed in that light, it is evident that the allocation per se cannot possibly be viewed or understood as representing proceeds of crime in itself. It is the illegal gains obtained and derived by the utilisation of that allocation and the concealment or conversion of those gains into assets or properties which could possibly be understood as amounting to an act of money laundering.*

89. *The quintessential element of money laundering is the washing of criminal proceeds and its conversion into property as defined in Section 2(1)(v). For reasons set out hereinabove, the Court has come to the definite conclusion that the allocation would not constitute proceeds of crime. If therefore the scope of enquiry were to be restricted up to this point of the sequence of events alone [and as the Court is mandated to do in light of the scope of the second chargesheet], it is apparent that an allegation of money laundering would not be sustainable at all. This since the allocation of the coal block only represented a permission to obtain rights to extract minerals. Its utilisation thereafter, the extraction of coal, the generation of moneys, the investment of the same, the acquisition of properties are all actions which ensued thereafter and relate to the period post 04 September 2003. The chargesheet which forms the bedrock of the impugned proceedings restricts itself to activities leading up to the allocation of the coal block alone. The Court also bears in mind the undisputed fact that the allocation came to be made on 04 September 2003. Till that time and date, no allegation of proceeds of crime having been obtained or generated is laid against the petitioners.*

xxxx xxxx xxxx xxxx

93. *While dealing with the issue as framed, the Court is conscious of the fact that the present proceedings emanate from a chargesheet which restricts itself to events which occurred upto 04 September 2003. Ordinarily there would have been no occasion to deal with the*

question posited except for the reason that the impugned show cause notice and the provisional order of attachment are based on allegations that the allocation was utilised to extract minerals, diversion of the same for the purposes of sale and the laundering of the proceeds so earned and derived through the purchase of immoveable properties. This despite the fact that the utilisation of that allocation and the consequential generation of the alleged proceeds of crime are all issues which fall beyond the realm of the second chargesheet.

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99. *Before concluding the discussion on this issue, it would be pertinent to note that there is no allegation that proceeds of crime had been generated as on 04 September 2003. The respondents have not founded the impugned proceedings on any monetary gains or benefits that may have allegedly accrued to the petitioners as on 04 September 2003. In the absence of any allegation that such gains had been derived or obtained as on that date, the Court finds itself unable to appreciate how proceedings under the Act could have been validly initiated."*

16. On the merits of the case, learned counsel for the Directorate has made submissions under four principal limbs, which are *(i)* alleged misrepresentations by PIL; *(ii)* Incorrect Application of Proceeds of Crime u/s 2(1)(u) and Section 3 of the PMLA; *(iii)* Incorrect Application of Property u/s 2(1)(v) under PMLA and *(iv)* Incorrect application of scheme of PMLA.

i. <u>Alleged misrepresentations by PIL</u>

16.1 In substance, the learned counsel for the Directorate submits that PIL consistently indulged in multiple misrepresentations and suppression of facts before various statutory authorities and government bodies in order to fraudulently attain the allocation letter. The details of alleged misrepresentations are as follows:

S. No.	Mode of alleged Misrepresentation	Claimed position by PIL	Actual alleged position as per

	(Document/Occasion)		investigation
1.	Letter dated 03.06.1997 to Ministry of Coal (MoC)	Installed capacity of the company is 4 LTPA.	Only 3 LTPA installed capacity of sponge iron.
2.	Letter dated 13.01.1998 to SECL	Company has 4 LTPA capacity and intends to double it	Company had only 3 LTPA installed capacity
3.	Letter dated 27.01.1998 issued by SECL to MoC (based on information provided by PIL)	Reiterated 4 LTPA capacity	Capacity again misrepresented; actual was 3 LTPA
4.	Letter dated 21.12.1999 to Advisor (Coal), MoC	Reiterated 4 LTPA capacity	Continued misrepresentation of actual 3 LTPA capacity
5.	Letter dated 12.11.2001 to MoC	Total 4 LTPA claimed to be commission under Phase-I (2 LTPA on 31.10.1993) and Phase-II (2 LTPA on 30.09.1996)	Actual capacity remained 3 LTPA
6.	Letters dated 26.11.2001 and 22.01.2002 to MoC	Claimed production of 4.25 LTPA sponge iron	Actual capacity was lower
7.	19th Screening Committee Meeting (26.05.2003)	Claimed existing capacity of 4 LTPA and proposed addition of 4 LTPA more	Based on misrepresented capacity; no verification provided
8.	From 15th Screening Committee meeting onward	Claimed BIFR-approved rehabilitation package	PIL was declared sick in 1998 under BIFR, pursuant to which its application for allotment stood rejected in the 14th meeting
9.	Application data on Net Worth, Paid-up Capital, Cash Flow in 18th Screening Committee meeting held on 05.05.2003	Claimed Net Worth: (-)500 Cr; Paid-up Capital: 300 Cr; Cash from Ops: 200 Cr	Actual (as per investigation): **As on 31.03.2003-** NW: (-)598.94 Cr; PUC: Rs. 79.10 Cr; CFO: Rs. 26.45Cr **As on 31.03.2004** – NW: (-)430.58 Cr; PUC: Rs. 94.09 Cr; CFO: Rs. 38.89 Cr

10.	CCO Reports dated 08.10.2009 & 20.05.2011	Implied historical capacity of 4 LTPA	Actual sponge iron production (2006–2010) ranged from 2.05 LTPA(2006-07) to 3.35 LTPA(2009-10)and never reached 4 LTPA
11.	Letter dated 24.05.2000 to Secretary, Ministry of Steel	Commissioned 15 MW Fluidised Bed Boiler (FBB) in March 2000	Actual installed capacity was only 12.5 MW
12.	Letters dated 26.11.2001 and 22.01.2002 to Addl. Secy., MoC	Claimed: ISO-9002 certified; Monthly MS production 25,000 tons (till Sept 2001), expanded to 35,000 tons from Oct 2001 → annual 4.25 LTPA	Not ISO certified; Actual annual production was 1,76,520 tons as on 26.11.2001

ii. <u>Incorrect Application of Proceeds of Crime u/s 2(1)(u) and Section 3 of the PMLA</u>

16.2 At the outset, it has been submitted by the learned counsel for the Directorate that the LSJ has erred in ignoring the expression 'process' under Section 3 of the PMLA. The term process is stated to mean *"a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result.*" It has been submitted that as per the aforestated interpretation, Section 3 of the PMLA is sufficiently wide enough to include any process or activity connected with or leading to the generation of proceeds of crime. Therefore, on the basis of the above interpretation, it has been submitted that the extraction of 84,42,725 MT of coal, valued at Rs. 9,51,77,34,115/-, the license for which was derived through fraudulent allocation of coal blocks from

2006-07 to 2014-15 and which is a scheduled offence would be covered under the ambit of Section 3 of the PMLA.

16.3 Controverting the position recorded at Paragraph No.83 by the LSJ, it has been submitted that the LSJ erroneously records that the ECIR No. ECIR/01/CDZO/2017 pertains to events that occurred upto 04.09.2003, the date of allocation. However, the impugned PAO and SCN relate to properties acquired both prior to as well as post the date of allocation.

16.4 The attention of this Court has been drawn to Paragraph No.84 of the IJ to submit that the LSJ has posed an incorrect question leading to an incorrect finding. The actual question as per the learned counsel for the Directorate is not whether the allocation in itself constitutes as proceeds of crime, rather the actual question is whether such allocation, having been obtained on the basis of the commission of a scheduled offence and which led to generation of proceeds of crime, makes such proceeds liable for attachment under PMLA.

16.5 Learned counsel for the Directorate also raised an objection on the finding at Paragraph No.86 of the IJ, wherein the LSJ recorded that "*the allocation of a coal block cannot stricto sensu be construed either as property or conferment of a right in the property and as such cannot be recognized as representing the proceeds of crime*". Additionally, objection has also been raised on the findings recorded by the LSJ in Paragraph No.99, wherein it is recorded that the Directorate has failed to base the impugned proceedings on any monetary gain that may have accrued as on 04.09.2003. Controverting

the aforesaid observations made by the LSJ, it has been submitted by the learned counsel for the Directorate that the LSJ failed to consider that the PAO categorically observes that the value of proceeds of crime is the coal that was extracted pursuant to the illegal allocation, which was attained on the basis of false and forged documents. Additionally, it has also been stated that the Directorate in the PAO has treated the extraction of coal amounting to 84,42,725 MT valued at Rs. 9,51,77,34,115/- carried out during 2006-07 to 2014-15 from the Chotia Coal Block, as the proceeds of crime and not the allocation letter alone.

16.6 Learned counsel for the Directorate, during his submissions, has pointed out the acknowledgment made by the LSJ in Paragraph No.86 of the IJ, wherein it is stated, '*that allocation per se cannot be recognized as proceeds of crime, but the subsequent and consequent utilization of that allocation, working lease granted and generation of revenue from such operations and investment of the wrongfully obtained monetary gain can be an allegation of money laundering*'. On the aforesaid premise, it has been submitted that the PAO reflects the intention of the Directorate to treat Rs. 9,51,77,34,115/- as generation of proceeds of crime, obtained from extraction of coal which was directly obtained as a result of criminal activity recognized as scheduled offence under sections 420, 120B and 471 of the IPC.

16.7 On the basis of the above said submissions made, it is the case of the Directorate that as per the definition of proceeds of crime provided under PMLA, such proceeds can only be derived directly or indirectly as a result of criminal activity in relation to a scheduled

offence. Therefore, the proceeds of crime will only arise after the commission of scheduled offence and the scope of inquiry cannot be restricted upto the date of allocation alone. A similar position has also been given by the LSJ in Paragraph No.88 of the IJ. In this regard, reliance has been placed on Paragraph No.270 of ***Vijay Madanlal Chaudhary v Union of India***[10], wherein the Supreme Court has held as under:

> *"270.* ***Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence.*** *In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."*
>
> (Emphasis supplied)

[10]2022 SCC OnLine SC 929

Relying on the aforestated, it has been submitted that the utilization of the allocation of coal block by the extraction of coal would qualify as proceeds of crime hence attracting Section 3 of the PMLA.

16.8 It is submitted that the LSJ has failed to draw a necessary distinction between the actions that ensued prior to and leading up to the allocation (pre - 04.09.2003) and activities that ensued post the date of allocation, i.e., 04.09.2003, particularly the extraction of coal which resulted in monetary gain. The LSJ, other than noting that the second chargesheet relates to pre-allocation, does not analyse post-allocation.

iii. <u>Incorrect Application of 'Property' u/s 2(1)(v) of the PMLA</u>

16.9 It is argued that the LSJ has incorrectly applied the definition of 'property' under Section 2(1)(v) of the PMLA by holding that the allocation letter cannot be construed as property. It is the case of the Directorate that the allocation letter itself constitutes property involved in the offence of money laundering, as it not only confers rights, and thereby constitutes "proceeds of crime" and proceed further to grant the rights for extraction of coal, thereby also generating proceeds of crime capable of attachment. It has been submitted that the LSJ failed to recognize the settled law that if an order can sustain on any one ground provided under Section 2(1)(v) of the PMLA, then no interference is warranted by a Writ Court.

16.10 Reliance in this regard has been placed on the ***ML Sharma*** judgment to contend that the observations made by the LSJ in Paragraph No.88 are in teeth of the said judgment. On one hand, the IJ

states that the allocation cannot be construed as property; whereas on the other hand, the ***ML Sharma*** judgement makes it amply clear that allocation letter creates and confers a valuable right upon the allotee. Moreover, it is also argued that the fact of a pending investigation against PIL in respect of scheduled offences makes no difference to the legal position. Whether the Directorate treated the allocation letter itself as proceeds of crime or not, is immaterial, as the undisputed fact remains that the allocation was attained through fraud, leading to accrual of illegal financial gains obtained by utilization of said allocation.

iv. <u>Incorrect application of scheme of PMLA</u>

16.11 It is further submitted that the LSJ at Paragraph No.89 of the IJ, has erroneously observed that "*money laundering involves only the washing of criminal proceedings and its conversion into property"* as defined under Section 2(1)(v) of the PMLA. This narrow interpretation has been controverted by placing reliance on Paragraph Nos.268, 269 and 467 of ***ML Sharma*** *(Supra)*, wherein the Supreme Court held that the word *"and"* in Section 3 of the PMLA must be construed as *"or"* to ensure that every individual act or process involving proceeds of crime, such as concealment, possession, acquisition, use, or projection as untainted, is sufficient on its own to constitute the offence of money laundering. This interpretation prevents evasion of liability where different persons undertake different parts of the laundering process, namely, one person possesses the proceeds and another projects it as untainted. The 2019

Explanation to Section 3 of the PMLA is merely clarificatory and reaffirms this understanding.

16.12 It is further submitted that the offence of money laundering is distinct and independent of the underlying scheduled offence and focuses solely on the handling of proceeds of crime. The investigative scope under the PMLA is not limited to the contours of the time period for commission of the scheduled offence as framed under the chargesheet by the predicate agency.

16.13 It is submitted that the LSJ, at Paragraph No.95, has further erred in recording that money laundering is a stand-alone offence which can survive even in the absence of an allegation that a person committed a scheduled offence. Such finding is stated to be contrary to law and facts of the case, to the extent that where the scheduled offence continues to exist in relation to the illegal allocation on the basis of forged documents, any proceeds of crime generated pursuant to such allocation would sustain the allegation of money laundering, since the scheduled offence continues to exist.

Submissions on behalf of PIL

17. *Per contra,* the learned senior counsel for PIL, controverting the submissions advanced by the learned counsel for the Directorate, has made the following submissions:

17.1 It is the case of PIL that the PAO issued by the Directorate, based on the presumption of proceeds of crime as defined under Section 2(1)(u) of the PMLA, would not be equivalent to the value of

the coal already extracted, rather it would be equivalent to the benefit derived by the accused from the offence and the equivalent loss caused to the exchequer. Reliance in this regard has been placed on ***ML Sharma*** *(Supra)* to contend that such allocations were cancelled by the Supreme Court as on 24.09.2014, wherein the Court also directed the allotees to pay an additional levy of Rs. 295/- per metric ton of coal extracted from the respective coal blocks. Additionally, reference is made to Section 415 of the IPC to submit that the loss caused to the exchequer is emanating from the offence of cheating, which, in the present case, constitutes the benefit derived by PIL through allocation obtained on the basis of false and forged documents.

17.2 It is submitted that, in the present case, the coal block allocation formed the very basis on which the Respondent was able to derive any benefit which subsequently constituted the proceeds of Crime. However, on the basis of the submissions made in the immediately preceding paragraph, PIL contends that, *firstly*, no proceeds of crime could arise in the cases related to the coal block allocation, since the said allocation stood terminated by the Supreme Court. *Secondly*, it is argued that even assuming a loss was caused to the exchequer, the same has already been compensated by PIL in accordance with the directions of the Supreme Court, through payment of an additional levy amounting to Rs. 249,06,03,875/-. It is also contended by the learned senior counsel for PIL that the calculation of Rs. 951,77,34.115/- reached by the Directorate, representing the alleged proceeds of crime, is without any basis.

17.3 Additionally, the learned senior counsel for PIL has submitted that PIL has already paid a sum of Rs. 186,24,24,058/- to the Government by way of various cesses and duties from July 2006 to March 2015. Moreover, an amount of Rs. 680,93,44,083/- has been incurred by PIL towards development, operation and maintenance of the mine. All the three sums when aggregated, reflect a total expenditure of Rs. 1116,23,72,016/- incurred by PIL. It is the case of PIL that this aggregate amount is significantly higher than the alleged proceeds of crime, i.e., Rs. 951,77,34,115/-and as such there are no proceeds of crime liable to be attached as the alleged benefit is outweighed by the legitimate expenditure incurred by PIL.

17.4 The learned senior counsel for PIL, while controverting the submissions advanced by the learned counsel for the Directorate with respect to the proceeds of crime, has submitted that the definition under Section 2(1)(u) of the PMLA clearly describes the proceeds of crime as any property derived or obtained directly or indirectly, as a result of criminal activity relating to a scheduled offence. In the present case, the ECIR has been registered solely on the basis of description of scheduled offence as mentioned therein. In other words, the ECIR constitutes the first step in the initiation of proceedings under Section 3 of the PMLA, which in turn forms the basis for exercising powers under Section 5 of the PMLA.

17.5 Therefore, the argument advanced by the learned counsel for the Directorate, that powers under Section 5 of the PMLA can be exercised in relation to any property under Section 2(1)(v) of the PMLA, treating it as proceeds of crime under Section 2(1)(u) of the

PMLA, irrespective of whether the corresponding scheduled offence which may or may not be registered as an offence, is contrary to the scheme of the provision itself. In support of this contention, reliance has been placed on ***Vijay Madanlal Chaudhary*** *(Supra),* ***Indrani Ptanaik v Enforcement Directorate***[11].

17.6 Controverting the submissions advanced by the learned counsel for the Directorate that the cut-off date of 04.09.2003 is of no relevance, learned senior counsel has relied upon Paragraph No.93 of the IJ, wherein the LSJ observed that "*the utilisation of the allocation and consequential generation of alleged proceeds of crime are all issued which fall beyond the realm of the second chargesheet*". Further, it is submitted that this finding was based on the submissions made by PIL, who contended that, in terms of the first FIR, the allegation against PIL was that 2,27,000 MT of coal had been diverted to the open market, resulting in the earning of illegal profits amounting to Rs. 22.7 crores.

17.7 Additionally, the attention of this Court has been drawn to a portion of the second chargesheet, which reads as follows:

> ***"16.57 A CASE RC AC2 2010 A0001 WAS REGISTERED BY CBI, AC-I, NEW DELHI ON 07.04.2010 AGAINST M/S PRAKASH INDUCTIRIES LIMITED AND OTHERS. THE MATTERS RELATEDTO POST ALLOCATION AND DIVERSION ASPECTS IN RESPECT OF CHOTIA COAL BLOCK WERE INVESTIGATED IN THE SAID CASE AND CHARGESHEET AND SUPPLEMENTARY CHARGE SHEETS WERE FIELD, SINCE, THE POST ALLOCATION ASPECT HAS ALREADY BEEN INVESTIGATED, THE INVESTIGATION IN THE PRESENT CASE IS LIMITED UPTO ALLOCATION STAGE ONLY."***

[11](2022) SCC OnLine SC 2167

Placing reliance on the aforestated, it has been submitted that the second chargesheet expressly limited the scope of investigation to events upto 04.09.2003, i.e., the date of allocation. Further, it also clarifies that all post-allotment and utilization aspects, including the extraction and diversion of coal, were already the subject matter of an earlier FIR and first chargesheet, which has since been quashed by the criminal bench of this Court, against which no stay is operational currently, as also recorded in the IJ.

17.8 Accordingly, the LSJ has rightly considered 04.09.2003 as the cut-off date, since the mining activity and coal excavation formed part of the earlier proceedings emanating from the first FIR. By attempting to include the post-allocation activities within the ambit of the second chargesheet, the Directorate is, in effect, attempting to import new offences and allegations from the first FIR into the second, despite the fact that the predicate agency itself has demarcated the scope of its investigation and such an approach is impermissible in law.

17.9 It is contended that on the basis of the aforestated facts and circumstances, PIL has sought quashing of the proceedings initiated under Sections 5 and 8 of the PMLA on the ground that proceedings under PMLA can only be initiated upon commission of an offence under Section 3 of the PMLA. Section 3 of the PMLA requires that the proceeds of crime, as defined in relation to a scheduled offence, must be projected or claimed as untainted properties.

17.10 It is submitted that since the record reflects that the second chargesheet, *prima facie*, did not reflect commission of offence under

Section 3 of the PMLA, the proceeding under Section 5 of the PMLA could not have been initiated. It is further submitted that the allocation of the coal block was made on 04.09.2003, which was subsequently cancelled by the Supreme Court in the ***ML Sharma*** judgment. The subsequent possession, acquisition or use of the coal block allocation occurred after the date of allotment *qua* which no chargesheet has been filed. Therefore, the essential ingredient of proceeds of crime and the applicability of Section 3 of the PMLA are both absent in the case at hand. In light of these, it is contended that the Directorate couldn't have issued a PAO against PIL.

ANALYSIS & FINDINGS:

18. Having heard the rival submissions advanced by the learned counsel for the parties and upon perusal of the record, this Bench has identified the following five issues:

A. Maintainability: Preliminary Objection regarding the present appeal.

B. Section 2(1)(v) of the PMLA: Whether the allocation letter can be construed as 'property'?

C. Section 2(1)(u) and Section 3 of the PMLA: Whether misrepresentation in allocation of coal block leads to proceeds of crime making it an offence of money laundering?

D. Attachment under Section 5 of the PMLA: Whether the Directorate is justified in attaching the value of coal extracted?

E. Relevance of 04.09.2003: Whether the LSJ erred in restricting the applicability of PMLA, pre-allocation, in view of the quashing of First FIR and Chargesheet?

A. MAINTAINABILITY: PRELIMINARY OBJECTION REGARDING THE PRESENT APPEAL

19. At the very outset, this Court deems it necessary to state that the entire proceedings challenged before the LSJ beginning from the issuance of PAO under Section 5 of the PMLA to the culmination of issuance of the SCN and initiation of complaint proceedings, are intrinsically linked to each other by virtue of chain of causation, all of which then emanate from the very foundational action of an executive authority to issue the PAO.

20. It is trite law that whenever there is a series of legal consequences flowing from any administrative or executive act, any challenge against such an act squarely falls within the scope of Article 226 of the COI. In the present case, initially PIL filed a Writ Petition before the LSJ, with an intention to invoke the original extraordinary jurisdiction of the Court. During the pendency of the aforestated Petition and owing to the further developments arising out of the PAO, namely issuance of SCN and registration of complaint, PIL by way of an amendment application sought to add the prayer and grounds relating to quashing of these further developments, which was eventually allowed by the LSJ *vide* its Order dated 03.03.2022.

21. To put it succinctly, the PAO having been issued by an Executive Authority under Section 5 of the PMLA, forms the root order. If this root order is tainted or found to be legally unsustainable,

all actions emanating from the PAO or flowing therefrom must also fall. Therefore, the challenge by virtue of the root order was not merely limited to an adjudicatory oversight or supervisory powers to be exercised under Article 227 of the COI, rather was an invocation of the original writ jurisdiction under Article 226 of the COI. Hence, the maintainability of the present Appeal shall also be understood to be an adjudication in light of the nature of jurisdiction already exercised by the LSJ, making the present Appeal before this Court maintainable.

22. Moreover, a plain reading of the various prayers, both in the original and amended Writ Petitions, in the opinion of this Court, is to be construed as a clear indicator that the relief sought by PIL included the quashing of the PAO, which is a quintessential executive action, alongside the consequential reliefs in the form of quashing of the SCN and the complaint proceedings. The aforestated underscores that the gravamen of the challenge lay against the exercise of executive authority under statutory powers, thereby attracting Article 226 of the COI.

23. Additionally, a perusal of the arguments advanced by learned counsel for PIL, with respect to the merits of the present case, reflect that the intention of PIL was not merely confined to the quashing of the orders, rather the Writ Petition was filed with an intention to directly strike the very foundation of the powers exercised by the Directorate to initiate attachment proceedings followed by the SCN and the complaint. Meaning thereby, PIL sought to impugn the reasoning adopted by the Directorate in invoking its power under Sections 5 and 8 of the PMLA, by challenging the alleged existence of

proceeds of crime and their alleged nexus to a scheduled offence which is a statutory requirement under Section 2(1)(u) and Section 3 of the PMLA.

24. The arguments advanced by learned counsel for PIL were targeting the substantive legality and the jurisdictional validity of the actions initiated by the Directorate, which was argued to be going beyond statutory compliances. Consequent to which, the LSJ after adjudicating these issues, rendered its findings on whether the facts and circumstances of the present case attract the essentials of Section 3 and Section 2(1)(u) of the PMLA, thereby justifying the powers of the Directorate to pass an attachment order.

25. Moreover, the LSJ in Paragraph No.17 of the IJ has relied upon the judgment of ***Whirlpool Corporation v Registrar of Trademarks***[12], to justify the exercise of extraordinary original jurisdiction under Article 226 of the COI at the stage of issuance of the SCN. This reliance further highlights that the judgment rendered by the LSJ was in exercise of jurisdiction under Article 226 of the COI.

26. In light of the aforesaid observations, this Court is of the view that the LSJ exercised his original jurisdiction under Article 226 of the COI, by comprehensively examining the existence of jurisdictional facts and the legality of the executive action in the form of issuance of the PAO. Moreover, the PAO not only constituted the core subject matter of the Writ Petition but also served as the initiating and determinative act of an Executive Authority, with the SCN and the

[12](1998) 8 SCC 1

complaint being consequential steps. Accordingly, the challenge before the LSJ was with respect to an executive action and adjudicated under Article 226 of the COI, making the present appeal maintainable.

27. Before moving towards the examination of the merits of the present case, it is important to reproduce the relevant provisions of the PMLA, which are as follows:

> ***"2. Definitions.—****(1) In this Act, unless the context otherwise requires,—*
>
> *(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];*
>
> *[Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]*
>
> *(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;*
>
> *[Explanation.—For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;]*
>
> ***3. Offence of money-laundering.—****Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 1[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*
>
> *[Explanation.—For the removal of doubts, it is hereby clarified that,—*
>
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—*

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]

5. Attachment of property involved in money-laundering.— ***4****[(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director 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—*

(a) any person is in possession of any proceeds of crime; and

(b) 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 confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1[first proviso], 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 authorised by him for the purposes of this section has reason to believe (the reasons 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

under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under 3[sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."

28. At the outset, it is deemed imperative by this Court to note that the LSJ, while dealing with the merits under Part (I) of the IJ, has framed the central question as, "*whether allocation of coal is proceeds of crime*". The same however in the opinion of this Bench is a wrong question framed by the LSJ. The findings rendered by the LSJ on the merits of the case, are based on a misconstrued core legal issue framed.

29. A perusal of the facts, in conjunction with the applicable statutory framework under the PMLA would show that actual question for consideration ought to have been, '*whether the allocation letter constitutes 'property' within the meaning of Section 2(1)(v) of the PMLA; and if so, whether the said property was subsequently used or dealt with in a manner that enabled PIL to derive any financial gain, thereby generating 'proceeds of crime' as provided under Section 2(1)(u) of PMLA*'. It is only in such circumstances that Section 3 of the PMLA could have been validly invoked.

30. However, the LSJ, having incorrectly identified the preliminary legal issue, then proceeded to conclude that the offence of money laundering under Section 3 of the PMLA was not attracted in the present case. This inference, in the opinion of this Court, strikes at the fundamental core of the issue raised before the LSJ, making the findings legally unsustainable.

B. SECTION 2(1)(V) OF THE PMLA: WHETHER THE ALLOCATION LETTER CONSTRUES AS 'PROPERTY'?

31. The word 'property' has been defined under ***Black's Law Dictionary***[13], as, "*one which is peculiar or proper to any person; which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government."* It also goes on to define it as, "*the word commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to*

[13]Black's Law Dictionary by Henry Campbell Black, M.A.; Revised 4th Edition by The Publishers Editorial Staff.

make up wealth or estate. It extends to every species of valuable right and interest and includes real and personal property, easements, franchises and incorporeal hereditaments".

32. The definition of 'property' as provided under Section 2(1)(v) of the PMLA, is inclusive and expansive, broadly including every description of asset provided thereunder, in form of a deed or instrument evidencing title or interest in such assets. To put it simply, the definition of 'property' as provided under the PMLA is broad and inclusive in its approach towards what constitutes as property within the contours of the Act. This statutory definition is further supported by the constitutional jurisprudence of India, reiterating the understanding of what constitutes as property in India under Article 300A of the COI, which recognizes property as inclusive of intangible interests and rights created through incorporeal assets.

33. Additionally, it is apposite to note that, in the contemporary world, dominated by a commercial landscape where economic transactions are shaped by intangible rights and digital assets, to construe the definition of 'property' in a narrow or traditional sense, would not only amount to restricting the approach of the Court to the innovative nuances of the modern commercial world but also create an impediment for the judiciary to keep up its pace with the evolving jurisprudence. Therefore, it becomes essential to embrace a broader and more dynamic understanding of what constitutes 'property'.

34. In the modern era, as also evidenced by the usage of terms to define property under Section 2(1)(v) of the PMLA, intangible

property has assumed immense legal and commercial significance. The evolution of Intellectual Property laws now comprehends rights such as copyrights, trademarks, design rights, patents, licenses, digital assets and contractual entitlements, all of which are firmly recognised as valuable forms of property within the framework of common law.

35. In view of the aforestated, an allocation letter, especially when it confers upon the beneficiary an exclusive right to gain commercial advantage, enabling the beneficiary to derive economic gains, must be examined through this widened legal lens.

36. In the present case, the coal block allocation letter, although subsequently cancelled by the Supreme Court in ***ML Sharma*** *(Supra)*, is an instrument evidencing a right or interest, namely, a right to obtain mining lease from the Government and extract coal through its utilisation. In accordance with, the definition of 'property' provided under both Black's Law Dictionary and Section 2(1)(v) of the PMLA, such a right, once exercised and converted into economic gain becomes a form of property and the very foundation for what the Directorate has identified as proceeds of crime. Moreover, it is undisputed that the allocation letter was neither dormant nor kept in abeyance rather was utilised by PIL to derive substantial financial gains through coal excavation, leading to form the very foundation for the economic generation stated to be proceeds of crime by the Directorate.

37. Moreover, as explained in detail in the succeeding paragraphs, the allocation letter was one of the core essential elements to initiate

the offence of money laundering, whereby it acted as a conduit to derive the proceeds of crime. Further, the allocation letter was attained through misrepresentation and suppression of material facts, which if revealed truly would have led PIL to not be in the possession of the allocation letter, amounting to criminal activity relating to scheduled offences under the PMLA. Since, the allocation letter enabled the commission of money laundering, the letter is not only relevant but also constitutes property involved in money laundering under the scheme of the Act.

38. In view of the aforestated, the finding of the LSJ under Paragraph No.86, whereby the LSJ while relying upon the procedure for allotment of coal blocks as explained in the judgment of ***ML Sharma***, has highlighted that the allocation of a coal block cannot be construed either as property or conferment of a right in property, falls short of nuanced understanding of the rights conferred upon the allotee through the allotment letter. The LSJ erred in coming to such a finding, specifically when in the present case the allotment letter leading to allocation of coal block is alleged to have been obtained through criminal means. The mere fact that subsequent statutory clearances are to be obtained by the allotee (PIL) does not negate the legal character of the initial allocation. These statutory clearances are expedited on a *prima facie* presumption that the allotment was attained legally. Against this backdrop, where the foundation of such allotment is vitiated by criminal activity, any and/or every benefit arising from it in favour of PIL, including the interest in the coal block arising therefrom, cannot be treated as legally inconsequential.

39. It is pertinent to note that, the act of allocation, in itself, may not constitute a complete offence; rather, it is the first step in a chain of subsequent events, carrying a cascading effect. These events begin with the procurement of the allocation, which is then followed by the actual extraction of coal, an act, if done on the basis of an unauthorised allocation, constitutes a separate illegal act. The allocation sets in motion the process through which the State Government is expected to act upon the recommendation made by the Central Government and facilitate the formalities flowing therefrom. This process leads to an initiation of series of administrative actions, which, if found to be tainted by criminality at the origin, ultimately results in usurpation of a public resource, which otherwise would rightfully vest in the State as a natural resource belonging to the general public at large.

C. SECTION 2(1)(U) AND SECTION 3 OF THE PMLA: WHETHER MISREPRESENTATION IN ALLOCATION OF COAL BLOCK LEADS TO PROCEEDS OF CRIME MAKING IT AN OFFENCE OF MONEY LAUNDERING?

40. Section 2(1)(u) of the PMLA covers any property derived or obtained, directly or indirectly, by any person as a result of any criminal activity in relation to a scheduled offence and includes within its meaning, the ‘value of such property’. As explained in the preceding paragraphs under Part B of this judgement, the definition of ‘property’ is broad, which includes the tangible and intangible property and the property used in the commission of a scheduled offence.

41. Section 3 of the PMLA defines the offence of money laundering as an involvement in any process or activity connected with the proceeds of crime, including concealment, possession, acquisition, use and its projection as untainted or to claim it as untainted. Whereas, explanation (ii) of the said provision highlights that such process or activity connected with the proceeds of crime is a continued activity and continues till such time a person enjoys such proceeds by concealing or being in possession or acquiring or using or projecting or claiming it as an untainted property.

42. The Statement of Objects and Reasons of the PMLA also highlights certain important recommendations made by the Financial Task Force held in Paris in 1989, which also forms the foundation of the present-day legislation of PMLA dealing with offence of money laundering in India, which are:

> *"(i) declaration of laundering of monies carried through serious crimes as criminal offence;*
>
> *xxxx xxxx xxxx xxxx xxxx*
>
> *(iii) confiscation of the proceeds of crime;"*

43. These two recommendations forming part of the objects of the PMLA when read together, reveal the legislative intent behind the Act. It means that the offence of money laundering as envisaged under Section 3 of the PMLA is a stand-alone offence and not just a by-product of crimes; rather it is a crime in itself and the illicit financial gains arising from the criminal activities forming a part of money laundering is subject to confiscation. To put it succinctly, the intent of the Act is not only to punish the accused found to be guilty under the offence of money laundering, but also to deprive them of the illegal

financial gains. The PMLA not only recognizes the illegal financial gains but also sustainably targets the conduct, in the form of serious economic offences, that results in the generation of such illegal financial gains.

44. The aforestated intent of the PMLA is also corroborated with the preamble of the Act, which defines PMLA as, "*an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto*".

45. Sections 2(1)(u) and 3 of the PMLA, when put together leads us to infer that Section 3 criminalises any process or activity connected with proceeds of crime, which in turn includes property derived or obtained, directly or indirectly, by any person, as a result of criminal activity, relating to a scheduled offence and the value of such property.

46. The aforesaid position has also been rendered by the Supreme Court in ***Vijay Madanlal Chaudhary*** Judgement and the relevant paragraph is reproduced hereunder:

> *"382.8. The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or anyone*

claiming such property being the property linked to stated scheduled offence through him."

47. The view taken by the Supreme Court was further reiterated in a recent judgment passed by the Supreme Court in ***Union of India through the Assistant Director v Kanhaiya Prasad***[14], and the relevant paragraph is as follows:

"19. We also do not find any substance in the submission made by learned Senior Advocate Ranjit Kumar for the respondent that the respondent has not been shown as an accused in the predicate offence. It is no more res integra that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime, which had been derived or obtained as a result of criminal activity relating to or in relation to a schedule offence. Hence, involvement in any one of such process or activity connected with the Proceeds of Crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a schedule offence, except the Proceeds of Crime derived or obtained as a result of that crime. The precise observations made in Vijay Madanlal (supra) in this regard may be reproduced hereunder:—

***"270.** Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. <u>The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the</u>*

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date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

271 to 405……

406. It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigours of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money laundering is one wherein a person, directly or indirectly, attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."

48. In the present case, PIL misrepresented facts and figures in the process of obtaining coal block allocations, which typically attracts offences under Sections 420 and 467 of the IPC and Section 13(1)(d) of the PCA. Thereafter, the coal block allocation letter obtained through such criminal activity conferred valuable rights in favour of PIL which enabled the party to secure mining leases from the government and subsequently undertake coal excavation. As a result, it led PIL to obtain financial benefits in the form of profits earned from the extraction and sale of coal or through the usage of the

financial benefits to substitute or derive assets, which qualifies as proceeds of crime within the meaning of Section 2(1)(u) of the PMLA.

49. Subsequently, since any process or activity connected with such proceeds of crime including possession, use, concealment, layering, projection or claim as untainted, constitutes money-laundering, the aforesaid proceeds, having been possessed, used, concealed, projected such as untainted property by PIL, brings the case squarely within the scope of the offence of money laundering as defined under Section 3 of the PMLA. Additionally, it is pertinent to note that explanation (ii) to Section 3 of the PMLA clearly states that the process of money laundering is a continuing offence linked to the existence of proceeds of crime.

50. The Supreme Court in ***Satyendar Kumar Jain v. Directorate of Enforcement***[15], has clarified that the offence of money laundering is not limited to the final act of integration and remains ongoing as long as the proceeds are being dealt with. Accordingly, the continuing nature of money laundering, sustains the liability arising out of the PMLA for post-enactment activities involving such proceeds.

51. It is undisputed that the coal block was obtained fraudulently through misrepresentation, whereas the subsequent extraction of coal, generated revenue. As such, the initial illegality breaks the entire chain of financial transactions, including any expenditure incurred therefrom. PIL is attempting to apply a net benefit theory to

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substantiate that the losses cancel out the gains, such an attempt is wholly misplaced in the context of established money laundering jurisprudence through statutes and various judgements of the Supreme Court. Such argument made by PIL, if accepted, would defeat the objective of the Act, which is to trace, identify and attach the property derived from a criminal activity, irrespective of subsequent financial performances.

52. Moreover, the source of funds stated to be spent by PIL remains unexplained, as such in the absence of a clear financial trail showing that the expenditure incurred by PIL was funded through untainted and legitimate means it cannot merely be presumed that the losses absolve the liability under the Act. In substance, the fallacious premise that "a negative plus a negative result in positive" cannot be invoked to defeat the legislative intent and mandate of the PMLA, since the statute focuses on the derivation of use of property obtained through a criminal activity and not on the eventual profit or loss incurred by a party.

D. ATTACHMENT UNDER SECTION 5 OF THE PMLA: WHETHER THE DIRECTORATE IS JUSTIFIED IN ATTACHING THE VALUE OF COAL EXTRACTED?

53. Section 5(1) of the PMLA permits provisional attachment where the authorized officer has a 'reason to believe' that a person is in possession of proceeds of crime and such proceeds are likely to be dealt in a manner, the result of which is likely to undermine the proceedings related to confiscation provided under the PMLA. However, the first proviso to Section 5 (1) of the PMLA, highlights that the order of attachment shall be issued following some formal

action taken, namely, registration of final report under Section 173 of the CrPC; complaint filed by an authorised officer before a court or magistrate; or in case of offence committed outside India, a similar report or complaint being filed under the municipal laws of the respective countries.

54. The statutory definition of proceeds of crime under Section 2(1)(u) of the PMLA expressly includes, "the value of any such property", which enables the Directorate, subject to statutory prerequisites, to attach the equitable value where the specified property and its value obtained illegally by the person become untraceable or has been intermingled or dissipated.

55. In order to proceed with the order of attachment, the Directorate has to show a nexus with a scheduled offence, demonstrate the generation of proceeds of crime under Section 2(1)(u) and show that the accused participated in the process highlighted under Section 3 of the PMLA. The aforestated foundation must then be supported with a recorded "reasons to believe" with an identified equivalent value of proceeds before proceeding to adjudication under the PMLA, failing which attachment under Section 5 of the PMLA fails.

56. In the present case, the Directorate's evaluation of Rs. 951.77 crores corresponding to the coal excavated during the financial years from 2006-07 to 2014-2015, reflects the financial gain derived by PIL pursuant to attaining the coal block allocation through misrepresentation. The quantification reached by the Directorate as also elaborated in the preceding paragraphs is not constrained to the

date of allocation, rather continues as long as the benefit from the tainted property subsists. In the aforesaid background, although it is the case of PIL that the quantification by the Directorate is baseless, no credible evidence to rebut the said quantification has been produced, thereby failing to discharge the onus of proof imposed upon it once the procedural presumption arises.

57. Therefore, once the Directorate has made a *prima facie* case, establishing the predicate offence, its nexus to the proceeds and reason to believe, the burden shifted to PIL to prove that the property is untainted. Accordingly, the Directorate, is justified in attaching the "value" of coal extracted under Section 5 of the PMLA, when the pre-requisites of attachment has been satisfied.

E. RELEVANCE OF 04.09.2003: WHETHER THE LSJ ERRED IN RESTRICTING THE APPLICABILITY OF PMLA, PRE-ALLOCATION, IN VIEW OF THE QUASHING OF FIRST FIR AND CHARGESHEET?

58. The contention of PIL with respect to the relevance of the date of allocation, i.e. 04.09.2003 and the findings of the LSJ restricting the actions of the Directorate upto the given date falls short of merit. More specifically, when Section 5 of the PMLA enables the Directorate to proceed with an attachment of the properties of similar value, whereas first two provisos out of the three provisos to Section 5(1) of the PMLA, highlights the statutory pre-requisite of initiating the attachment. While the first proviso provides for filing of a report under Section 173 of the CrPC or a complaint by an authorised officer for initiation of attachment, the second proviso provides for attachment on account of a 'reason to believe' based on the material

available. These provisos form a jurisdictional precondition for issuance of the PAO; however, it does not restrict the scope of the Directorate's attachment to the time period covered in the said report or complaint.

59. To put it succinctly, the report under Section 173 of the CrPC, acts as a gateway triggering the requirement to initiate action under the proviso to Section 5(1) of the PMLA; but does not confine the extent of the inquiry of the Directorate and/or the duration of the proceeds of crime sought to be attached. Having said the aforestated, it is also important to highlight that there are two provisos attached to section 5(1) of the PMLA, each operating within its own independent domain. Therefore, it is important to bear in mind that the filing of a report under Section 173 of the CrPC is one of the triggering conditions for initiating attachment under first proviso to Section 5(1) of the PMLA, but not the only one, as under the statute, other conditions may independently warrant the initiation of attachment proceedings.

60. The finding of the LSJ limiting the jurisdiction of the Directorate strictly to pre-allocation events, i.e. 04.09.2003, falls short of the intention of the PMLA and overlooks the continuing nature of the offence of money laundering recognised under explanation (ii) to Section 3 of the PMLA, which highlights that the said offence persists as long as the proceeds of crime are possessed, used, concealed, or projected as untainted. It is to note that, while the second chargesheet filed by the CBI may have confined itself to events leading upto the allocation, the PMLA is a standalone statute empowering the

Directorate to investigate and act upon ancillary events as long as they are connected to the proceeds of crime. The Directorate is not confined to the timeframe or scope set out by the predicate agency.

61. Additionally, the LSJ has erroneously reached to a conclusion, since the first FIR and the consequential chargesheet were quashed by this Court, that there exists no criminal activity, consequently, there can be no proceeds of crime, thereby failing to attract the offence of money laundering under the PMLA. The LSJ further observed that Money Laundering is a stand-alone offence only in a sense that it has to be tried separately, and not that it can survive independently even if the charges in respect of the predicate offence has been quashed or if the accused has been discharged by a competent court with a finding that no offense is made out. Additionally, it has also been noted by the LSJ that the proceeds of crime, stated to be generated by PIL was already a part of the first chargesheet and therefore, the Directorate's power to initiate proceedings is only limited to 04.09.2003.

62. The aforesaid view taken by the LSJ is flawed on three premises, *firstly*, as elaborated in the preceding paragraphs, the Directorate's power to initiate proceedings is not constrained to the four corners of the CBI's report or limited to the findings of the chargesheet. *Secondly*, the judgement of the High Court, quashing the first FIR and chargesheet is currently under challenge before the Supreme Court and, therefore, remains *subjudice*. As such, the finality of findings on existence or non-existence of a predicate offence is yet to be determined.

63. *Lastly*, at this stage, it also becomes important for this Court to note that the ECIR was registered on 03.03.2017, subsequent to the second FIR dated 02.12.2016, wherein eventually a chargesheet was filed on 23.01.2020 following which a supplementary chargesheet was also filed u/s 173(8) of CrPC. Thereafter, the Special Judge framed charges with respect to the second FIR; however, the Supreme Court stayed the proceedings before the Trial Court. On the contrary, the first FIR and its consequent chargesheet were quashed by this Court. Against this backdrop, notwithstanding the stay of trial proceedings arising from the second FIR, neither the second FIR nor the chargesheet or supplementary chargesheet has been quashed by any competent court till date. Therefore, quashing of the first FIR does not affect the subsistence of the ECIR, particularly when the second FIR and its consequential proceedings remain pending. As such, when the registration of the second FIR and filing of supplementary/final report u/s 173 (8) of CrPC formed the basis of proceedings under PMLA, the quashing of the first FIR is not of much relevance because the second FIR and its chargesheet have not been quashed and continue to subsist. However, it appears that the LSJ did not advert to this fact and has overlooked this determinative consideration.

64. Therefore, at this stage, the LSJ ought not to have rendered conclusive findings premised on an outcome that lacks finality. More specifically, owing to the reason that, the quashing of the FIR and chargesheet was allowed at a preliminary stage, without delving into the examination of the facts, evidence and surrounding circumstances. Furthermore, when the LSJ invoked its extraordinary jurisdiction at

the stage of issuance of SCN, relying on the principles laid down in ***Whirlpool Corporation v. Registrar of Trademarks***, it rather became necessary to exercise judicial restraint. Thus, the LSJ must not have drawn definitive conclusion on the existence or absence of predicate offence at such a nascent stage.

65. In view of the aforestated, the financial benefits derived by PIL post-allocation, such as coal extraction, commercial exploitation, profit generation, or any asset substitution, form part of the economic chain flowing from the alleged tainted allocation. These are squarely within the scope of the Directorate's jurisdiction under the PMLA. Therefore, the Directorate is legally justified in extending its actions beyond the pre-allocation phase, and the artificial cut-off date of 04.09.2003 cannot be used to curtail its statutory mandate.

CONCLUSION

66. For all the foregoing reasons, this Court has reached the conclusion that the issuance of the Provisional Attachment Order under Section 5 of the PMLA formulates a foundational executive action, the legality of which was challenged by PIL under Article 226 of the COI. Further, the coal block allocation letter dated 04.09.2003 obtained through misrepresentation constitutes 'property' under Section 2(1)(v) of the PMLA, whereas the illegal financial gains facilitated the generation of proceeds of crime under Section 2(1)(u) of the PMLA. Furthermore, PIL's continued possession and use of these proceeds established the offence under Section 3 of the PMLA. Moreover, the Directorate has satisfied the statutory pre-requisites

envisaged under Section 5 of the PMLA justifying the issuance of PAO.

67. Keeping in view the above position of law, as well as the facts and circumstances of the present case, the present Appeals are allowed. the Impugned Judgment passed by the learned Single Judge, which is under challenge herein, is hereby set aside.

68. Resultantly, the cancellation of the PAO and its consequential proceedings by the learned Single judge are also set aside.

69. Accordingly, the present Appeals, stands closed.

70. The foregoing discussions were only for the purpose of adjudication of *lis* raised in the present Appeals and the same shall not be treated as a final expression on the submissions of respective parties and also shall not affect the future adjudication emanating before any other forum in accordance with law.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 17, 2025
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