

**APPELLATE TRIBUNAL, PREVENTION OF MONEY LAUNDERING ACT  
AT NEW DELHI**

**Date of decision : 12.12.2018**

**1. FPA-PMLA-2115/MUM/2017**

Bank of Baroda ... Appellant/Applicant

Versus

The Deputy Director,  
Directorate of Enforcement, Mumbai & Ors. ... Respondents

**2. FPA-PMLA-2117/MUM/2017**

Oriental Bank of Commerce ... Appellant/Applicant

Versus

The Deputy Director,  
Directorate of Enforcement, Mumbai & Ors. ... Respondents

**3. FPA-PMLA-2189/MUM/2017**

Union Bank of India ... Appellant/Applicant

Versus

The Deputy Director,  
Directorate of Enforcement, Mumbai & Ors. ... Respondents

**Advocates/Authorized Representatives who appeared**

For the Appellant no. 1 : Ms. Praveena Gautam, Advocate  
Mr. Pawan Shukla, Advocate  
Mr. Jitesh P. Gupta, Advocate

For the Appellant no. 2 : Mr. H.P. Bhardwaj, Advocate

For the Appellant no. 3 : Mr. Rajeev Sagar, Advocate

For the Respondent no.1 : Mr. Nitesh Rana, Advocate

**CORAM**

**JUSTICE MANMOHAN SINGH** : **CHAIRMAN**  
**SHRI G. C. MISHRA** : **MEMBER**

## **JUDGMENT**

### **FPA-PMLA-2115, 2117 &2189/MUM/2017**

- 1.** Since these appeals are having identical facts, involve similar questions of law and arising out of the same ECIR, P.A.O. O.C. and Impugned order, so taken up together for a common order.
- 2.** The above-named Appellants have filed these appeals under Section 26 of the Prevention of Money-Laundering Act, 2002 against the common Order dated 24.10.2017 in O. C. No. 787 of 2017 passed by the Adjudicating Authority, PMLA.
- 3.** By the said impugned order, the Adjudicating Authority has confirmed the provisional attachment Order No. MBZO-II/05/2017 dated 08.06.2017 and addendum dated 13.06.2017.

#### **4. The Case of the Bank of BARODA**

**4.1** The Appellant Bank is a leading Nationalised Bank who is routinely involved in financing large scale projects both on an individual level, and as part of multi bank consortiums.

**4.2** M/s Siddhi Vinayak Logistic Limited (M/s SVLL/Borrowers) was dealing with the Appellant Bank since 2008. The Appellant Bank, on the request of its Director, Shri. Rupchand Baid had granted, restructured and sanctioned various credit facilities to M/s SVLL – viz. (1) Review with decrease in Term Loan-IV of Rs.10.52 Crores, (2) Review with decrease in Term Loan-V of Rs.53.36 Crores, (3) Review with decrease in Term Loan-VI of Rs.79.76 Crores, (4) Review of Term Loan-VII of Rs.76.46 Crores, (5) Review with increase in various Term Loans for purchase of Cars of Rs.1.49 Crores, (6) FITL-(I) (interest part of TL-IV) of Rs.1.30 Crores, (7) FITL-(II) (interest part of TL-V) of Rs.6.60 Crores, (8) FITL-(III) (interest part of TL-VI) of Rs.9.87 Crores, (9) FITL-(IV) (interest part of TL-VII) of Rs.9.46 Crores, (10) Cash

Credit (Hypo. of stocks & book debts) (under Consortium) of Rs.45 Crores – review with carving out of W.C.D.L. of Rs.12.15 Crores, (11)W.C.D.L. under consortium – by carving out Cash Credit limit of Rs.12.15 Crores and (12) Review of Bank Guarantee (performance/ financial) of Rs.3 Crores and thereby, reviewed, sanctioned and granted total aggregate credit facilities of Rs.296.82 Crores.

**4.3** Apart from other securities of Hypothecation of Vehicles, Personal Guarantees, Mortgages, Corporate Guarantees, the following properties were also mortgaged/charged with the Appellant Bank with the deposit of title deed by the Borrowers:

Sl. No.	Year of acquisition of the property	Description of the immovable property	Area	Agreement value in Rupees	Market value as per Govt. circle rate in Rupees
1	<b>2004</b> Owned by Rupchand Baid	Flat No.1001, Sanskrit 'A/1', Dumas Road, Piplod, Surat	1635 Sq. Ft. super Build up Area	6,54,000/-	30,94,325 /-
2	<b>2004</b> Owned by Rupchand Baid	Flat No.1002, Sanskrit 'A/1', Dumas Road, Piplod, Surat	1635 Sq. Ft. super Build up Area	6,54,000/-	30,94,325 /-
3.	<b>2011</b> Jointly owned by Rajkumar Baid with Laxmi Devi Vaid	Pawan Hotel, Block No.39, village-Varediya, Tal: Bharuch, Distt: Bharuch (jointly owned with Laxmi Devi Vaid)	13676 Sq. mts along with the constructio erected thereon	43,50,000 /-	43,36,459 /-

**4.4** The properties at Serial No. 1 to 3 are mortgaged with the Appellant Bank and its charge is duly registered with Sub Registrar Office, Surat/1 (Athwa) much prior to the commission period of the alleged crime by the M/s SVLL at all.

**4.5** As per books of the Appellant Bank following amount is due and outstanding against the said M/s SVLL, its Directors and other corporate guarantors, personal guarantors at all:

- (1)** Term Loan-IV Account showing the debit balance of Rs.10,51,82,767/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (2)** Term Loan-V Account showing the debit balance of Rs.53,36,24,3013/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (3)** Term Loan-VI Account showing the debit balance of Rs.79,75,64,775/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (4)** Term Loan-VII Account showing the debit balance of Rs.76,46,00,000/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (5)** FITL-I Account showing the debit balance of Rs.1,34,92,546/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (6)** FITL-II Account showing the debit balance of Rs.6,84,97,566/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (7)** FITL-III Account showing the debit balance of Rs.10,24,34,971/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (8)** FITL-IV Account showing the debit balance of Rs.9,81,78,336/- as on 30/09/2015 (inclusive interest applied up to 30/06/2015),
- (9)** Car Loan Accounts (20 Cars) showing the debit balance of Rs.1,02,80,867/- as on 30/09/2015 (inclusive interest applied up to 30/09/2015),

- (10)** Cash Credit (Working Capital) Account showing the debit balance of Rs.31,55,72,840/- as on 30/09/2015 (inclusive interest applied up to 30/09/2015),
- (11)** Sub-Limit (WCDL) Account showing the debit balance of Rs.12,29,50,772/- as on 30/09/2015 (inclusive interest applied up to 30/09/2015) and
- (12)** Bank Guarantee showing the debit balance of Rs.2,17,00,000/- as on 30/09/2015 which are the true entries of above referred Accounts maintained by the Defendant No:10 bank during the ordinary course of its banking business.

**4.6** The Appellant Bank submits that the said M/s SVLL and other Directors, Guarantors, Corporate Guarantors defaulted in repayment of the loan/credit facilities availed by them. The Appellant Bank, in accordance with Prudential Accounting and Income Recognition Norms prescribed by the Reserve Bank of India for the Bank, classified the (1) Term Loan-IV, (2) Term Loan-V (3) Term Loan -VI (4) Term Loan-VII (5) FITL-I (6) FITL-II (7) FITL-III (8) FITL-IV (9) Car Loan Accounts (20 Cars) (10) Cash Credit (Working Capital Term Loan) and (11) Sub-limit (WCDL) of the said M/s SVLL as Non-Performing Asset on 30.09.2015.

**4.7** The Appellant Bank submits that on account of non-payment of secured debts, it also took measures for recovery of the secured debts under the SARFAESI Act-2002 and issued a Demand Notice dated 05.11.2015 u/s. 13(2) of the SARFAESI Act-2002 to the M/s SVLL/ Borrower/ its Directors, Guarantors/ Securities/ Mortgage Properties/ Personal Assets. However, in spite of service of the statutory demand notice issued by Appellant Bank the said borrowers failed to pay the outstanding dues of Rs.307,73,40,872/- as on 30.11.2015.

**4.8** By Notice dated 17.02.2016 u/s 13(4) of SARFAESI Act, 2002, it also took over the symbolic possession of the Securities mortgaged/ charged/ hypothecated with it to recover its dues of over Rs.307,73,40,872/-. A copy of the said Notice dated 17.02.2016 issued by the Appellant Bank u/s 13 (4) of the SARFAESI Act-2002 is filed as ANNEXURE-A/3.

**4.9** The Appellant Bank submits that it filed an O. A. No: 86/2016 in the DRT-II, Ahmedabad for recovery of its dues from aforesaid borrowers M/s SVLL, and its Directors besides other guarantors, corporate guarantors, personal guarantors etc. The DRT-II, Ahmedabad granted a status-quo order in respect of the securities in the hand of the Bank as on the date of the order dated 02.08.2016. A true copy of the O. A. No:86/2016 filed by the Appellant Bank and order dated 02.08.2016 passed by the DRT-II, Ahmedabad in O.A. No:86/2017 is filed as ANNEXURE-A/4 & A/5.

**4.10** While the proceedings for recovery of dues under the DR & B Act, 1993 and the SARFAESI Act were pending, the CBI, BS &FC, Mumbai, registered an FIR bearing no. RCBSM2015E2007 dated 06.08.2015 invoking Sections 420, 468, 471, 120(B) of Indian Penal Code, 1860 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against M/s Siddhi Vinayak Logistics Ltd, its Director ShriRupchandBaid, Shri. Deepak Kumar Baid, ShriRajkumarBaid, Smt. Laxmi Devi Baid all Directors of M/s Siddhi Vinayak Logistics Ltd and others. This FIR revealed that the persons mentioned therein were, during the period from September 2012 to March 2015, party to the criminal conspiracy to cheat the Bank of Maharashtra in the garb of seeking finance for their “Chaalak se Maalak” Scheme.

**4.11** Since the offences mentioned above fall under the scheduled offences covered in Paragraph 1 and 8 of Part A of the schedule to the PMLA, 2002, respectively, the Directorate of Enforcement, (Respondent herein) Mumbai Zonal Office recorded an ECIR bearing No. MBZO/10/2016 dated 16.11.2016.

**4.12** The Provisional Attachment Order No. MBZO-II/05/2017 was passed on 08.06.2017 by the Respondent. A further addendum to the said provisional attachment order dated 08.06.2017 was issued by the Respondent on 13.06.2017.

**4.13** The Respondent filed Original Complaint No.787 of 2017 before the PMLA, Adjudicating Authority. The Appellant Bank was made a party to the said Complaint as Defendant No. 10 being the mortgagee of the properties provisionally attached by the Respondent vide Provisional Attachment Order No. MBZO-II/05/2017 was passed on 08.06.2017.

**4.14** On being served in the said O. C. No:787/2017, they filed its reply to the same on 12.09.2017 and objected to the provisional attachment by the Respondent of the properties mortgaged with the Bank on various grounds and prayed that the so far as the properties mortgaged with the Bank should be released. The Appellant Bank also submitted that the said properties mortgaged with the Bank were mortgaged with the Bank by the accused/borrowers much prior to the alleged commission of crime and since the said properties were bought in the year 2004, they cannot be said to be the proceeds of crime as defied u/s 2(1)(u) of the PMLA. It was also submitted by the Bank that it being a secured creditor, it has a prior rights over the said propertied under SARFAESI Act and other related statutes.

**4.15** While the adjudication proceedings in the O. C. No:787/2017 were pending, the insolvency proceedings were initiated against the M/s SVLL in the NCLT, Ahmedabad Bench by the Punjab National Bank. The NCLT, Ahmedabad vide its order dated 12.09.2017 ordered a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (I & B Code hereinafter), whereby continuation of all pending suits or proceedings against the Corporate Debtor i.e. M/s SVLL were prohibited.

**4.16** The Adjudicating Authority, PMLA passed the impugned order dated 24.10.2017 in O.C. No:787/2017 confirming the provisional attachment Order No.MBZO-II/05/2017 dated 08.06.2017 and addendum dated 13.06.2017.

**4.17** There is no denial on behalf of respondent no. 1 that the Appellant Bank also took measures for recovery of the secured debts under the SARFAESI Act-2002 and issued a Demand Notice dated 05.11.2015 u/s. 13(2) of the SARFAESI Act-2002 to the M/s SVLL/ Borrower/ its Directors, Guarantors/ Securities/ Mortgage Properties/ Personal Assets. However, said M/s SVLL/Borrowers failed to pay the outstanding dues of Rs.307,73,40,872/- as on 30.11.2015.

**4.18** The Appellant Bank vide Notice dated 17.02.2016 u/s 13(4) of SARFAESI Act. 2002 also took over the symbolic possession of the Securities mortgaged/ charged/ hypothecated with it to recover its dues of over Rs.307,73,40,872/-.

**4.19** The Appellant Bank filed an O. A. No:86/2016 in the DRT-II, Ahmedabad for recovery of its dues from aforesaid Borrowers/ M/s SVLL, and its Directors besides other guarantors, corporate guarantors, personal guarantors etc. The DRT-II, Ahmedabad



granted a status-quo order in respect of the securities in the hands of the Bank as on the date of the order dated 02.08.2016.

**4.20** The Respondent filed its rejoinder to the reply filed by the Appellant in the said O.C. No:787/2017 on 28.09.2017. In the said rejoinder, the Respondent admitted that though the said properties mortgaged with the Bank were acquired prior to the date of commission of fraud, however, it was erroneously urged by the Respondent that as per the definition of proceeds of crime is either the property derived or obtained as a result of criminal activities relating to a schedules offence or value thereof.

**4.21** Accordingly, the Respondent attached the properties mortgaged with the Appellant Bank being the value thereof u/s 2 (1) (u) of PMLA.

## **5. FPA-PMLA-2189/MUM/2017**

**5.1** The above-named Appellant has filed this appeal under Section 26 of the Prevention of Money-Laundering Act, 2002 against the common Order dated 24.10.2017 in O. C. No. 787 of 2017 passed by the Adjudicating Authority, PMLA.

**5.2** By the said impugned order, the Adjudicating Authority has confirmed the provisional attachment Order No.MBZO-II/05/2017 dated 08.06.2017 and addendum dated 13.06.2017.

**5.3** The followings are the contentions of the Union Bank of India(UBI), Appellant Bank:-

**5.4** That at the request of the Respondent no.3 namely M/s. Siddhi Vinayak Logistic Limited (SVLL), the UBI has sanctioned a loan of/limit Rs. 102.50 Crs. (Term Loan of Rs. 99.90 Crs and Term Loan Rental Discounting Rs. 2.60 Crs) as per the banking norms and practice to the

Respondent no.3 for business expansion. As a security for due and prompt repayment of the loan granted by the UBI and as per the terms and conditions of the sanction, a Simple Mortgage Deed dated 26.09.2012 was executed by the respondent no.3 in favour of the UBI. The copy of the Simple Mortgage Deed dated 26.09.2012 was executed by the respondent no.3 in favour of the UBI is annexed herewith and marked as Annexure A-3.

**5.5** That it is one of the terms of the conditions of the loan that the proceeds of loan shall be utilized for expansion of business and accordingly UBI has disbursed a loan/limit of Rs. 102.50 Crs. (Term Loan of Rs. 99.90 Crs and Term Loan Rental Discounting Rs. 2.60 Crs) towards expansion of business.

**5.6** That the Respondent no.3 executed a loan agreement dated 26.09.2012 in favour of the UBI and a loan/limit of Rs.99,99,00,000.00 was disbursed to the Respondent no.3 in good faith.

**5.7** That after completion of necessary formalities, the sanctioned loan amount was disbursed in the name of Respondent no.3, M/s. Siddhi Vinayak Logistics and the mortgage in favour of the Union Bank of India was created on 26.09.2012 at Surat by execution of Simple Mortgage Deed. The Respondent no.3 has been regularly making payment of loan installments earlier but later on defaulted in making payment of the same.

**5.8** That it is admitted fact that Respondent no.3 is the owner of the property and had acquired possession and ownership of property in year 2011.

**5.9** That the Union Bank of India claims its mortgage over given property i.e.:- "Office at "RIPPLE MALL", 2<sup>nd</sup> Floor, Near Rajhans Cinema Piplod, Surat-14". That the UBI in order to claim its right over the mortgaged property claims that the UBI has provided the loan facilities in the year 2011 to its borrowers.

**5.10** Details of loan as well as the details of outstanding amount to be recovered from the borrower are as under:

- (A) 1. Account no. with the UBI-311206350000001 (FITL)  
2. Name of the account holder-  
M/s. Siddhi Vinayak Logistics Limited  
3. Loan facility as availed – Commercial  
4. Outstanding Amount – Rs. 10,11,63,133.00  
as on 31.07.2017.
- (B) 1. Account no. with the UBI-311206580000001  
(Term Loan Rent Discounting)  
2. Outstanding Amount – Rs. 1,99,37,302.16  
as on 31.07.2017.
- (C) 1. Account no. with the UBI-311206120043016  
(Term Loan)  
2. Outstanding Amount – Rs. 100,72,02,710.00  
as on 31.07.2017.

**5.11** That the said property or the aforesaid units are mortgaged as securities with the Union Bank of India, Salabatpura, Surat Branch by Respondent no.3 for availing various financial facilities. Therefore, the attachment order dated 08.06.2017 is illegal & bad in law.

**5.12** That the Commercial loan amount which was sanctioned to the Respondent no.3 is a public money, which the Respondent no.3 has to repay to the UBI, therefore, this complainant has no right to attach the said properties which is mortgaged with the UBI. So, only the Appellant bank has right on the loan amount out of mortgaged properties.

**5.13** That the UBI has initiated action under the Securitisation Act against the respondent no.3 and have taken symbolic possession of the property on 04<sup>th</sup> May, 2017 after it issued a notice under section 13(2) of the Securitisation Act on 05<sup>th</sup> February, 2016. The Learned District Magistrate has ordered under Section 14 of SARFAESI Act for taking possession of the attached

properties. It is submitted by UBI that the property was earlier mortgaged with the Union Bank of India since 22<sup>nd</sup> September, 2012 but since the account became NPA, the UBI had to initiate action under the Securitisation Act. It is submitted that the complainant is not entitled to attach the property being One Office at "RIPPLE MALL", 2<sup>nd</sup> Floor, Near Rajhans Cinema Piplod, Surat. It is submitted that the provisions under Section 26(E) of the SARFAESI Act, 2002 give overriding effect over and above any other law and priority to the secured creditor, including the provisions of PMLA in so far as by the secured assets are concerned. The relevant provision of the SARFAESI Act, 2002 is narrated herein below for the sake of convenience this Honorable Court:

*"26-E. Priority to secured creditors-Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.*

*Explanation:-For the purpose of this section, it is hereby clarified that on or after the commencement of the Insolvency or Bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that code."*

It is clear from the above mentioned provision that the Union Bank of India will get priority over the rights of Central or State or any other Local Authority.

**5.14** That, there is no finding as to how the properties involved herein are proceeds of crime, particularly, when all the funds belong to the bank.

**5.15** The followings are the contentions of the Enforcement Directorate (Respondent no. 1):-

- (i) That, no specific reply has been filed by the respondent no. 1. The learned counsel for the respondent no 1 has advanced his arguments orally.

(ii) As it is seen from the record that the Enforcement Directorate /respondent no. 1 the aforementioned properties which are mortgaged with the UBI (Appellant) are attached in terms of provision of section 2(1)(u) being value of such property.

(iii) That, as per section 71 of PMLA, 2002, the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including SARFAESI Act. The above proposition has been upheld by the Apex Court in the case of *Solidaire India Ltd.* AIR 2001 SC 958:JT 2001(2) SC 642 (MANU/SC/009/2001), *Bank of India Vs. Ketan Parekh*-2008(8) SCC 148:AIR 2008 SC 2361 (MANU/SC/009/2001) and *Narcotic Control Bureau Vs. Krishnalal* in C.A. Nos. 810-811/1989 (MANU/SC/0152/1992). The Prevention of Money Laundering Act is aimed at preventing money laundering and to provide confiscation of property derived from or involve in money laundering and for matters concerned therewith and incidental thereto.

**5.16** We have gone through the impugned order and the material available on record. So far as the present appellant, who is the defendant no. 13 in the in the O.C. 787/2017, there is no dispute that the property in question has been mortgaged with the appellant in the year 2012 as a security against the loan of Rs. 102.50/- crores advanced to SVLL(Respondent no. 3) for business expenses after following the banking norms and practice.

## **6. Oriental Bank of Commerce**

**6.1** The above-named Appellant has filed this appeal under Section 26 of the Prevention of Money-Laundering Act, 2002 against the common Order dated 24.10.2017 in O. C. No. 787 of 2017 passed by the Adjudicating Authority, PMLA.

**6.2** By the said impugned order, the Adjudicating Authority has confirmed the provisional attachment Order No. MBZO-II/05/2017 dated 08.06.2017 and addendum dated 13.06.2017.

**6.3** The Case of the appellant is that Oriental Bank of Commerce(OBC Bank) is the appellant herein granted various financial facilities to M/s SVLL, which is engaged in the business of transportation and logistics service provider.

**6.4** It is stated that M/s SVLL, initially approached and requested the appellant Bank in the year 2007 for grant of credit facilities in the shape of Term Loan for purchase of vehicle (Trucks), Cash Credit (Hypothecation) facility and Bank Guarantee facility for smooth functioning of its business activities. Thereafter, at the request of the Respondents, the facilities were renewed, enhanced and fresh Loans were granted by the Appellant Bank the as detailed in the appeal memo and the written submissions filed on behalf of the OBC bank.

**6.5** It is stated that the appellant bank sanctioned various financial facilities beginning from 19/12/2007 to 26/12/2012 and in all, apart from working capital facility, Seven Term Loans were sanctioned to the Respondent No.2 for purchase of 1527 vehicles . Out of the Seven Loan accounts by the Appellant Bank four of the accounts have been adjusted with 3 of them remains outstanding.

**6.6** It is stated that as on 30.11.2017 Rs. 510,04,22,371.06 is outstanding against the Respondent no.2 namely M/s SVVL excluding expenses from the date of NPA.The bank has also initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002.

**6.7** It is stated that M/s SVLL executed various documents to avail of the loaning facilities vide sanctions on various dated as enumerated above from Oriental Bank Of Commerce. M/s SVLL failed to adhere to the payment schedule even after availing restructuring. The Bank i.e. Oriental bank of Commerce was forced to recall the loans and the credit facilities granted Under SARFAESI. The Bank Filed ORIGINAL APPLICATION NO. 767 OF 2015 titled as “Oriental Bank of Commerce, Ring Road Branch, Surat AND M/s. Siddhi Vinayak Logistic Ltd & 17 others” at Debts Recovery Tribunal, Ahmadabad and the matter is pending adjudication by Debts Recovery Tribunal, Ahmadabad.

**6.8** It is stated that in the year 2017 Oriental Bank Of Commerce was informed of initiation of proceeding against M/s SVLL under the Prevention of Money Laundering Act, 2002 wherein it is alleged that M/s SVLL represented by Rupchand Baid, who introduced himself as Promoter of M/s SVLL, in the month of September 2012, M/s SVLL financial facilities by Bank of Maharashtra, that M/s SVLL had also availed the same. It is further alleged that in September 2012 Shri Rupchand Baid introduced a Scheme “Chalak Se Maalak” and under that scheme Bank of Maharashtra had sanctioned financial facilities to M/s SVLL.

**6.9** It is stated that the Deputy Director, Enforcement Directorate vide Provisional Attachment Order no. MBZO-II/05/2017 dated 08.06.2017 and further addendum dated 13.06.2017 purportedly issued under Section 5(1) of the Prevention of Money Laundering Act, 2002 attached various properties of the alleged accused including the following properties which, as has been admitted by the Enforcement Directorate, were acquired by the mortgagors/owners prior to September, 2012 i.e. prior to committing the alleged crime and which are mortgaged with

Oriental Bank of Commerce. Thus there is no nexus between the alleged fraud and the properties acquired by the mortgagors/owners and hence these cannot be called as properties acquired from alleged “ proceeds of crime”:

Sr.No.	Year of Acquisition	Description of Property	Value of Property Realisable (RsCrores)
1	2007	Flat no. 102, Shantikunj Apartment, Rustapura, Surat admeasuring 54.53 Sq.Mtrs belonging to M/s. Siddhi Vinayak Logistic Ltd.	0.14
2	2011	All That Piece and Parcel of Land Bearing Survey/ KhasraNo.341 admeasuring 2.00 hectares (4.941 acres), Bhogwatdar Class I, Land Revenue Rs.10.23/- of Mouza - Gumthala, Tahsil-Kamptee, District - Nagpur admeasuring 4.941 acre belonging to M/s Siddhi Vinayak Logistic Limited.	2.73
3	2011	All That Piece and Parcel of Land Bearing Survey / Khasra No.338 admeasuring 1.02 hectares (2.52 acres), Bhogwatdar Class I, Land Revenue Rs.7.00/- of Mouza - Gumthala, Tahsil - Kamptee, District - Nagpur admeasuring 2.52 acre belonging to M/s Siddhi Vinayak Farm Fresh Private Limited.	0.85
4	2000-2001	Land and Building at Plot no.14,15,16,35,36 and 37 at GIDC, BhatporeSurat, registered in the name of M/s Raj International, Proprietorship firm of ShriRoopchandBaid.	4.77
5	2010	B-903/904, 9 <sup>th</sup> Floor, Happy Residency, MojeVesu Bearing R.S.No.551, 552/1, 552/2 & 552/3, Revised Survey No.347, 349/1, 349/2 & 349/3, T.P.No.29,F.PNo. & 36, UdhanaMagdalla Road, Surat admeasuring 2051 Sq.ft. belonging to Mrs.Laxmi Devi Baid.	1.21

Also, the amount of Rs 29,00,173/- lying in the a/c no.



0102113101069 with Oriental Bank of Commerce, being the lead bank, is the amount to be disbursed to the Members of Consortium namely Bank of Maharashtra and Bank of Baroda has been wrongly attached as the Complainant has failed to prove that the said amount is proceeds of Crime. The amount of Rs.12,61,781/- lying in a/c no.1336 1131002825 and Rs.2250/- lying in a/c no.12001131005983 with Oriental Bank of Commerce have been wrongly attached as the Complainant has failed to prove that the said amount is proceeds of Crime.

**6.10** It is submitted that the properties attached have been purchased prior to the date of purported crime committed by Roop Chand Baid and others has no nexus with the mortgage of the properties acquired before the said crime was committed and therefore, are not the proceeds of crime and have been attached erroneously.

**7.** Case of the Respondent no. 1,

- (i)** It is stated that the above mentioned properties which are mortgaged with Appellant bank are provisionally attached in terms of the provisions of the section 5(1) of the PMLA, 2002,
- (ii)** These properties have been attached in terms of the provisions of the section 2(1)(u) being value of such property as such contention of the appellant bank that the subject properties were not proceeds of crime is not maintainable,

**8.** Following facts are common in above mentioned appeals:-

- 8.1.** On the complaint of the Bank of Maharashtra an FIR bearing no. RCBSM2015E2007 dated 06.08.2015 was registered by CBI, BS & FC, Mumbai invoking section 420,468,471,120(B) of IPC and sections 13(2)

r/w 13(1)(d) of PC Act, 1988 against M/s SVLL, S/ShriRupchand Bail, Deepak Kumar Baid, RajkumarBaid, Smt. Laxmi Devi Baid& others on the allegation that M/s SVLL and other persons during the period from September 2012 to March, 2015 were parties to the criminal conspiracy to cheat the banks, Pune and in pursuance to the said criminal conspiracy, the accused director/officials of M/s SVLL induced the Bank of Maharashtra to sanctioned the disbursed 2804 vehicle loans (under “Chalak se Malak” scheme devised by M/s SVLL) to M/s SVLL and its employees and its drivers on the basis of the false assurances and forged vehicle registration documents, thereby availing credit facility aggregating to Rs. 651.17 crore in the form of loans sanctioned to individuals drivers/employees of the said m/s. SVLL in Model Colony Branch & Deccan Gymkhana Branch, Bank of Maharashtra, Pune.

**8.2** On the basis of the above the Enforcement Directorate i.e. respondent no. 1 registered ECIR no. ECIR/MBZO/10/2016 dated 16.11.2016 and attached the properties involved in these appeals vide P.A.O./MBZO/II/05/2017 dated 08/06/2017 ordering to attach immovable and movable properties as detailed in the P.A.O.

**8.3** Consequent to the above, a common O.C. bearing 787/2017 was filed before the Adjudicating Authority praying for confirmation of the P.A.O.. The Adjudicating Authority, by the impugned order, allowed the O.C. confirming the P.A.O. on dated 24.10.2017 which is under challenge before this Tribunal.

**8.4.** That all these above appeals involves identical facts and similar questions of law. This is the reasons why these appeals are taken up for consideration together and for common order.

**8.5.** It is pertinent the mentioned here that the State Bank of India is also a victim of M/s SVLL and its director and is also a party before the Adjudicating Authority in the same P.A.O. and O.C. The State Bank of India had also preferred the appeal before this Tribunal against the same impugned order dated 24.10.2017 vide FPA-PMLA-2121/DLI/2017. This Tribunal had allowed the appeal vide order dated 06.02.2018 after discussing the entire facts and

circumstances including the decisions of Hon'ble Supreme Court and High Courts and also the judgment and order of full bench of this Tribunal passed in FPA-PMLA-1026/KOL/2015 dated 10.07.2017 in matter of State Bank of India v/s Enforcement Directorate.

**8.6** In all the appeals mentioned above the banks are victims not involved in generating any proceeds of crime.

**8.7** It is undisputed fact that none of the properties which are mortgaged with the aforesaid appellants are either acquired out of proceeds of crime and that were purchased and mortgaged before the commission of alleged crime.

**8.8** The appellant Banks have taken steps under sections 13(2) & 13(4) of SARFAESI Act,2002 and also took over symbolic possession of the secured mortgaged/charged/hypothecated properties dues to recover their dues. Even, the appellant Banks i.e. Bank of Baroda and Oriental Bank of Commerce have moved DRTs of the respective jurisdictions vide O.A. nos. 86/2016 and 767/2015 respectively.

**8.9** The contention of the appellant Banks have been dealt with by the Adjudicating Authority in the discussion/conclusion part of its order available at para 50, 53 & 55 at internal page 102 & 103 of the impugned common order, which are re-produced below:-

*“ 50. By virtue of section 71 of PMLA, the PMLA has overriding effect. It need to be borne in mind that the amendment by way of introduction of section 26(e) of the SARFAESI Act 2002 and section 31(b) Recovery of Debt and Bankruptcy Act 1993 does not come into play with regard to the liability of attachment, confirmation and confiscation of proceeds of crime. The section 26(e) above referred has provided that notwithstanding anything contained in any other law for the time being in force, after the registration of security interest the debt due to any secure creditors shall be paid in priority over all other debts and all other revenue, taxes and cess and other rates payable to the Central Government and State Government and local authority. So what is referred are only (1) the other debts, (2) all (i) revenues(ii) taxes (iii) cesses (iv) other rates payable to the Central Government and the local authority. Similarly section 31(b) above referred provides that notwithstanding anything*

contained in any other law for the time being in force, the rights of secured creditors to realize secured debts due and payable to them by sale of assets over which security interest is created shall have priority and shall be paid in priority over all other debts and government dues including revenues taxes, cesses and other rates due to the Central Government and State Government or local authority. So what is referred are only (1) the other debts, (2) all Govt. dues including, (i) revenues (ii) taxes, (iii) cesses (iv) other rates due to the Central Government and the local authority. Thus there is no priority conferred on the secured creditors under the said acts, in respect of the proceeds of crime in their hands. The PMLA is a Special Act and is an Act to prevent money-laundering and to provide for confiscation of property derived from or involved in money laundering and for matters connected there with or incidental thereto. Section 3 of Act defines money laundering as Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly s a party or is actually involved in any process or activity connected with the 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.

Thus the secured creditors does not and cannot have any priority over the attachment, confirmation and confiscation of proceeds of crime. It would be against a public policy to permit the possession of proceeds of crime and its utilization, save and except in the manner provided under the PMLA.

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53. It is held that the properties which have been attached under section 5 is involved in money laundering. The Defendant are in possession of “Proceeds of Crime” within the meaning of provisions of Prevention of Money Laundering Act, 2002 and accordingly it is ordered that the attachment of the property shall continue during the pendency of the proceedings relating to any offence under this Act before a court or under corresponding law of any other country, before the competent court or criminal jurisdiction outside India, as the case may be; and become final after an order of confiscation is passed under sub-section (5) to sub-section (7) of section 8 or section 58(B) or sub-section (2A) of section 60.

54.....

55. *Conclusion:*

*On a through perusal of the PAO, compliant, relied upon documents, the investigations conducted by the ED and the statements recorded u/s 50 of the PMLA and on careful consideration of the arguments advanced on behalf of the Complainant and Defendants undersigned comes to the prima facie conclusion that the defendant have committed the Scheduled Offences, generated proceeds of crime and laundered them. No doubt the properties attached are proceeds of crime or value thereof and are involved in money laundering. Undersigned therefore orders confirmation of the above Provisional Attachment Order. This order shall continue during the pendency of the proceedings relating to any offence under this Act before court or under the corresponding law of any other country, before the competent court or criminal jurisdiction outside India as the case may be and become final after an order of confiscation is passed under sub-section (5) to sub-section (7) of section 8 or section 58B or subsection 2A or section 60.*

**9.** It is not denied on behalf of respondent no. 1 that the properties as detailed above, are securities in the hands of the Appellant Banks for granting various credit facilities to the said M/s SVLL /Borrowers. These securities were created by the said M/s SVLL in favour of the Banks much prior to the alleged fraud committed by the M/s SVLL and its Directors etc. during the period Sept. 2012- March 2015. Therefore, the allegations of the Respondent that the mortgage properties have anything to do with the proceeds of crime, are totally incorrect. It is also significant to note that even as per the admission of the ED, the properties were acquired by the respective owners much before the alleged fraud committed by the accused persons. Also that the properties Mortgaged/ charged/ hypothecated with the Appellant Bank were acquired before Sept. 2012. In these circumstances any of these properties cannot be attached by the ED under the PMLA. No proceeds of crime have been used for acquiring any of these properties.

**10.** There is already a Status quo order dated 02.08.2016 passed by the Hon'ble DRT-II, in O.A. No. 86/2016 in respect of the same immovable securities in the hand of the Appellant Bank i.e. Bank of Baroda, is prior to the provisional attachment.

**11.** The Appellant Banks have a prior right under the special statutes enacted by the Central Govt. The SARFAESI Act, 2002 has been amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act 2016 which has come into force w.e.f. 01.09.2016. Section 26(E) of the SARFAESI Act and Section 31(B) of the Recovery of Debts and Bankruptcy Act, 1993 after the amendment, reads as under:

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

*“26E, Priority to Secured Creditors- Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any Secured Creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government of State Government or local authority.*

*Explanation: For the purposes of this Section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the Borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”*

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

*31B. Priority to Secured Creditors- Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realize secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and government dues including revenues, taxes, cesses and other rates due to the Central Government, State Government or local authority.*

*Explanation: for the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.”*

**12.** The Appellant Banks/Secured Creditors have the priority over the rights of the Central or State Government or any other local authority. This amendment has been introduced to facilitate the rights of the Secured Creditors which were being hampered by way of provisional attachment of the properties belonging to the Banks/Secured Creditors. In these circumstances, the Complainant ED could not have attached these properties. Reliance is placed on the Judgment dated 14.07.2017 passed by this Tribunal in State Bank of India Vs Jt. Director, Directorate of Enforcement, Kolkata (emphasis on para 46 & 47).

**13.** On perusal of the impugned order it is pertinent that the Adjudicating Authority did not consider the same at all. This Tribunal in fact took a strong exception to the same while recording that “... *It is a serious matter. The Authority is supposed to give due respect to the judgment of the higher Authority & Courts*” in the matter of Bajaj Finance Ltd. Vs. Joint Director, DOE, Lucknow dated 20.11.2017.

**14.** The Adjudicating Authority erroneously held that:

*“ In the present case the properties which are mortgaged to the defendant were attached not on account of the recovery of the Government dues but were attached being proceeds of crime as defined under the provisions of Section 2 (1) (u) of the PMLA, 2002.”*

**15.** The Appellant Banks have never mentioned the attached properties as being “government dues”. The Appellant Banks brought up the Statutes mentioned above, (and reiterates the same in these appeals) because of two reasons. Firstly, the properties attached are not proceeds of crime. Secondly, both Section 31B and 26E contain the words “priority over all other debts”. Any claim which the ED would try to make over the said properties would be covered under “all other debts” and the Appellant Bank being a secured creditor would have priority over the same.

**16.** The SARFAESI and RD& B Acts have overriding effect on the PMLA 2002 needs to be applicable to a case in the first place. The Adjudicating Authority cannot declare any property as proceed of crime, and then base its jurisdiction on the wrong application of the Act.

**17.** The Section 2 of the *Recovery of Debts and Bankruptcy Act, 1993* after the words “*date of the applications*” and *includes any liability towards debt securities which remain unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or*” is added which makes the said amendment or the 1993 Act applicable to all the debts which remained unpaid.

**18.** This Tribunal, in the judgment dated 14.07.2017 in FP-PMLA-1026/KOL/2017 titled as ‘State Bank of India vs The Joint Director, Directorate of Enforcement’ in the identical facts of the case, has held that :

*“Thus, it is very clear from above that the secured creditor, get a priority over the rights of Central or State Government or any other Local Authority. The amendment has been introduced to facilitate the rights of the secured creditors which are being hampered by way of attachments of properties, belonging to the financial institutions/secured creditors, done by/in favour of the government institutions.”*

**19.** Subsequent to the judgment dt. 14.07.2017 (supra), this tribunal passed several judgments dealing with overriding effect of SARFAESI Act, 2002 as amended in 2016 over PMLA, 2002 after based on several Supreme Court & High Courts judgements.

**20.** This Tribunal further in its judgment dated 06.02.2018 in para to 54 onwards in FPA-PMLA-2121/DLI/2017 titled as ‘State Bank of



India vs The Joint Director, Directorate of Enforcement' arising out of the same O.C. has held that:

*“54. The Adjudicating Authority has not examined the law on mortgage and securities. The Appellant Bank is liable to recover huge amounts in the above loan accounts and the appellant bank being mortgagee/transferee of the interest in the properties is entitled to recover its dues with the sale of properties. The properties stood transferred by way of mortgage to the Appellant Bank much before the alleged criminal action. The alleged proceeds of crime have not been used for acquiring the mortgaged property.”*

**21.** The Full Bench of the Madras High Court while acknowledging the amount of losses suffered by the Banks and while approving the latest amended Section 31B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 held in the case “The Assistant Commissioner (CT), Anna Salai-III Assessment Circle Vs. The Indian Overseas Bank and Ors.” that

*“There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016. Further it was also held that the law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.”*

**22.** It is undisputed fact that the attached properties were purchased much prior to the period when the facility of loan sanctioned to the borrowers. The Banks while rendering the facilities were bonafide parties. It is not the case of the Respondent that the attached properties were purchased after the loan was obtained. The mortgage of the properties was done for bonafide purposes. The Appellant Banks admittedly are not

involved in the scheduled offence. There is no criminal complaint under the schedule offence and PMLA is pending against the Bank.

**23.** The Respondent no 1 has not fulfilled its duty of carrying out a thorough investigation and attached only such properties which were already mortgaged and held as securities with the Banks against the loans granted by them. Even the car bearing BMW-0005MH43AP was bought by the M/s SVLL out of the loan borrowed by it from the appellant Bank (Bank of Baroda) and was hypothecated to the Bank (Bank of Baroda). Since the M/s SVLL failed to refund the same, the said car has become the property of the Bank (Bank of Baroda) and cannot be said to be bought out of the proceeds of crime as alleged.

**24.** This Tribunal in the matter of FPA-PMLA-1848/DLI/2017 titled as Axis Bank vs the Deputy Director, DOE, Delhi dated 25.10.2017 has held that:

*“22. It is settled law that the assets hypothecated to the Bank must be protected from attachment by the Respondent No.1. Despite the fact that the asset/vehicle was purchased prior to the acts alleged to the accused-Respondents and that admittedly there was no taint on the monies used partly to repay the loan amount to the Appellant Bank, the Ld. Adjudicating Authority has confirmed the attachment of an asset hypothecated to a Bank.*

*26. The Adjudicating Authority (PMLA) has not understood that the Loan facility provided by the Appellant to the Respondent No.7 for purchase of the attached vehicle is a public money and not proceeds of crime or value thereof. Thus, no order can be passed by the Respondent No.1 prejudicing the genuine business transaction of the Appellant Bank. The impugned order is patently illegal and not sustainable in law.”*

**25.** The SVLL through Resolution Professional under IB&C has filed an appeal (FPA-PMLA-2107/MUM/2017) u/s 26 of PMLA, 2002 against the same impugned order dated 24.10.2017 in O.C. NO. 787/2017. The directors of SVLL have also filed separate appeals against the same order

vide appeal nos. FPA-PMLA-2137,2138& 2139/MUM/2017. Those appeals have been dealt with separately and the orders of this tribunal in those appeals may be read with the present judgment/order.

**26.** In view of our judgment regarding overriding effect in favour of appellant bank herein we have not gone into other legal issues which are kept open.

**27.** In view of the aforesaid submissions, the provisional attachment order, so far as the properties mortgaged with the appellant banks are concerned, confirmed by the Adjudicating Authority is liable to be quashed.

**28.** The aforesaid Appeals are allowed and the impugned order dated 24.10.2017 passed by the Adjudicating Authority, to the extent of the properties mortgaged with the Appellant Banks, is set aside.

No cost.

**(Justice Manmohan Singh)**  
**Chairman**

**(G. C. Mishra)**  
**Member**

**New Delhi,**  
**12<sup>th</sup> December, 2018**

‘s’