

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

**Date of Decision: 2<sup>nd</sup> August, 2018**

1. **MP-PMLA-3363/MUM/2017(Stay)**  
**FPA-PMLA-1604/MUM/2017**  
Standard Chartered Bank ... Appellant  
  
Versus  
  
The Deputy Director  
Directorate of Enforcement, Mumbai ... Respondent
  
2. **MP-PMLA-3310/MUM/2017 (Stay)**  
**FPA-PMLA-1711/MUM/2017**  
M/s Winsome Diamonds & Jewellery Ltd. ... Appellant/Applicant  
  
Versus  
  
The Joint Director  
Directorate of Enforcement, Mumbai ... Respondent
  
3. **FPA-PMLA-1760/MUM/2017**  
Ms Kohinoor Diamonds Pvt. Ltd ... Appellant  
  
Versus  
  
The Deputy Director  
Directorate of Enforcement, Mumbai ... Respondent
  
4. **FPA-PMLA-1761/MUM/2017**  
M/s Bombay Diamond Company Pvt. Ltd. ... Appellant  
  
Versus  
  
The Deputy Director  
Directorate of Enforcement, Mumbai ... Respondent

**Advocates/Authorized Representatives who appeared**

For the appellant : Shri Jayesh Desai, Advocate  
Shri Dheeraj Kumar Singh, Advocate  
Shri Rahul Chitnis, Advocate

For the respondent : Ms. Shilpi Satyapriya Satyam, Advocate

**CORAM**

**JUSTICE MANMOHAN SINGH : CHAIRMAN**

## **JUDGEMENT**

**FPA-PMLA-1604/MUM/2017,FPA-PMLA-1711/MUM/2017,FPA-PMLA-1760/MUM/2017 & FPA-PMLA-1761/MUM/2017**

1. By this Order, I propose to decide the following four appeals:-

<b>Sr. Nos.</b>	<b>Case Nos.</b>	<b>Title</b>
i)	Appeal No. 1604 of 2017	Standard Chartered Bank. Vs. The Joint Director Directorate of Enforcement, Mumbai
ii)	Appeal No. 1711 of 2017	Winsome Diamonds & Jewellery Ltd. Vs. The Joint Director Directorate of Enforcement, Mumbai (PNB is R.-2 & SCB is R.-3)
iii)	Appeal No. 1760 of 2017	M/s. Kohinoor Diamonds Pvt. Ltd. Vs. The Joint Director Directorate of Enforcement, Mumbai (PNB is R.-2 & SCB is R.-3)
iv)	Appeal No. 1761 of 2017	M/s. Bombay Diamond Company. Pvt. Ltd. Vs. The Joint Director Directorate of Enforcement, Mumbai (PNB is R.-2 & SCB is R.-3)

2. Admitted position is the following properties belonging to M/s. Winsome Diamonds & Jewellery Ltd., M/s. Kohinoor Diamonds Pvt. Ltd. and M/s. Bombay Diamonds Company Pvt. Ltd., along with a company named Forever Diamond Pvt. Ltd. were mortgaged to the Consortium of banks led by Standard Chartered Bank.

3. The detailed list of various properties along with their estimated value is as follows: -

Sr. No.	Details of Property	Present Owner	Area	Market Value of the Property (Amount in Rs.)
(a)	(b)	(c)	(d)	(e)
1.	Land, building, plant and machinery situated at Plot No. 143-D, Bommasandra KIADB Industrial Area, Hosur, Hebbagodi, PO Anekal Taluka, Bangalore, Karnataka, 560099	Su-Raj Diamonds (India) Ltd. [now M/s. Winsome Diamonds and Jewellery Ltd.]	8826 Sq. Mtrs. to constructed area of Approx. 95003.06 Sq. ft.	22,91,82,462/-
2.	Land and Building situated at Plot No. E-7, Marudhara Industrial Areas, Basni, II Phase, Jodhpur, Rajasthan	Su-Raj Diamonds (India) Ltd. [now M/s. Winsome Diamonds and Jewellery Ltd.]	Plot admeasuring 4529.57 Sq. Mtrs. with ground plus 2 constructions + Compound Wall	12,38,61,000/-
3.	Land, Building, Plant and Machinery Survey No. - 437/3, C.S. No. 5329/2, Sub Plot Nos. 10/B, 11, 12, 13, 14/A, F.P. No. 417/A, T.P.S. No. 3, Ashoka Tower, Building No. 2, Wing A, Kesharba Market, Gotalawadi, Katargam, Surat (Details of Units in the Buidling) Floor, Unit No. - 5 and 6, Ground Floor, Unit No. - 2, 3 and 4,6,7 and 8, First Floor, Unit No. - 2, 3 and 4, Third Floor, Unit No. - 2,3 and 4 Fourth Floor, Unit No.- 2,3 and 4, Fifth Floor, Unit No. - 2,3 and 4, Sixth Floor,	Su-Raj Diamonds (India) Ltd. [now M/s. Winsome Diamonds and Jewellery Ltd.]	Land Area as per undivided share 1696.52 Sq. Mtrs. Built up Area ( As per Site) 62,494.00 Sq. ft. (jointly with Kohinoor Diamonds Pvt. Ltd.)	22,96,05,700/-

	Unit No. -2, 3 and 4, Seventh Floor, Unit No. -2, 3 and 4, Eight Floor			
4.	Land, Building, Plant and Machinery Survey No. - 437/3, C.S. No. 5329/2, Sub Plot Nos. 10/B, 11, 12, 13, 14/A, F.P. No. 417/A, T.P.S. No. 3, Ashoka Tower, Building No. 2, Wing A, Kesharba Market, Gotalawadi, Katargam, Surat (Details of Units in the Buidling) Floor, Unit No. -1, Basement, Unit No.-4, Basement, Unit No. 1, Ground Floor, Unit No.-4, Ground Floor, Unit No.-1, First Floor, Unit No.-5, First Floor, Unit No.-1, Third Floor, Unit No.-1, Fourth Floor, Unit No.-1, Fifth Floor, Unit No.-1, Sixth Floor, Unit No.-1, Seventh Floor, Unit No.-1, Eight Floor.)	Kohinoor Diamonds P. Ltd. (Corporate Guarantee extended by the directors of the company to the banks)		
5.	Land and building at Plot No. 1 and 1-A, Tivim Industrial Estate, Survey No. 500 (Part) and 502 (Part) Mapusa Municipal Council,	Winsome Diamonds and Jewellery Ltd.	Land 5400 Sq. Mtrs. Bldg. 5396.20 Sq. Mtrs.	8,87,42,000/-

	Taluka and Regn. Sub. Dist.- Bardez, Dist. – North Goa, Goa.			
6.	Unit No. -1 NW, First Floor, SDF Buidling, Gem and Jewellery Park, Manikanchan, Plot No. -1, Block CN, Sector – V, Bidhan Nagar, Salt Lake, Kolkata- 700 091	Su-Raj Diamonds and Jewellery Ltd. [Winsome]	3498.30 Sq. Ft. (Leased Property)	1,88,91,000/-
7.	Unit Nos. 801 to 824, 906, 907, 908 and 910, Eight and Ninth Floor, Service Indl. Estate (Plaza Panchsheel), Survey No. 1551 and 1572, 55, Gamdevi Road, Mumbai – 400 007	Su-Raj Diamonds and Jewellery Ltd., Su-Raj Diamonds Consultancies Ltd., Su-Raj Diamonds and Jewellery Ltd., (Corporate Guarantee extended by the directors of the company to the banks)	Total 28 units as detailed in Column (b)	46,57,60,000/-
8	Land and Building situated at Plot No. A-42, Marudhara Industrial Area, Basni Jodhpur, Rajasthan.	Forever Diamonds Pvt. Ltd.	Plot admeasuring 10791.81 Sq. Mtrs. and constructed area of Approx. 24500 Sq. ft. and shed of Approx. 17390 Sq. ft.	34,33,64,000/-
9	Land and Building situated at Survey No. 130/1 and 184, Paikee, Village Aasura, Taluka DharampurVandsa Road, District-Valsad, Gujarat	Bombay Diamond Co. (Ind.) P. Ltd. (Corporate Guarantee extended by the directors of the company to the banks)	Plot admeasuring 13809.12 Sq. Mtrs. and Builtup Area of 23946 Sq. ft. (14074 Sq.ft. + 9872 Sq.ft.)	3,60,00,000/-
10	Only Plant and Machinery installed in the premises No. 17, SDF Bldg., 4th Floor, Cochin SEZ, Kakkanad, Kochin – 682 037	Winsome Diamond and Jewellery Ltd.	N.A.	2,14,00,000/-

<b>TOTAL</b>	<b>155,68,06,162/-</b>
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4. All the mortgaged properties mentioned in this table are acquired between 1989 – 2009. Shri Jatin R. Mehta is the promoter and guarantor of M/s. Winsome Diamonds & Jewellery Ltd.

5. The date of acquisition in respect of mortgaged of properties are as under:-

- i. Bangalore, Karnataka property acquired on 21<sup>st</sup> January, 2006.
- ii. Jodhpur, Rajasthan property acquired on 07<sup>th</sup> December, 1989.
- iii. Katargam, Surat property acquired on 10<sup>th</sup> December, 2001 in respect to Unit No. 2, 3, 4, 6 & 7.
- iv. Katargam, Surat property acquired on 13<sup>th</sup> July, 2000 in respect to Unit No. 1, 4 & 5.
- v. Bardez, North Goa property acquired on 17<sup>th</sup> March, 2009.
- vi. Salt Lake, Kolkata property acquired on 07<sup>th</sup> July, 2008.
- vii. Gamdevi Road, Mumbai property, as follows: -

Unit No.	Date of Acquisition
801	27 <sup>th</sup> February, 1990
802	21 <sup>st</sup> March, 1990
803	23 <sup>rd</sup> January, 1990
804	29 <sup>th</sup> March, 1990
805	28 <sup>th</sup> March, 1990
806	29 <sup>th</sup> November, 1989
807	28 <sup>th</sup> March, 1990
808	22 <sup>nd</sup> January, 1990
809	24 <sup>th</sup> January, 1990
810	29 <sup>th</sup> November, 1989
811	20 <sup>th</sup> March, 1990
812	19 <sup>th</sup> February, 1990
813	19 <sup>th</sup> March, 1990
814	17 <sup>th</sup> March, 1990
815	27 <sup>th</sup> November, 1989
816	21 <sup>st</sup> March, 1990
817	27 <sup>th</sup> March, 1990
818	27 <sup>th</sup> March, 1990
819	26 <sup>th</sup> March, 1990
820	26 <sup>th</sup> March, 1990
821	19 <sup>th</sup> March, 1990
822	20 <sup>th</sup> January, 1990
823	17 <sup>th</sup> March, 1990
824	20 <sup>th</sup> March, 1990

906	21 <sup>st</sup> February, 1990
907	20 <sup>th</sup> January, 1990
908	27 <sup>th</sup> November, 1989
910	29 <sup>th</sup> February, 1990

6. Punjab National Bank declared their NPA on 30<sup>th</sup> June, 2013 and after declaring NPA subsequently Consortium Banks filed Original Application in DRT, Ahmedabad on 02<sup>nd</sup> June, 2014. On 24<sup>th</sup> March, 2014 Punjab National Bank filed a complaint with CBI, BS & FC, Mumbai.

7. Standard Chartered Bank declared NPA on 23<sup>rd</sup> July, 2013 and after declaring NPA subsequently Consortium Banks filed Original Application in DRT, Ahmedabad on 02<sup>nd</sup> June, 2014.

8. The Consortium of Banks led by Standard Chartered Bank filed an Original Application before the Ahmedabad DRT on 1<sup>st</sup> June, 2014, being O.A. No. 304 of 2014. Thereafter, under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, Act 2002, notice was issued on 21<sup>st</sup> October, 2014 and possession of the charged assets was taken under section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, Act 2002, on the following dates: -

Location of Property	Date of Notice u/s. 13(2)	Date of Notice u/s. 13(4)
Mumbai	21.10.2014	11/02/2015
Surat		18/03/2015
Valsad		23/07/2015
Jodhpur		27/07/2015
Goa		03/08/2015
Bangalore		09/09/2015
Kolkata		Only P & Min SEZ unit

9. The DRT at Ahmedabad, by its order dated 20<sup>th</sup> May, 2016 allowed the recoveries for the Consortium of Fourteen banks, as follows: -

*“The Defendant no. 1 shall pay an amount of Rs. 4,061,589,537.00 to applicant no. 1, an amount of Rs. 714,743,985.00 to applicant no. 2, an amount of Rs. 1,636,021,974.00 to applicant no. 3, an amount of Rs.*

*6,722,236,193.00 to applicant no. 5, an amount of Rs. 1,277,706,509.00 to applicant no. 6, an amount of Rs. 10,521,187,766.00 to applicant no.7, an amount of Rs. 1,448,174,130.00 to applicant no. 8, an amount of Rs. 7,465,886,346.00 to applicant no. 9, an amount of Rs. 2,803,341,974.00 to applicant no. 10, an amount of Rs. 474,953,920.00 to applicant no. 11, an amount of Rs. 463,330,128.00 to applicant no. 12, an amount of Rs. 1,147,875,362.00 to applicant no. 13, and an amount of Rs. 906,139,200.00 to applicant no. 14 along with contractual rate of interest agreed between the parties from date of filing of application under Section 19(1) of the Recovery of Debt Due to Banks and Financial Institutions Act 1993 till realization to the applicant bank within a period of one month from date of receipt of order, failing which this Tribunal shall be competent to issue recovery certificate against the defendant no. 1 for the aforesaid amount under Section 19(22) of Recovery of Debt Due to Banks and Financial Institutions Act 1993 ”.*

10. A partial Recovery Certificate was issued by the DRT, Ahmedabad, on 27<sup>th</sup> June, 2016 based on above order for a consolidated sum of Rs. 4258,82,27,850/- (Rupees Four Thousand Two Hundred Fifty-Eight Crore Eighty Two Lakhs Twenty Seven Thousand Eight Hundred and Fifty only).

11. An Attachment Warrant pursuant to Recovery Certificate was issued by the Recovery Officer, attached to DRT, Ahmedabad on 1<sup>st</sup> August, 2016, all assets in question are attached pursuant thereto.

12. The Appellant in appeal no. 1604/2017 representing consortium of 14 banks has a prior charge over the said assets of the Company. The Appellant through their lawyers' letter dated 22<sup>nd</sup> June, 2016 has brought this issue to the notice of the Directorate of Enforcement, putting all these facts in the said letter along with copies of relevant Annexures as mentioned therein. These were also pointed out by an Affidavit dt. 02<sup>nd</sup> September,2016 before the Tribunal.

13. The facilities were granted by various banks in the year 2009 (initially), the situation as prevailed in the year 2009 was as follows: -



		<b>Rupees in Crore</b>
<b>Applicant Nos.</b>	<b>Banks</b>	<b>Total</b>
1	Standard Chartered Bank	189.00
2	Export import Bank of India	70.00
3	Oriental Bank of Commerce	100.00
4	Canara Bank	350.50
5	Bank of Maharashtra	182.00
6	State Bank of Hyderabad	130.00
7	Punjab National Bank	534.00
8	Vijaya Bank	116.00
9	Central Bank of India	350.00
10	Union Bank of India	150.00
11	Axis Bank Ltd.	46.50
12	State Bank of Mauritius Ltd.	30.00
	Barclays Bank PLC	27.00
13	IDBI Bank Ltd	50.00
	<b>Total</b>	<b>2325.00</b>
	Additional	465.00
	<b>Total</b>	<b>2790.00</b>

14. The limits were revised in the year 2010 as follows: -

	<b>Rupees In Crore</b>	<b>Limits (2009)</b>	<b>Limits (2010)</b>
<b>Applicant Nos.</b>	<b>Banks</b>	<b>Total</b>	<b>Total</b>
1	Standard Chartered Bank	189.00	264.00
2	Export import Bank of India	70.00	85.00
3	Oriental Bank of Commerce	100.00	120.00
4	Canara Bank	350.50	430.00
5	Bank of Maharashtra	182.00	221.00
6	State Bank of Hyderabad	130.00	130.00
7	Punjab National Bank	534.00	655.00
8	Vijaya Bank	116.00	123.50
9	Central Bank of India	350.00	435.00
10	Union Bank of India	150.00	185.00

11	Axis Bank Ltd.	46.50	11.50
12	State Bank of Mauritius Ltd.	30.00	35.00
	Barclays Bank PLC	27.00	----
13	IDBI Bank Ltd	50.00	70.00
14	BANK of India	----	50.00
	<b>Total</b>	<b>2325.00</b>	<b>2850.00</b>
	Additional	465.00	570.00
	<b>Total</b>	<b>2790.00</b>	<b>3420.00</b>

15. At request, again facilities were revised/enhanced in November, 2011 as follows: -

	<b>Rupees In Crore</b>	<b>Old Limits (2009)</b>	<b>New Limits (2010)</b>
<b>Applicant Nos.</b>	<b>Banks</b>	<b>Total</b>	<b>Total</b>
1	Standard Chartered Bank	264.00	414.00
2	Export import Bank Of India	85.00	110.00
3	Oriental Bank of Commerce	120.00	162.00
4	Canara Bank	430.00	575.00
5	Bank of Maharashtra	221.00	300.00
6	State Bank of Hyderabad	130.00	138.00
7	Punjab National Bank	655.00	880.00
8	Vijaya Bank	123.50	152.00
9	Central Bank of India	435.00	600.00
10	Union Bank of India	185.00	206.00
11	Axis Bank Ltd.	46.50	50.00
12	State Bank of Mauritius Ltd.	35.00	45.00
13	IDBI Bank Ltd	70.00	125.00
14	BANK of India	50.00	50.00
	<b>Total</b>	<b>2850.00</b>	<b>3845.00</b>
	Additional	570.00	769.00
	<b>Total</b>	<b>3420.00</b>	<b>4614.00</b>

16. Based on claim of each bank sought to recover the said following amount in appeal filed by the bank in the following manner:-

Applicant No.1	Rupees In Crore		
Standard Chartered Bank	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	3,631,676,706.77	-----	3,631,676,706.77
Unapplied Interest	1,013,793,885.86	-----	1,013,793,885.86
Penal Interest	-----	-----	
Total	464,54,70,592.63	-----	464,54,70,592.63

Applicant No.2	Rupees In Crore		
Export Import Bank of India	Details of Facilities		Total
	Fund Based	Non Fund Based	
Principal	42,01,86,344.91	65,71,26,572.31	107,73,12,917.22
Interest	3,59,30,336.18	10,91,04,548.66	14,50,34,884.84
Additional Interest by way of Liquidated Damages	62,21,871.84	2,30,19,012.82	2,92,40,884.66
Total	46,23,38,552.93	78,92,50,133.79	125,15,88,686.72

Applicant No.3	Rupees In Crore		
Oriental Bank Of Commerce	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	150,30,38,915.31	---	150,30,38,915.31
Unapplied Interest	26,15,13,611.00	----	26,15,13,611.00
Penal Interest	---	---	---
Total	176,45,52,527.51		176,45,52,527.51

Applicant No.4	Rupees In Crore		
Canara Bank	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	93,89,23,379	530,27,42,691	624,16,66,070
Unapplied Interest	11,91,92,702.80	101,51,59,161.78	113,43,51,864.58
Penal Interest	49,06,430.19	11,31,09,655.91	11,80,16,086.10
Total	106,30,22,511.99	643,10,11,508.69	749,40,34,020.68

Applicant No.5	Rupees In Crore		
Bank of Maharashtra	Details of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	276,85,82,529	-----	276,85,82,529
Unapplied Interest	44,20,44,093	-----	44,20,44,093
Penal Interest	2,33,68,927	-----	2,33,68,927
Total	3,23,39,95,549	-----	3,23,39,95,549

Applicant No.6	Rupees In Crore		
State Bank of Hyderabad	Details of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	121,24,93,461.00		121,24,93,461.00
Unapplied Interest	18,89,00,978.00		18,89,00,978.00
Penal Interest	-----		-----
Total	140,13,94,439.00		140,13,94,439.00

Applicant No.7	Rupees In Crore		
Punjab National Bank	Details of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	900,55,07,342.00	----	900,55,07,342.00
Unapplied Interest	145,15,98,822.98	-----	145,15,98,822.98
Penal Interest	17,33,25,232.60	-----	17,33,25,232.60
Total	10,63,04,31,397.58	-----	10,63,04,31,397.58

Applicant No.8	Rupees In Crore		
Vijaya Bank	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	145,92,99,745.00	-----	145,92,99,745.00
Unapplied Interest	4,98,28,065.00	-----	4,98,28,065.00
Penal Interest	-----	-----	-----
Total	150,91,27,810.00	-----	150,91,27,810.00

Applicant No.9	Rupees In Crore		
Central Bank of India	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	700,59,73,310.04	-----	700,59,73,310.04
Unapplied Interest	136,50,62,424.53	-----	136,50,62,424.53
Penal Interest	-----	-----	-----
Total	837,10,35,734.57	-----	837,10,35,734.57

Applicant No.10	Rupees In Crore		
Union Bank Of India	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	2641540695.23	-----	2641540695.23
Unapplied Interest	532821103.31	-----	532821103.31
Penal Interest	-----	-----	
Total	3174361798.54	-----	317,43,61,798.54

Applicant No.11	Rupees In Crore		
Axis Bank Ltd.	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	52,22,92,351	-----	52,22,92,351
Penal Interest without compounding	57,69,776	-----	57,69,776
Unapplied interest		-----	
Total	52,80,62,127	-----	52,80,62,127

Applicant No.12	Rupees In Crore		
State Bank of Mauritius Ltd.	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	46,29,17,557.28	-----	46,29,17,557.28
Unapplied Interest	6,17,92,927.70	-----	6,17,92,927.70
Penal Interest	-----	-----	-----
Total	52,47,10,484.98	-----	52,47,10,484.98

Applicant No.13	Rupees In Crore		
IDBI Bank Ltd.	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	1,32,16,04,413.66	-----	1,32,16,04,413.66
Unapplied Interest	96,79,223.17	-----	96,79,223.17
Penal Interest	-----	-----	-----
Total	1,33,12,83,636.83	-----	1,33,12,83,636.83

Applicant No.14	Rupees In Crore		
Bank Of India	Details Of Facilities		Total
	Fund Based	Non Fund Based	
Ledger Balance	82,54,45,774,40	-----	82,54,45,774,40
Unapplied Interest	16,75,46,902.82	-----	16,75,46,902.82
Penal Interest	1,73,62,833.03	-----	1,73,62,833.03
Total	101,03,55,510.25	-----	101,03,55,510.25

17. Admittedly on the basis of the said claim of each bank as mentioned above in the O.A. the DRT, Ahmedabad issued a final Recovery Certificate for Rs. 4687,04,04,315.29 (Rupees Four Thousand Six Hundred Eighty Seven Crore Four Lakh Four Thousand Three Hundred Fifteen and Paise Twenty Nine only) as stated earlier.

18. Simultaneously, along with filing of O.A., Punjab National Bank (PNB) being Respondent No. 11 and Standard Chartered Bank the Appellant herein filed a complaint with the CBI/Enforcement Directorate, Mumbai. And based on this complaint Enforcement Directorate, Mumbai initiated the present action. This is independent from the Complaints made by other consortium members if any.

19. It is admitted position that the Basni Jodhpur Lake, Rajasthan property acquired on 31<sup>st</sup> May, 1990. Valsad, Gujarat property acquired on 27<sup>th</sup> October, 1988 & 25<sup>th</sup> January, 1989, Plant & Machinery – hypothecated goods.

20. The current status of the Consortium of Bank has to recover an amount of Rs. 4687,04,04,315.29 (Rupees Four Thousand Six Hundred Eighty Seven Crore Four Lakh Four Thousand Three Hundred Fifteen and Paisa Twenty Nine only) and it is admitted situation that the Original Application before DRT, Ahmedabad was filed in the year 2014 around the same time the Appellants and Punjab National Bank (PNB) filed a complaint with the Enforcement Directorate, Mumbai.

21. There is no denied or any allegation by the Enforcement Directorate (Mumbai) during the hearing as to that the properties in question are acquired from the money laundering activity or are the proceeds of crime.

22. As per record, no allegation has been made against Standard Chartered Bank or Punjab National Bank or any of the Consortium bank that anyone or more bank helped/assisted either of the three companies i.e. M/s. Winsome Diamonds & Jewellery Ltd., M/s. Kohinoor Diamonds Pvt. Ltd. and M/s. Bombay Diamonds Company Ind. Pvt. Ltd. or Mr. Jatin Mehta in the Money Laundering activity carried out by them.

23. As per settled law and facts in the matter, all the properties described in the table above have been attached by DRT, Ahmedabad and are also covered under notice issued under SARFAESI Act, 2002.

24. The Enforcement Directorate, Mumbai has attached the properties belonging to M/s. Winsome Diamonds & Jewellery Ltd., M/s. Kohinoor Diamonds Pvt. Ltd. and M/s. Bombay Diamonds Company Ind. Pvt. Ltd., which are all mortgaged with the consortium of Banks on loan account of M/s. Winsome Diamonds & Jewellery Ltd.

25. The Appellant bank craves leave to refer to and rely upon the Order passed by this Tribunal on 14<sup>th</sup> July, 2017 in the matter of State Bank of India v/s. The Joint Director Directorate of Enforcement,

26. There is no denial on behalf of respondent – ED that the borrowers i.e. M/s. Winsome Diamonds & Jewellery Ltd., M/s. Kohinoor Diamonds Pvt. Ltd. and M/s. Bombay Diamonds Company Ind. Pvt. Ltd., being Respondent No. 3, 5 & 6 in appeal filed by the bank no. 1604/2017 have failed to pay the consortium an amount of Rs. 4687,04,04,315.29 (Rupees Four Thousand Six Hundred Eighty Seven Crore Four Lakh Four Thousand Three Hundred Fifteen and Paise Twenty Nine only) despite various reminder and follow ups.

27. The Appeals filed by borrowers as per their own prayer is simply to defeat the claim of the Appellant consortium.

28. The prayer is reproduced herein

*b. The impugned Order of the Adjudicating Authority wrongly confirming the provisional attachment order of the properties of the Appellant of the said order may kindly be ordered to be released from the provisional attachment **and restored to the Appellant.**(Underline and bold supplied for emphasis).*

29. The Account of M/s. Winsome Diamonds & Jewellery Ltd., the consortium led by Appellant bank was declared as Non Performing Assets on 31<sup>st</sup> December, 2013. As stated earlier, in view of this Consortium led by Appellant bank has filed an Original Application for Recovery of Rs. 464,54,70,592.63 (Rupees Four Hundred and Sixty Four Crore Fifty Four Lakhs Seventy Thousand Five Hundred Ninety Two and Paise Sixty Three Only).

30. Pursuant thereto final order was awarded in Original Application on 09<sup>th</sup>December, 2016. In the recovery Proceedings initiated, the Recovery Officer has sold certain properties, but because of the action before the NCLT, Ahmedabad by a third party, as well as the action under PMLA Act,2002 by Respondent No. 1; Enforcement Directorate, Mumbai the mortgaged properties are lying unsold.

31. It is not at all disputed by any of the Respondents including the three defaulter companies that these Properties are mortgaged to the Consortium led by Appellant bank and they have a first charge on the same.

32. The Appellant bank and the consortium led by them and has nothing to do and has no connection with the said allegation or crime (if any) committed by M/s. Winsome Diamonds & Jewellery Ltd., M/s. Kohinoor Diamonds Pvt. Ltd. and M/s. Bombay Diamonds Company Ind. Pvt. Ltd., being Respondent Nos. 3, 5 & 6 or any other person/s.

33. It is undisputed fact that the Appellant Bank is not holding any funds of the accused/ Respondents, on the other hand, the Appellant Bank itself has to recover more than Rs. 464,54,70,592.63 (Rupees Four Hundred and Sixty Four Crore Fifty Four Lakhs Seventy Thousand Five Hundred Ninety Two and Paise Sixty Three Only) from the Respondent Nos. 3, 5 & 6.



34. The mortgaged property with Appellant Bank is of much prior to the date of crime. The allegation of the respondent no. 1 that these properties may have been purchased from the proceeds of crime is incorrect, on the face of record itself.

35. The proceeds of crime are defined in Section 2(1) (u) of the Prevention of Money Laundering Act, 2002 which reads as under:-

*“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.”*

36. The mortgaged properties are not derived or obtained, directly or indirectly from the criminal activity or the proceeds of crime. The scope of the Act and the provisions of PML Act is to punish the accused person involved in money laundering, but not to punish an innocent person, who is not involved in the crime within the meaning of Section 2(u) of the Act.

37. As per “The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016” which came into effect on 01<sup>st</sup> September, 2016:

a. a new **Section 31B** in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 under the heading of “Priority of Secured Creditors” states that

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

b. in **Section 2** of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 after the words "the date of the application", "*and includes any liability towards Debt Securities which remains unpaid in full or part after notice of 90 days served upon the Borrower by the Debenture Trustee or any other authority in whose favour security interest is created for the benefit of holders of Debt Securities or;*" is added which makes the said amendment or the 1993 Act applicable to all the debts which remains unpaid.

38. The amendment prima facie gives the Secured Creditor, i.e. the Appellant, a priority over the rights of Central or State Government or any other Local Authority.

39. 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.

40. 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. MANU/TN/3743/2016”* that

*“There is, thus, no doubt that the rights of a Secured Creditor to realize secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "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.”*

41. In a case contested by one of the branches of the Appellant Bank, the High Court of Madras *“State Bank of India Vs. The Assistant Commissioner, Commercial Tax, Puraswalkam Assistant Circle and Ors. MANU/TN/3619/2016”*, while upholding the Amendment Act, 2016 inserting Section 31B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Section 26E of the SARFAESI Act and reaffirming the view of the

Full Bench of the same Court in The Assistant Commissioner (CT), Anna Salai-III Assessment Circle (*supra*) lifted the attachment entry and held that:

*“In other words, not only should the amendment apply to pending lis, but the declaration that the right of a Secured Creditor to realize the Secured Debts, would have priority over all debts, which would include, Government dues including revenues, taxes, etc., should hold good qua 2002 Act as well.”*

42. In another Madras High Court judgment in the case of “Dr. V. M. Ganesan vs. The Joint Director, Directorate of Enforcement. MANU/TN/2475/2014” has explained the grievances faced by the financial institutions while holding that

*“For instance, if LIC Housing Finance Limited, which has advanced money to the Petitioner in the first Writ Petition and which consequently has a right over the property, is able to satisfy the Adjudicating Authority that the money advanced by them for the purchase of the property cannot be taken to be the proceeds of crime, then, the Adjudicating Authority is obliged to record a finding to that effect and to allow the provisional order of attachment to lapse. Otherwise, a Financial Institution will be seriously prejudiced. I do not think that the Directorate of Enforcement or the Adjudicating Authority would expect every Financial Institution to check up whether the contribution made by the Borrowers towards their share of the sale consideration was lawfully earned or represent the proceeds of crime. Today, if the Adjudicating Authority confirms the provisional order of attachment and the property vests with the Central Government, LIC Housing Finance Limited will also have to undergo dialysis, due to the illegal kidney trade that the Petitioner in the Writ Petition is alleged to have indulged in. This cannot be purport of the Act.”*

43. The provisions of the amended SARFAESI Act prevails over the provision of the PML Act because the Amended SARFAESI Act is the subsequent legislation to the PML Act as held by the Hon’ble Supreme Court in the case of Solidaire India Ltd. Vs Fairgrowth Financial Services Ltd. &Ors., (2001) 3 SCC 71.

44. Therefore, the said judgment is not applicable infavor of the respondent in view of amendment brought by in the respective statues. Rather now the said judgment can be applied against the arguments of Respondent No. 1.

45. The Supreme Court in (2010)8 Supreme Court Cases 110 (Before G.S. Singhvi and A.K. Ganguly, JJ) in the case of United Bank of India V/s. SatyawatiTondon and Ors. In paras no. 6, 55 & 56 has held as under:-

*6. To put it differently, the DRT Act has not only brought into existence special procedural mechanism for speedy recovery of dues of banks and financial institutions, but also made provision for ensuring that defaulting borrowers are not able to invoke the jurisdiction of the civil courts for frustrating the proceedings initiated by the banks and other financial institutions.*

*55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.*

*56. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in furtherance of notice issued under Section 13(4) of the Act. In the result, the appeal is allowed and the impugned order is set aside. Since the respondent has not appeared to contest the appeal, the costs are made easy.”*

46. Proviso to Section 9 of The Prevention of Money Laundering Act, 2002 is reproduced herein below: -

*Vesting of property in Central Government. —Where an order of confiscation has been made under [sub-section (5) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of Section 60] in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:*

*Provided that where the [Special Court or the Adjudicating Authority, as the case may be,] after giving an opportunity of being heard to any other person interested in the property*

*attached under this Chapter or seized [or frozen] under Chapter V, **is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrances or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:***

*Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.*

(Underline and bold supplied for emphasis)

47. The encumbrances of properties are in favor of Banks has not been created with a view to defeat the provision of the Act. It is submitted that there is no allegation to this effect therefore by virtue of the proviso the properties being charged in favor of the Appellant led consortium, should be permitted to be sold and Sale proceeds be permitted to be adjusted against the bonafide dues of the consortium led by the bank.

48. The Section 26E of the SARFAESI (Amendment) Act, 2002 is reproduced herein below for ready reference:-

*26E. 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.*

49. This Tribunal in the case of IPRS in appeal no. FPA-PMLA-1302/MUM/2016 decided on 22.06.2017 had dealt with the similar issue as to whether the innocent party whose immovable properties are attached by the ED can approach the Adjudicating Authority for release of the same in para no. 55 to 60 the same read as under:-

“55. Whether innocent party whose properties i.e. movable or immovable are attached can approach the Adjudicating Authority for release of attached property.

The Scheme of Prevention of Money Laundering Act clearly provides the mechanism whereby the innocent parties can approach the Adjudicating Authority for the purposes of release of properties which have been attached in terms of the provisions of Section 5 of the Act. This can be seen by reading Section 8(1) and the proviso to Section 8(2) of the Act whereby Adjudicating Authority has to rule whether all or any of the properties referred to in the notice are involved in money laundering or not.

“8. Adjudication.- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after- (a) considering the reply, if any, to the notice issued under subsection (1); (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and (c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money laundering, section 58 B or sub-section (2 A) of section 60 by the Adjudicating Authority (4) Where the provisional order of attach”.

56. There are judicial pronouncements whereby it has been laid down that the innocent parties can approach the Adjudicating Authority for release of property by showing their bonafides in their dealings with the property. In the case of **Sushil Kumar Katiyar (Appellants) Vs UOI and Ors. (Respondents) MANU/UP/0777/2016** decided on 10.05.2016 by Allahabad High Court, it has been observed by the Ld. Single Judge after noticing the judgment of Karnataka High Court that the element of knowingly or mens rea have been provided under the Act so that the aspect of implicating any innocent person can be ruled out. Relevant para 26 of judgment is reproduced below:-

“26. Thus, upon consideration of the law laid down by the Hon'ble Karnataka High Court, it is clear that the amendment incorporated in the Money Laundering Act was not held unconstitutional and ultra-virus, but it was observed by the Karnataka High Court that the property of a person can be attached without there being any prosecution for the offence of Money Laundering, but so far as the prosecution of a person for the offence of money laundering is concerned, the proceedings under section 3 of the PML Act can be initiated only in case the person is held guilty of receiving proceeds of crime as a result of commission of scheduled offence. The Karnataka High Court has also held that the complainant in such a case is not required to wait for the result of trial being held for the scheduled offence. A complaint can still be filed against such person, but if ultimately the person is acquitted of the charge for the scheduled offence, his prosecution under section 3 of the Act for the offence of Money-Laundering would also come to an end. It has also been kept open by the Karnataka High Court that a person against whom complaint under section 3 of the PML Act has been filed and he is being prosecuted for the offence of money laundering, he can show before the court that he is innocent and has not received any proceeds of crime.”

It is clear that innocent person can approach the Adjudicating Authority of any competent court to demonstrate his innocence that he has not received any proceeds of crime. The consequence of this is that while considering whether all or any of the properties provided under notice issued u/S 8(1) are involved in money laundering, the Adjudicating Authority can take into consideration the plea of innocence raised by any person and also the fact as to whether the property which has been attached has any nexus whatsoever with that of money laundering or not if the person before the Tribunal/ Adjudicating Authority is able to demonstrate that he neither directly nor indirectly has attempted to indulge nor with knowledge or ever assisted any process or activity in connection with proceeds or crime and the question of his involvement does not arise as he is third party, then the

Tribunal/Adjudicating Authority can consider the said plea depending upon whether there exist bona fide in the said plea or not and proceed to adjudicate the plea of innocence of the said party.

57. This is due to the reason that Section 8 allows the Adjudicating Authority to only retain the properties which are involved in money laundering which means as to whether properties attached are involved in money laundering or not is a pre-condition prior to confirming or attachment by Adjudicating Authority. Therefore, at that time, if the plea is raised that the party whose property is attached is innocent or is without knowledge of any such transaction with respect to money laundering, then the Tribunal can consider the said plea and proceed to release the said property out of the properties by holding that the said property is not involved in money laundering.

58. For the purposes of determining whether the property is involved in money laundering, the Court may consider the ingredients of Section 3 which define offence of money laundering. The aspect of knowledge or involvement has been discussed by Ld. Single Judge of Gujarat High Court in the case of **Jafar Mohammed Hasanfatta and Ors (Appellants) Vs Deputy Director and Ors. (Respondents) MANU/GJ/0219/2017** wherein Ld Single Judge has observed as under:-

“37. A holistic reading of this definition of 'proceeds of crime' and the penal provision under Section 3 of PMLA, which uses conjunctive 'and', makes it luminous that any persons concerned in any process or activity connected with such "proceeds of crime" relating to a "scheduled offence" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two prerequisites are satisfied i.e.-

“(i) Firstly, if he-

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

(b) “knowingly” either assists or is a party, or

(c) is “actually involved” in such activity; and

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

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

“A. RE: DIRECT OR INDIRECT ATTEMPT:

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



"13. Well then, what is an "attempt"? ...In sum, a person commits the offence of "attempt to commit a particular offence" when (i) he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence."

Thus, an "attempt to indulge" would necessarily require not only a positive "intention" to commit the offence, but also preparation for the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such 'intention' and 'attempt' on the part of any of the petitioners.

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

In JotiParshad v. State of Haryana, 1993 Supp (2) SCC 497 the Hon'ble Supreme Court has held as follows-

"5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise, "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same."

The same test therefore applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to show that any of the petitioners, 'Knowingly', assisted or was a party to, any offence.

C. Actually involved:

Actually, involved would mean actually involved into any process or activity connected with the proceeds of crime and thus scheduled offence, including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to substantiate any such allegation qua the petitioners,

D. Neither any of the petitioners is arraigned as accused in the 'Scheduled Offences' punishable under Indian Penal Code for direct or indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of them."

39. The second of the two pre-requisites to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of crime as untainted property. For making such claim or to project 'proceeds of crime' as untainted, the knowledge of tainted nature i.e. the property being 'proceeds of crime' derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, would be utmost necessary, which however is lacking in the instant case."

59. These are four ingredients which are determinative factors on the basis of which it can be said that whether any person or any property is involved in money laundering or not. If there is no direct / indirect involvement of any person or property with the proceeds of the crime nor there is any aspect of knowledge in any person with respect to involvement or assistance nor the said person is party to the said transaction, then it cannot be said that the said person is connected with any activity or process with the proceeds of the crime. The same principle should be applied while judging the involvement of any property of any person in money laundering. This is due to the reason that if the property has no direct involvement in the proceeds of the crime and has passed on hands to the number of purchasers which includes the bona fide purchaser without notice, the said purchaser who is not having any knowledge about the involvement of the said property with the proceeds of the crime nor being the participant in the said transaction ever, cannot be penalized for no fault of his. Therefore, it cannot be the Scheme of the Act whereby bona fide person without having any direct/ indirect involvement in the proceeds of the crime or its dealings can be made to suffer by mere attachment of the property at the initial stage and later on its confirmation on the basis of mere suspicion when the element of mens rea or knowledge is missing.

60. Similar principle has been laid down by Chennai High Court in the case of **C. Chellamuthu (Appellants) Vs The Deputy Director, Prevention of Money Laundering Act, Directorate of Enforcement (Respondent)** MANU/TN/4087/2015 decided on 14.10.2015, relevant portion of which are reproduced below:-

"20. The said sections read as follows: --

“23. Presumption in inter-connected transactions Where money-laundering involves two or more interconnected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation (under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court), be presumed that the remaining transactions form part of such inter-connected transaction.

24. Burden of proof

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

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering; and

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

21. In the present case, one G. Srinivasan is accused of having played fraud and obtained a loan of Rs. 15,00,00,000/- by producing bogus and fabricated documents. From and out of the said amount, the property in question was purchased by him in the names of his Benamies. One Ayyappan was appointed as their Power Agent. One Gunaseelan purchased the property through the Power Agent Ayyappan. The said Gunaseelan was examined and his statement was recorded Under Section 50 of the Act. He had stated that he purchased the property for cultivation. He developed the property, but geologist gave opinion that property will not yield proper income. In the circumstances, he sold the property to appellants. The respondent has not produced any document or material to disprove the statement of Gunaseelan. There is nothing on record to show that the transaction in favour of the said Gunaseelan, is not genuine. It is not the case of respondent that the said Gunaseelan is a Benami or employee of G. Srinivasan and that Gunaseelan did not pay any amount as sale consideration or the sale consideration paid by Gunaseelan was not legitimate money. There is no material to show nexus and link of Gunaseelan with G. Srinivasan and his Benamies. In the absence of any verification or investigation by respondent with regard to genuineness or otherwise of the purchase by Gunaseelan; whether he was connected with G. Srinivasan or the sale consideration is legitimate or not the property in the hands of Gunaseelan cannot be termed as proceeds of crime.

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

possess agricultural lands, cultivate GloriosaSuperba seeds and sell the same and derive considerable income. They have named the persons to whom they have sold the GloriosaSuperba seeds and produced Bank statements. Some of the Appellants have stated that they sold their lands and borrowed monies to purchase the property in question. There is nothing on record to show that the respondent had verified these statements. Especially, the respondent has not verified the Bank statement produced by the Appellants to ascertain the genuineness of the same and whether the money deposited came from genuine purchasers or from the persons involved in fraud and Money Laundering. The respondent does not allege that Appellants are Benamies of G. Srinivasan or no sale consideration passed to the vendor.

23. Considering the materials on record and judgments reported in MANU/MH/1011/2010: 2010 (5) Bom CR 625 [supra] and: [2011] 164 Comp Cas 146(AP) [supra], I hold that appellants have rebutted the presumption that the property in question is proceeds of crime. The respondent failed to prove any nexus or link of Appellants with G. Srinivasan and his benamies. Once a person proves that his purchase is genuine and the property in his hand is untainted property, the only course open to the respondent is to attach sale proceeds in the hands of vendor of the appellants and not the property in the hands of genuine legitimate bona fide purchaser without knowledge.

24. Before the Adjudicating Authority it was admitted by complainant that appellants had no knowledge that properties in the hands of their vendor was proceeds of crime. It was also not disputed by complainant that the appellants did not have financial capacity to buy properties. Paragraphs 21, 22, 23 and 24 of order of Adjudicating Authority is extracted herein for better appreciation.

21. The CBIBS & FC (BLR) has filed a charge sheet in the court of Spl. Judge for CBI cases Coimbatore, against Sh. Arivarasu, Sh. R. Manoharan, Sh. R. Selvakumar, Sh. G. Srinivasan, Sh. K. Martha Muthu, Sh. V. InduNesan, Sh. K. Vignesh, Sh. A. Sainthil Kumar, Sh. M. Ram Krishnan, for the offences punishable under Section 120-B read with 420, 467, 471 IPC and section 13(2) read with 13(1)(d) of PC Act 1988. The offences punishable under section 120-B, 420, 471 are schedule offence under Section 2(1)(y) of the PMLA and therefore on of the condition for issuing provisional attachment order is satisfied. The other important point to be determined is whether the properties attached vide Provisional attachment order are involved in money-laundering. The only defense or explanation raised by Defendants, particularly Def No. 2 to 8 is that the landed properties attached by the complainant are not proceeds of crime. These properties were purchased by

these defendants without having any knowledge, whatsoever, that these properties were derived or obtained through criminal activities relating to schedule offence. It has been demonstrated by them that they verified the title deeds relating to the properties and after due verification of every details entered into the sale transactions as such these are bona fide deals entered by them against proper sale consideration and the money paid to the seller is also well explained.

22. Against the above arguments vehemently raised by the defendants, the complainant without disputing that the deals are bona fide heavily relied on the judgment of the Bombay High Court, dated 05.08.2010 in Mr. Radha Mohan Lakhotia Vs. Deputy Director, PMLA, Directorate of Enforcement, Mumbai in first appeal No. 527/2010. In this case it held by the Bombay High Court that the property bought without the knowledge that the same is tainted could be subjected to Provisional Attachment Order.

23. In the instant case the only point to be decided is whether the properties bought by any person against clean money and without any knowledge that properties have been acquired directly or indirectly through scheduled offence could be subject matter of provisional attachment order.

24. It is an admitted position that the Defendants (D-2 to D-8) had no knowledge that the properties in the hands of the vendor was proceeds of crime. They have also verified the papers relating to these properties before the deal. No point has been raised with regard to the financial capability of these Defendants to buy these properties. However, the Bombay High Court decision in Radha Mohan Lakhotia has been pressed into service to make out a plea that the properties could be attached in such circumstances under the PMLA."

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

25. A reading of paragraphs 21 to 24 clearly reveals that both the Adjudicating Authority as well as Appellate Authority failed to properly appreciate the facts and findings in Radha Mohan lakhotia's case. In that case, the Department had placed substantial and acceptable facts to prove that the property in the hands of third party was proceeds of crime. It is pertinent to note that in Mr. Radha Mohan Lokatia's case, Department had proved the nexus and link between the person possessing the property and person accused of having committed an offence. All the persons involved in that case were close relatives.

26. In the present case, the respondent failed to prove that the appellants did not have sufficient financial capacity to buy the property or that the money paid by them as sale consideration was not legitimate money derived by agricultural activities. No material was produced to show that the appellants are close relatives of person, who involved in criminal activities and the person, who sent monies to purchase the property did not possess financial capacity to provide such huge amounts and that they are not genuine purchasers of agricultural products of appellants. The respondent has not made any such investigation and has not produced any such material. Further, the Appellate Authority in fact considered the additional documents produced before it but rejected the same on the ground that Appellants have not given any valid reasons for not filing the same before the Adjudicating Authority. Having considered the Additional documents, the appellate authority failed to give any finding on merits after verifying with the concerned Bank."

50. 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 were done for bonafide purposes. None of the bank is involved in the schedule offence. No PMLA proceedings are pending against the bank. There is also no criminal complaint under the schedule offence under PMLA is pending against the bank.

51. It is not denied by the respondent that the conduct of the bank was always bona-fide all the time. The bank is an innocent party who is legally entitled to inform the Adjudicating Authority about its innocence, but the contention was rejected as appeared from the impugned order.

52. From the scheme of the Prevention of Money Laundering Act, 2002 and its object, it is clear that the intention of the legislation is not to apply the Act to the nature transaction involved in the present case.

53. The Enforcement Directorate in its provisional order as well as in the complaint before the Adjudicating Authority admitted that the properties which are subject matter are mortgaged with the appellant bank. The borrowers

acquired the properties much before the borrowers availed the loan from the appellant bank and therefore no proceeds of crime were invested in these properties. The copies of the title deed of the properties would show that the same were acquired prior to dates of alleged fraud crime, if any, committed even as per the case of the Respondent No. 1.

54. The mortgaged properties are security to the loans and cannot be subject matter of attachment particularly when the same were purchased and mortgaged prior to the events of funds diversion and fraud committed by the borrowers. The appellant Bank is entitled to recover amounts in the above loan accounts and the appellant bank being the mortgagee/transferee of the interest in the properties is entitled to recover its dues with the sale of the properties. The properties stood transferred by way of mortgage to the appellant bank much before the alleged criminal action.

55. The appellant bank is the rightful claimant of the said properties, which are already in the possession of the DRT and appellant bank under the SARFAESI Act. The Hon'ble Supreme Court of India in the case of Attorney General of India and Ors. (AIR 1994 SC 2179) while dealing with the matter under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act has defined the illegally acquired properties and held that such properties are earned and acquired in ways illegal and corrupt, at the cost of the people and the state, hence these properties must justly go back where they belong. In the present case as the money belongs to the Appellant bank it is public money. It is submitted that the appellant bank has the right to properties under the Constitution of India. It is submitted that the property of the appellant bank cannot be attached or confiscated if there is no illegality in the title of the appellant and there is no charge of money laundering against the appellant. The mortgage of property is the transfer under the Transfer of Property Act.

56. There is no money laundering in the present case in the mortgaged properties as far as the claim of the Appellant is concerned. Due to the attachment proceedings by the Enforcement Directorate the Appellant bank is not able to recover the public money by way of selling the properties. The proceedings for recovery are pending.

57. The Enforcement Directorate in its provisional order as well as in the complaint filed before the Ld. Adjudicating Authority has admitted and acknowledged that the Properties which are mortgaged with the Banks were acquired and possessed by the respective owners much before the Respondents availed the loan from the Appellant Banks and therefore no proceeds of crime are invested in these properties.

58. The legal right under SARFAESI is taken away from the Appellant Bank by the Enforcement Directorate vide Attachment Order dated 16<sup>th</sup> November, 2016 and by the Ld. Adjudicating Authority vide Impugned Order 16<sup>th</sup> November, 2016. The Adjudicating Authority failed to understand that the Appellant Bank has stakes in the said properties at para no. 13 (listed from 01 to 10). The Appellant Bank has the right to recover the loan amount against the mortgaged properties under law. The valuable right will be lost if the Order of attachment would continue. The impugned order passed by Adjudicating Authority would cause miscarriage of justice if it is not set-aside.

59. If the attachment would continue against the mortgaged property of the banks in this matter, the economy of the country would suffer. The banks in the present case have proceeded with the matter in good faith and are not involved in the offence of money laundering.

60. The Adjudicating Authority had all the *reasons to believe* despite of aware that abovementioned were mortgaged to the Appellant Bank and that



the Appellant/consortium had prior charge over the subject matter/properties; in spite of this the Ld. Adjudicating Authority confirmed the provisional attachment order issued by the Respondent No. 1 and it has caused huge loss to the Appellant/ consortium. It is submitted that both Enforcement Directorate and Adjudicating Authority have failed to apply the law on the subject.

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

62. The Adjudicating Authority has failed to consider that the Enforcement Directorate has attached all the properties without examining the case of the banks. The evidence on record is clear that all the properties were acquired by the accused much before the alleged date of crime. It is submitted that the Bank has already filed the Suit for recovery and has also had taken the action under SARFAESI Act. The Adjudicating Authority failed to appreciate that depriving the Appellant Bank from its funds/property, without any allegations or involvement of the Bank in the alleged fraud would be unjustified.

63. The properties attached cannot be attached under Section 5 of the PML Act because the properties are not purchased from the alleged proceeds of crime. As per the provisions of Section 5(1) (c) the primary requirement for the attachment is that the proceeds of crime are likely to be concealed, transferred or dealt with in any manner. The said properties are already in the possession

of the appellant bank under the SARFAESI Act. The Hon'ble Supreme Court of India in the case of Attorney-General of India and others reported in AIR 1994 SC 2179 while dealing with the matter under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act has defined the illegally acquired properties and has held that the illegally acquired properties are earned and acquired in ways illegal and corrupt, at the cost of the people and the state, the state is deprived of legitimate revenue to that extent hence these properties must justly go back where they belong, the state. In the present case as the money belongs to the Appellant Bank it is liable to be recovered by the Appellants Banks. Moreover, it also does not satisfy the proviso to section 9 of the Act.

64. The mortgaged properties of the Appellant Bank cannot be attached or confiscated unless link and nexus directly or indirectly established. From the facts of the present appeal filed by the bank, I find that there is no illegality or unlawfulness in the title of the Appellant Bank and there is no charge of money laundering against the Appellant. The mortgage of property is the transfer under the Transfer of Property Act as there is no dispute as regards the origin of funds or the title of the properties. It is submitted that; the bank needs to recover its outstanding dues by taking over the possession of the mortgaged properties in case the borrowers are not able to pay back the amount.

65. The Respondent No.1 cannot have any lien over the said properties as the Appellant bank is now the Legal transferee of said properties. The Respondent No. 1 cannot retain the property over which they have no legal title and the property is to be returned to the persons lawfully entitled as the bank is the victim and even after trial, bank needs to receive back the said properties being a victim party u/s 8(8) of the Act.

66. There is no nexus whatsoever between the alleged crime and the fourteen banks who are mortgagee of all the properties which were purchased before

sanctioning of the loan. Thus, no case of money-laundering is made out against banks who have sanctioned the amount which is untainted and pure money. The bank has priority on assets of the secured creditors to recover the loan amount/debts by sale of assets over which security interest is created, which remains unpaid.

67. The Adjudicating Authority has not appreciated the facts and law involved in these matters and the primary objective of section 8 & 9 of PMLA is that the Adjudicating Authority to take a prima facie view on available material and facts produced.

68. The complainant in the criminal case is the Appellant Bank who is a victim. Had the Appellant Bank not filed a criminal complaint there proceedings would not have been initiated. The security of the Bank, is treated as proceeds of crime and is confiscated under the Act, in future, no Bank in such circumstances would make a complaint to the authorities. The trial in the prosecution of complaint would take number of years. The Bank being a Secured Creditor is entitled to recover the dues.

69. In the case of *Indian Bank Vs. Government of India and M/s. PalpapIchinichi Software International Ltd.*, decided by Madras High Court on 11.07.2012, wherein it was held in similar circumstances that Sections 5 and 8 of the Act cannot be used by the authorities to inflict injury of the victim i.e. the Bank. As far as actual amount due from the borrowers are concerned, the out-standing amount would be decided by the appropriate authority.

70. The banks being appellant in appeal no. 1604/2017 pressed the relief to set aside the impugned order to the extent it attaches charged/mortgaged properties, charged/mortgaged to consortium of banks as borrowers have been availing various financial facilities.

71. The intention of the Act could not have been to block the loan amount against the mortgaged properties being innocent person as is sought to be done in the instant case. It is submitted if the impugned order is taken as correct, it would be a patently absurd situation once substantial securities of the bank are not available for the benefit of Bank. Such a result does not advance the objects of the Act.

72. There is no denial that all the properties in the subject matter of the Appeal, are mortgaged with the Appellant Bank were acquired by the alleged accused/mortgagor much prior to the date of crime. It is also the stand of the ED that the banks are the victim parties. They are entitled to recover the amount, most are public sector banks. It is a public money and accused/borrowers are liable to face trial in criminal complaint. The trial may take number of years. The main accused is absconding. He has left India.

73. Non performing assets (NPA) are choking the banking system and the system is already struggling for some time and banking conditions are deteriorating day by day. It is submitted that such order would create a chaos in banking industries and would be against the interest of nation as a whole and would also be against the public policy.

74. As a matter of fact, hundreds of borrowers have taken the loans against the securities and mortgaged properties and are not returning the legal debts. They are simply adopting all sort of tactics by raising defense that their properties are attached by ED. Even they have stopped paying the installments due by raising the plea that why should pay debts once the attachment orders are passed. By way attachment, their properties are also safe so as the due amount. In fact, they are happy if the attachment would continue against the mortgaged properties despite of passing the decrees by the DRT in favor of banks and against borrowers. By this mean, the attachment-orders amounting

to interference with the judicial system as the Adjudicating authority in many cases has ignored judgments of the Supreme Court, Full bench of Madras High Court and many High Courts and even of this tribunal.

75. It has come on record that the main mastermind is Shri Jatin R. Mehta who is the promoter and guarantor of M/s. Winsome Diamonds & Jewellery Ltd.

76. At present, total outstanding as per Recovery Certificate is Rs.4687,04,04,315.29 (Rupees Four Thousand Six Hundred Eighty Seven Crore Four Lakh Four Thousand Three Hundred Fifteen and Paisa Twenty Nine only). What a big tragedy, despite of having a full knowledge about the amount due, Jatin R. Mehta has left the country without any hindrance by making a fool of everyone of this country and we are unable to do anything.

77. I have been informed that he has run away from this country leaving the debt of more than Rs. 4687 Crores. It is a matter of surprising and shocking as many banks are Public Sector Banks. It is a public money. One hand, middle class (who are law abiding citizen) are suffering from starvation and small children are dying due to shortage of meal, on the other hand the person like Jatin R. Mehta has cheated the banks and all citizen of this country whose hard earned money is Rs.4687 Crore swindled by this villain of our society. The condition of the Public Sector Banks is become very bad. It is a matter of fact and it proves that he has flanted the law and guilty of fleece and fly. Jatin R. Mehta, Mehul Chokshi and Nirav Modi have scammed and have shamed to this country.

78. This tribunal is hopeful that the ED and other authorities must take necessary steps and stringent action against him who is enjoying the lavish life in foreign countries by cheating the huge amount of the poor people of this country. This tribunal expects that the ED must take similar actions as taken  
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in the case of other accused persons who have run away from this country by issuance of Red-Corner-Notice and initiate the extradition proceedings forthwith (if already not taken).

79. For the above said reasons as mentioned above, the impugned order dated 16<sup>th</sup> November, 2016 be set-aside, consequently the provisional attachment does not to survive. The same is also quashed. Three appeals filed by the borrowers are disposed of in view of finding arrived in appeal no. 1604/2017. The appeal filed by the bank is allowed. All pending MPs are disposed of.

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

**New Delhi,**  
**2<sup>nd</sup> August, 2018.**  
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