



**REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. .... OF 2026**  
**(Arising out of SLP (Crl.) No. 9216 of 2023)**

M/s. NAV NIRMAN BUILDERS  
& DEVELOPERS PVT. LTD.  
THROUGH ITS MANAGING  
DIRECTOR, NAVEEN SINGH ... APPELLANT

VERSUS

THE UNION OF INDIA  
THROUGH  
DEPUTY DIRECTOR, DIRECTORATE  
OF ENFORCEMENT, GOVT OF INDIA  
RANCHI, JHARKHAND ... RESPONDENT

**JUDGMENT**

**M. M. Sundresh, J.**

1. Leave granted.
2. An interesting question of law has arisen in this appeal, on the interpretation of Section 8 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the “PMLA”).

3. We have heard the learned counsel for the appellant and the learned counsel for the respondent - Union of India. We have also perused the written submissions and the documents filed by both sides, in respect of their contentions.

### **BRIEF FACTS**

4. We are only recording brief facts, as the issues relating thereto are not required to be examined for deciding the present appeal.

5. A partnership firm, by the name M/s. Nav Nirman Builders (hereinafter referred to as the “firm”) was constituted on 01.04.1993 with Dharamveer Bhadaria (since deceased) as its Managing Partner. After more than a decade from its constitution, the appellant company was incorporated with the earlier partners of the firm, including Dharamveer Bhadaria who was made its Managing Director. The firm secured a work order from the Executive Engineer (RCD), Chaibasa, on 23.02.2007. Upon completion of the work, a payment of approximately Rs. 79,11,559/- was made to the firm.

6. Two years thereafter, a First Information Report (FIR) was registered for the offences punishable under Sections 120B, 420, 467, 468, and 471 of the Indian Penal Code, 1860 along with Sections 13(2) read with

13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the “**predicate offence**”), against the Executive Engineer, the firm, and unknown others.

7. The sum and substance of the allegations in the FIR dated 22.10.2009 and the consequential charge sheet dated 03.12.2010 is that the firm, despite being required to procure bitumen from oil companies of the Government of India, under the terms and conditions of the work order, did not do so, and the accused - public servants fraudulently cleared the bills of the firm and facilitated their payment. To cover up the said act, the firm submitted 37 invoices, claiming to have procured bitumen from Indian Oil Corporation Limited Depot, Tatanagar, of which 6 were forged and fabricated, and the remaining pertained to some other work.

8. Based upon the materials revealed during the investigation of the predicate offence, proceedings were initiated under the PMLA, on 13.03.2012, against the firm and Dharamveer Bhadoria. It is pertinent to note that the appellant was not arrayed as an accused in these proceedings. Perhaps, taking a wind of the proceedings initiated under the PMLA, the appellant company underwent a reconstitution on 08.06.2015.

**9.** A Provisional Attachment Order (PAO) was passed by the respondent, under Section 5(1) of the PMLA, on 17.12.2017, attaching two pieces of land purchased by the appellant in the years 2012 and 2014, in lieu of the amount allegedly received fraudulently by the firm. Thereafter, the respondent filed Original Complaint No. 760/2017 before the Adjudicating Authority, seeking confirmation of the PAO. Accordingly, proceedings were initiated under Section 8(1) of the PMLA.

**10.** An impleadment application was filed by the appellant in the aforesaid proceedings, since properties purchased by it were provisionally attached. The said application was allowed, arraying the appellant as Defendant No. 8. After hearing all the parties, including the appellant, the Adjudicating Authority passed a confirmation order under Section 8(3) of the PMLA. Aggrieved, an appeal was filed by the appellant under Section 26 of the PMLA before the Appellate Tribunal, in which an order of *status quo* dated 12.07.2018 was passed.

**11.** In the meantime, a Prosecution Complaint was filed by the respondent under Section 45 of the PMLA, on 31.03.2018, against Dharamveer Bhadoria and the firm. The sum and substance of the said complaint is

that the accused persons have utilised the proceeds of crime in the purchase of immovable properties in the name of the appellant. It is precisely on this ground that the Adjudicating Authority had confirmed the PAO.

**12.**Charges were framed by the Special Court on 17.11.2018, against Dharamveer Bhadaria and the firm. On account of his death, on 02.05.2021, the proceedings against him, in both the predicate offence and the one under PMLA, were dropped. In view of the above, the respondent filed an application invoking Section 8(7) of the PMLA. Nearly two months thereafter, the appellant filed an application invoking Section 8(8) of the PMLA, *inter alia*, contending that the properties attached are its own.

**13.**The Special Court considered both the applications together, notwithstanding the pendency of the appeal filed under Section 26 of the PMLA, and allowed the application filed under Section 8(7) of the PMLA, on merits. Consequently, the application filed by the appellant under Section 8(8) of the PMLA was dismissed. Resultantly, the confiscation of the attached properties, as sought by the respondent, was ordered. While doing so, the Special Court was also pleased to hold that

the proceedings initiated against the accused firm under the PMLA are liable to be dropped. The challenge made by the appellant before the High Court under Section 482 of the Code of Criminal Procedure, 1973 to the order of confiscation under Section 8(7) of the PMLA also met with the same fate. Aggrieved, the present appeal has been filed.

**14.**At this juncture, we may note that the appeal filed by the appellant under Section 26 of the PMLA has been dismissed as infructuous, on 23.08.2023, during the pendency of the present appeal.

#### **SUBMISSIONS ON BEHALF OF THE APPELLANT**

**15.**Learned counsel appearing for the appellant submitted that the attached properties belong to the appellant company which is an independent entity and has not been arraigned as an accused. Neither the Special Court nor the High Court have gone into the merits of the application filed by the appellant under Section 8(8) of the PMLA. The fact that the appeal against the confirmation order passed by the Adjudicating Authority under Section 8(3) of the PMLA was pending before the Appellate Tribunal for a long time due to want of coram, was brought to the notice of the Special Court. Yet, the Special Court decided the application under Section 8(7) of the PMLA on merits. The appellant

cannot be made to suffer for the same. Even as per the case of the respondent, the properties attached are not the proceeds of crime, and are only alternate property in value thereof. Despite the sources and the bank trail for the purchase of the said properties having been clearly furnished, the Special Court has not engaged with it in substance. The principle of ‘lifting the corporate veil’ cannot be used unilaterally against the appellant’s properties. Accordingly, the learned counsel submitted that the impugned order passed by the High Court requires interference.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

16. The facts as noted by the Special Court and the High Court would reveal that the proceeds of crime to the tune of Rs. 79,11,559/-, were first placed in the banking system by the firm and, thereafter, layered and laundered by investing in immovable properties on behalf of the appellant which shared the same name and address as that of the firm. Dharamveer Bhaduria suppressed material facts, including the existence of the appellant company and his role in the same. It was discovered during the course of investigation that the entire share capital of the appellant was owned and controlled by the partners of the

firm, who were either the Managing Director, Director, or Shareholder in the appellant company. The reconstitution of the appellant has been done after the initiation of proceedings under the PMLA and, thus, cannot come to its rescue. The facts make it clear that the appellant is a mere frontal and sham entity created to divert the money obtained by fraudulent means. The subject properties, having been purchased through the proceeds of crime, were attached and, thereafter, confiscated, being the ‘value thereof’ of the proceeds of crime. Section 2(1)(u) of the PMLA is expansive enough to deal with such a situation, as has been discussed in **Vijay Madanlal Chaudhary and Ors. v. Union of India and Ors., (2023) 12 SCC 1.**

17. The pendency of the appeal preferred by the appellant before the Appellate Tribunal under Section 26 of the PMLA would not come in the way of deciding the application under Section 8(7) of the PMLA. Reliance is placed on the decision of the Delhi High Court in **Deputy Director, Directorate of Enforcement of Delhi v. Axis Bank & Ors. 2019 SCC Online Del 7854** in this regard. In any case, the aforesaid appeal has been dismissed, though subsequently. It is further submitted that the appellant has failed to discharge the burden of proof under

Section 24 of the PMLA, as it failed to show the legitimate source for purchasing the attached properties. It is well-settled that the Courts are empowered to pierce the corporate veil and find out the truth if criminal offences are sought to be committed under the garb of corporate personality. Thus, the impugned order passed by the High Court confirming the order passed by the Special Court under Section 8(7) of the PMLA does not warrant any interference.

## **LEGAL DISCUSSION**

**18.** We now proceed to discuss the relevant statutory provisions.

### **Section 2(1)(u) of the PMLA**

**“2. Definitions.—(1)** In this Act, unless the context otherwise requires,—

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**(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;**

*Explanation.*—For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;”

(emphasis supplied)

19. The definition of “proceeds of crime” under Section 2(1)(u) of the PMLA is wide enough to include a property which is equivalent in value to the property that is directly or indirectly obtained from a criminal activity relating to the scheduled offence. Thus, such a property can also be attached if the proceeds of crime, as such, are not otherwise available. Section 2(1)(u) of the PMLA, despite being a definition clause, indicates the very objective of the enactment to secure proceeds of crime in any form. The scope and applicability of this provision have been succinctly dealt with by this Court, in the case of **Vijay Madanlal Choudhary (supra)**, in the following manner:

“105. The other relevant definition is “proceeds of crime” in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide the Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property mentioned in Section 2(1)(v) PMLA derived or obtained, directly or indirectly, by any person “as a result of” criminal activity “relating to” a scheduled offence mentioned in Section 2(1)(y) read with Schedule to the Act or the value of any such property. Vide the Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. **The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word “relating to” (associated with/has to do with) used in the main provision is a present participle of word**

**“relate” and the word “relatable” is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act.** It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e. Section 2(1)(u)].

**106. The “proceeds of crime” being the core of the ingredients constituting the offence of money laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating to a scheduled offence.** To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. **For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person “as a result of” criminal activity relating to the scheduled offence concerned.** This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 PMLA.

**107. Be it noted that the definition clause includes any property derived or obtained “indirectly” as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of**

or in exchange of the “property” which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression “proceeds of crime”, it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to “any property” including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition of “proceeds of crime”. The definition of “property” also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.

**108.** In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property if purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of the 2002 Act.

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**172.** It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India. This argument, in our opinion, is tenuous. For, the definition of “proceeds of crime” is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property. If the property is taken or held outside the country, even in such a case, the property equivalent in value held within the country or abroad can be proceeded with. The definition of “property” as in Section 2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money laundering.

173. We find force in the stand taken by the Union of India that the objectives of enacting the 2002 Act was the attachment and confiscation of proceeds of crime which is the quintessence so as to combat the evil of money laundering. The second proviso, therefore, addresses the broad objectives of the 2002 Act to reach the proceeds of crime in whosoever's name they are kept or by whosoever they are held. To buttress this argument, reliance has been placed on the dictum in *Attorney General for India v. Amratlal Prajivandas*, (1994) 5 SCC 54 : 1994 SCC (Cri) 1325] and *Raman Tech. & Process Engg. Co. v. Solanki Traders* (2008) 2 SCC 302 : (2008) 1 SCC (Civ) 539]."

(emphasis supplied)

20. Chapter – III of the PMLA deals with attachment, adjudication and confiscation of property, with one following the other. We wish to extract relevant provisions of the said Chapter, for the sake of convenience.

### **Section 8 of the PMLA**

**“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 sub-section (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, it 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 sub-section (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.**

**(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of Section 5 or retention of property or record seized or frozen under Section 17 or Section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—**

(a) continue during [investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section (2-A) of Section 60 by the Special Court.

**Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.**

(4) Where the provisional order of attachment made under sub-section (1) of Section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1-A) of Section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1-A) of Section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

**(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offences of money-laundering after having regard to the material before it.**

**(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:**

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering

**Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”**

(emphasis supplied)

### **Section 9 of the PMLA**

**“9. 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.”

(emphasis supplied)

### **Confirmation of a Provisional Attachment Order**

**21.**Section 8 of the PMLA gets attracted upon filing of a complaint under Section 5(5) of the PMLA after a PAO is passed by the Director or any other officer, or when applications are made under Section 17(4) or Section 18(10) of the PMLA pursuant to the retention of property or

record seized or frozen under Section 17 or Section 18 of the PMLA.

Under Section 8(1) of the PMLA, the Adjudicating Authority, after satisfying itself that there exist reasons to believe that a person has committed an offence under Section 3 of the PMLA or is in possession of the proceeds of crime, is expected to serve notice on such a 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 Section 5(1) of the PMLA or, seized or frozen under Section 17 or Section 18 of the PMLA.

**22.** The expression “any person” used in Section 8(1) of the PMLA, gives a wide power of examination to the Adjudicating Authority for the purpose of taking a decision *qua* confirming a PAO under Section 5(1) of the PMLA or the retention of property or record seized or frozen under Section 17 or Section 18 of the PMLA.

**23.** The proviso to Section 8(2) of the PMLA facilitates ‘any other person’ claiming the property, in respect of which a notice has been issued under Section 8(1) of the PMLA, to be heard, in order to prove that the said property is not involved in money-laundering. Thus, while exercising the power of confirmation under Section 8(3) of the PMLA,

the Adjudicating Authority is expected to conduct a proper inquiry into the question of whether the property is involved in money-laundering.

**24.**Upon confirmation of the PAO under Section 8(3) of the PMLA, the designated officer of the prosecuting agency shall forthwith take possession under Section 8(4) of the PMLA. The decision of the Adjudicating Authority, in confirming the attachment, is subject to a challenge, if any, before the higher forums under the PMLA.

**25.**Section 8(3)(b) of the PMLA gives an element of finality to a confirmation order once an order of confiscation is passed by the Special Court under Section 8(5) or Section 8(7) or Section 58B or Section 60(2A) of the PMLA. Therefore, the confirmation of attachment under Section 8(3) of the PMLA would be subject to confiscation under the aforementioned provisions. In other words, though the attachment continues after its confirmation, it is only meant to be so till an order of confiscation is passed.

#### **Confiscation/Release of properties upon conclusion of the trial**

**26.**Once the Special Court, after conclusion of the trial, holds that the offence of money-laundering has been committed, Section 8(5) of the PMLA mandates the Special Court to confiscate the property to the

Central Government. Alternatively, if the Special Court concludes that the offence of money-laundering has not been committed, then Section 8(6) of the PMLA gets attracted, leading to the release of the property to the person entitled to receive it.

#### **Confiscation/Release of properties due to non-conduct of the trial**

**27.**Section 8(7) of the PMLA allows confiscation of properties in the event of non-conduct of the trial, and is a complete provision by itself. A *sine qua non* for the Special Court to decide an application under Section 8(7) of the PMLA is an order of confirmation of the PAO by the Adjudicating Authority under Section 8(3) of the PMLA.

**28.**Section 8(7) of the PMLA can only be pressed into service in case of a contingency, on an application to be moved either by the Director of the prosecuting agency or a person claiming to be entitled to possession of the property. The said contingency would include situations such as when the trial cannot be conducted by reason of the death of the accused, or if the accused is declared as a proclaimed offender, or for any other reason, or the trial having commenced but could not be concluded. The expression “any other reason or having commenced but could not be concluded” must be read in conjunction with either the

death of the accused, or the declaration of the accused as a proclaimed offender, in view of the principle of *ejusdem generis*.

**29.** Circumstances aforesated must be evident and in existence and, hence, the expression “material before it,” occurring in Section 8(7) of the PMLA, must be understood in the context of demonstrating the same, as the scope of inquiry under Section 8(7) of the PMLA is rather limited and the Special Court does not have the power to review a decision under Section 8(3) of the PMLA.

**Expression “material before it” vis-à-vis Section 8(7) of the PMLA**

**30.** The expression “material before it” can also be understood from the standpoint of a person who was not a party to the proceedings under Section 8(3) of the PMLA before the Adjudicating Authority. Law does not necessarily bind a party *qua* an order passed by a statutory authority in his absence. Therefore, such a party can certainly invoke Section 8(7) of the PMLA, provided that the circumstances mentioned thereunder are available, coupled with entitlement to possession of the property in respect of which an order has been passed under Section 8(3) of the PMLA, in which case, the Special Court is expected to consider such material placed before it.

**31.** A limited caveat is, however, necessary in the case of a person who has suffered an adverse order before the Adjudicating Authority under Section 8(3) of the PMLA. Such a person cannot, as a matter of right, invoke Section 8(7) of the PMLA. However, by way of exception, such relief may be sought only on the basis of any new material placed for the first time before the Special Court. Such an interpretation would give meaningful effect to the expression “material before it” occurring in Section 8(7) of the PMLA. Any other interpretation would vest the Special Court with a power of review over an order passed under Section 8(3) of the PMLA which is clearly not contemplated under the scheme of the PMLA. The restriction, therefore, is that the material relied upon by such a party in proceedings under Section 8(7) of the PMLA must not have been considered by any forum exercising jurisdiction under Section 8(3) of the PMLA.

**32.** As iterated while discussing Section 8(3)(b) of the PMLA, an order of confiscation by the Special Court under Section 8(7) of the PMLA gives finality to a confirmation order.

## **Procedure and Powers of the Appellate Tribunal**

33. As against the order passed by the Adjudicating Authority under Section 8(3) of the PMLA, an appeal lies to the Appellate Tribunal under Section 26 of the PMLA. Section 25 of the PMLA states that the Appellate Tribunal under the PMLA shall be the one constituted under Section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the “SAFEMA”).

## **Section 25 of the PMLA**

**“25. Appellate Tribunal.—The Appellate Tribunal constituted under sub-section (1) of Section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976) shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.”**

(emphasis supplied)

## **Section 12 of the SAFEMA**

**“12. Constitution of Appellate Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by the Government for hearing appeals against the orders made.**

(a) under Section 7, sub-section (1) of Section 9 or Section 10;

- (b) under Section 68-F, Section 68-I, sub-section (1) of Section 68-K or Section 68-L of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (c) by the Adjudicating Authority or any other authority under the Prevention of Money-laundering Act, 2002 (15 of 2003);
- (d) by the Adjudicating Authorities, Competent Authorities and the Qualifications, Special Director (Appeals) under the Foreign Exchange Management Act, 1999 (42 of 1999).

**(2) The Chairman of the Appellate Tribunal shall be a person who is or has been a Judge of the Supreme Court or of a High Court.”**

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(emphasis supplied)

## **Section 26 of the PMLA**

**“26. Appeal to Appellate Tribunal.—(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.**

(2) Any reporting entity aggrieved by any order of the Director made under sub-section (2) of Section 13, may prefer an appeal to the Appellate Tribunal.

(3) **Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received** and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the Adjudicating Authority or the Director concerned, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.”

(emphasis supplied)

## **Section 35 of the PMLA**

**“35. Procedure and powers of Appellate Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.**

**(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—**

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974)."

(emphasis supplied)

**34.**Section 12(2) of the SAFEMA, 1976 provides that the Appellate Tribunal shall be headed by either a sitting or retired Judge of the High Court or the Supreme Court which by virtue of Section 25 of the PMLA becomes the Appellate Tribunal under the PMLA. Proceedings before it are akin to trying a suit, with the same powers as those vested in a civil Court. These proceedings are deemed to be judicial in nature and orders passed by the Appellate Tribunal have the trappings of a decree of a civil Court. As per Section 35(1) of the PMLA, the Appellate Tribunal can regulate its own procedure, not bound by the procedural constraints laid down by the Code of Civil Procedure, 1908. Thus, the Appellate Tribunal has additional powers which may otherwise not be available with a civil Court. Any person aggrieved by any decision or order of the Appellate Tribunal may further file an appeal to the High Court under Section 42 of the PMLA.

**35.**The fact that a robust mechanism is provided for by fixing a higher qualification for the constitution of the Appellate Tribunal is a clear indicator that a decision under Section 8(3) of the PMLA is not meant to be brought under the judicial scrutiny of the Special Court. We also take note of the time limit prescribed under Section 26(6) of the PMLA for the Appellate Tribunal to dispose of an appeal filed before it as expeditiously as possible, and make an endeavour to do so within a period of six months. This provision not only indicates the urgency for disposal, but also recognises that the right of a party to invoke Section 8(7) of the PMLA, in a given case, cannot be kept in suspense for a long time.

**36.**Thus, when an appeal or a further challenge is pending before the Appellate Tribunal or the concerned higher forum against an order passed under Section 8(3) of the PMLA, the Special Court is expected to refrain from dealing with an application filed under Section 8(7) of the PMLA, without awaiting the disposal of such appeal or further challenge. We also say so in view of the doctrine of merger.

### **Doctrine of merger *vis-à-vis* an order under Section 8(3) of the PMLA**

37. When a challenge is made to an order passed by the Adjudicating Authority under Section 8(3) of the PMLA before the Appellate Tribunal under Section 26 of the PMLA, or the High Court under Section 42 of the PMLA, or the Supreme Court thereafter, the order passed by such higher forum supersedes and replaces the earlier confirmation order, in view of the doctrine of merger. Thus, there can be only one order under Section 8(3) of the PMLA. Once an order under Section 8(3) of the PMLA is challenged, a deemed embargo operates on the conclusion of the proceedings under Section 8(7) of the PMLA. Thus, there is a deemed stay on the proceedings under Section 8(7) of the PMLA until the confirmation order attains finality.

### **Restoration of properties under Section 8(8) of the PMLA**

38. Section 8(8) of the PMLA deals with the consequential action that the Special Court is expected to undertake after a property stands confiscated to the Central Government under Section 8(5) of the PMLA. Section 8(8) of the PMLA restricts the power of the Special Court in considering a claim for restoration, only to a case where the claimant has a legitimate interest in the property and has also suffered

a quantifiable loss as a result of the offence of money-laundering. This is subject to the further restriction that such a claimant has acted in good faith, is not involved in the offence of money-laundering and, despite taking all reasonable precautions, has suffered the loss. Therefore, the onus is heavily placed on the claimant, wherein he is required to prove his *bona fides*.

**39.** The second proviso to Section 8(8) of the PMLA is an exception to Section 8(8) of the PMLA which facilitates a claimant to make a claim for restoration of properties during the pendency of the trial. The circumstances under which such a power can be exercised is on the basis of a prescription in the form of rules. Therefore, the provision itself facilitates rules to be prescribed on the manner in which the aforesaid claim may be considered. This proviso must be read in consonance with Sections 73 and 74 of the PMLA which empowers the Central Government to make the requisite rules that are to be laid before the Parliament before it comes into the statute. The relevant rules in this regard are the Prevention of Money-laundering (Restoration of Confiscated Property) Rules, 2016 (hereinafter referred to as the “**2016 Rules**”), as amended in 2019.

40. At this juncture, we take note of the fact that the second proviso to Section 8(8) of the PMLA, having been introduced by way of a subsequent amendment, is meant to give adequate relief to a claimant. In other words, a claimant need not wait for the conclusion of a trial under the PMLA if he is able to satisfy the requisite parameters as stipulated under the 2016 Rules.

### **Rule 2 of the 2016 Rules**

**“2. Definitions.—**In these rules, unless the context otherwise requires,—

xxx        xxx        xxx

(b) **“claimant” means a person who has acted in good faith and has suffered a quantifiable loss as a result of the offence of Money-laundering despite having taken all reasonable precautions, and is not involved in the offence of money-laundering;”**

(emphasis supplied)

### **Rule 3A of 2016 Rules**

**“3A. Manner of restoration of property during trial. —(1)The Special Court, after framing of the charge under section 4 of the Act, on the basis of an application moved for restoration of a property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18 of the Act prior to confiscation, if it thinks fit, may, for the purposes of the second proviso to sub-section (8) of section 8 of the Act, cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where such property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.”**

(emphasis supplied)

**41.**Though the PMLA does not define a claimant, Rule 2(b) of the 2016 Rules defines a ‘claimant’ as one who has acted in good faith and has suffered a quantifiable loss, pursuant to an offence of money-laundering, even after taking all necessary precautions. An essential condition is that he should not be involved in the offence of money-laundering. Thus, a ‘claimant,’ as mentioned under the proviso, has to be understood on the touchstone of Rule 2(b) of the 2016 Rules. As a necessary corollary, such a person can only be a third party who is not arraigned as an accused, and his entitlement is subject to the conditions imposed by the definition under Rule 2(b) read with Rule 3A of the 2016 Rules.

**42.**Rule 3A of the 2016 Rules deals with the manner in which restoration of a property can be ordered for during the trial. For the exercise of such power, it is mandatory for the charges under Section 4 of the PMLA to have already been framed. Only then can an application under the second proviso to Section 8(8) of the PMLA be filed. Such an application may be for restoration of a property attached under Section 5(1) of the PMLA, or seized or frozen under Sections 17 or 18 of the PMLA which are obviously prior to confiscation, after which due

publication will have to be made. Under this Rule, the Special Court will have to satisfy itself that a ‘claimant’ has established his legitimate interest in the property which would obviously be a question of fact. Thus, the second proviso to Section 8(8) of the PMLA has to be understood and read along with Rule 2(b) and Rule 3A of 2016 Rules.

### **Vesting of Confiscated properties with the Central Government**

**43.**Once an order of confiscation has been made either under Section 8(5), or Section 8(7), or Section 58B, or Section 60(2A) of the PMLA, the confiscated properties vest in favour of the Central Government, as provided under Section 9 of the PMLA. Resultantly, any right or title over the property, *qua* a third party, gets extinguished, since such a vesting becomes absolute. By the operation of law, the Central Government gets ownership of the property, free from any encumbrances. Hence, this provision clearly delineates the final consequence of a confiscation order.

**44.**To sum up, Chapter – III of the PMLA provides a comprehensive picture of how properties involved in the offence of money-laundering are to be dealt with. With the aforesaid discussion, we shall now proceed to analyse the facts of the instant appeal.

## **ANALYSIS**

**45.**Admittedly, the appellant company, having suffered an order under Section 8(3) of the PMLA, had preferred an appeal under Section 26 of the PMLA which was pending on the file of the Appellate Tribunal even at the time of filing of the applications under Sections 8(7) and 8(8) of the PMLA. The fact that the said appeal was pending before the Appellate Tribunal, for want of coram, is not in dispute. The decision of the Adjudicating Authority under Section 8(3) of the PMLA is subject to the outcome of any further challenge to the same.

**46.**As discussed, the powers of the Appellate Tribunal are rather wide and exhaustive. What is referred to under Section 8(7) of the PMLA is a confirmation order which has attained finality. At the cost of repetition, once an order under Section 8(3) of the PMLA is challenged before a higher forum, a deemed embargo operates on the conclusion of the proceedings under Section 8(7) of the PMLA. Hence, the Special Court cannot go into the issues which the higher forums have been entrusted with. When an appeal is provided for under the statute, it gives a vested right to any aggrieved person to exhaust the same.

**47.** In the present case, we are concerned with the decision-making process adopted by the Special Court, as confirmed by the High Court. Instead of deferring the application filed under Section 8(7) of the PMLA, and awaiting the adjudication by the Appellate Tribunal under Section 26 of the PMLA, the Special Court has allowed the said application, for which exhaustive reasons have been given independently on merits. The Special Court has, in effect, rendered the appeal under Section 26 of the PMLA infructuous. The said action at the instance of the Special Court is totally impermissible in law.

**48.** We have already discussed the scope and ambit of the proceedings under Section 8(7) of the PMLA which is predicated upon an order under Section 8(3) of the PMLA that has attained finality. The Special Court is required to act in furtherance of the order passed under Section 8(3) of the PMLA, including those which may be passed by the higher forums, upon being challenged before them. Hence, the aforesaid decision-making process adopted by the Special Court is legally untenable.

**49.** Insofar as the application filed by the appellant under Section 8(8) of the PMLA is concerned, we find that it has been correctly dismissed by

the Special Court. Having preferred an appeal under Section 26 of the PMLA against the order suffered under Section 8(3) of the PMLA, and not having demonstrated that it suffered a quantifiable loss as a result of the offence of money-laundering, the necessary conditions under Section 8(8) of the PMLA have not been satisfied by the appellant company.

**50.** In such view of the matter, we set aside the order passed by the Special Court allowing the application under Section 8(7) of the PMLA, as confirmed by the High Court in the impugned order. We are also conscious of the fact that after filing the present appeal, the Appellate Tribunal has dismissed the appeal under Section 26 of the PMLA, as having become infructuous.

**51.** Hence, the interest of justice would require that the order passed by the Appellate Tribunal under Section 26 of the PMLA also be set aside, as merits have not been gone into by the Appellate Tribunal for no fault of the appellant. It would only be fair and just to restore the said appeal for a decision on merits.

## **CONCLUSION**

52. On the basis of the interpretation given by us in this judgment, we conclude as follows:

- Section 8(7) and Section 8(8) of the PMLA are stand-alone provisions.
- Section 8(7) of the PMLA gets attracted only in case of a contingency and an application under the said provision can be decided by the Special Court only once the confirmation order attains finality.
- The expression “material before it” occurring in Section 8(7) of the PMLA has a limited import to the extent of showing the contingency and the entitlement to possession as regards the Director or any third party. In case of a party who has suffered an adverse order under Section 8(3) of the PMLA, relief under Section 8(7) of the PMLA can be sought for, provided there is new material that was not placed before or considered by the Adjudicating Authority under Section 8(3) of the PMLA, or by the higher forums, if so challenged.

- An application under the second proviso to Section 8(8) of the PMLA can only be filed subject to satisfying the essential conditions laid down by Rules 2(b) and 3A of the 2016 Rules.

**53.**For the foregoing reasons, we set aside the order dated 15.09.2022 passed by the Special Court allowing the application filed by the respondent under Section 8(7) of the PMLA, as confirmed by the High Court vide the impugned order dated 27.02.2023. The application filed by the appellant under Section 8(8) of the PMLA was not maintainable.

## **DIRECTIONS**

**54.**Consequently, the following directions are issued:

- (i) The Appellate Tribunal is directed to take up the appeal filed by the appellant under Section 26 of the PMLA on its file, notwithstanding its earlier order passed on 23.08.2023, and decide it on its own merits, within a period of 4 weeks from the date of receipt of a copy of this judgment.
- (ii) The application filed by the respondent under Section 8(7) of the PMLA is directed to be kept pending and be taken up after the disposal of the challenge to the order under Section 8(3) of the PMLA by the higher forum(s).

**55.**We make it clear that our factual observations, being *prima facie* in nature, shall have no bearing on the further proceedings.

**56.**The appeal stands allowed, accordingly.

**57.**Pending application(s), if any, shall stand disposed of.

..... J.

**(M. M. SUNDRESH)**

..... J.

**(NONGMEIKAPAM KOTISWAR SINGH)**

NEW DELHI;

FEBRUARY 06, 2026