IN THE COURT OF SH. ABHISHEK GOYAL, ADDITIONAL SESSIONS JUDGE-03, CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI

Directorate of Enforcement Vs. M/s. Sunstar Overseas Ltd. & Ors.
CNR No.: DLCT01-013456-2024
CC No.: 01/2024
ECIR No.: GNZO/09/2021
Under Sections: 3/4 of PMLA Act, 2002
PS.: EOW

25.09.2024

Present : Mr. Simon Benjamin, Ld. SPP for ED. *(through video conferencing)*
Ms. Aditi Singh, Ld. Proxy Counsel for Mr. Simon Benjamin, Ld. SPP for ED.
Mr. Yash Datt, Ld. Counsel for the accused, namely, Rakesh Kumar Gulati. *(through video conferencing)*
Ms. Bani Dikshit, Mr. Samarth Krishan Luthra, Ld. Counsel for the accused Paramjeet Sharma. *(through video conferencing)*
Mr. Yash Vardan, Ld. Counsel for the accused, namely, Ajay Yadav. *(through video conferencing)*
The accused, namely, Ajay Yadav, Rakesh Kumar Gulati and Paramjeet @ Paramjeet Sharma have been produced from judicial custody from CJ-07, Tihar Jail. *(through video conferencing mode).*

ORDER ON COGNIZANCE

1. The genesis of the present complaint, in terms of the provisions under Section 44 read with Section 45(1) of the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as **'PMLA'***), for the commission of the offence under Section 3 read with Section 70 PMLA, made punishable under Section 4 thereof, is the registration of Enforcement Case Information Report (***ECIR***) No. GNZO/09/2021, dated 09.04.2021. In turn, the inception/registration of the said ECIR, is premised/based on an FIR No. RCHG2020A0021, dated 31.12.2020, registered by Central Bureau of Investigation (CBI), Anti-Corruption Bureau

(ACB), Chandigarh against M/s. Sunstar Overseas Limited (**Accused No. 1** herein) and its then, directors, for the commission of offence(s) under Section 120B read with Section(s) 406, 409, 420 of the Indian Penal Code, 1860 (*hereinafter referred to as '**IPC**'*) and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as '**PC Act**'*). Needless to outrightly observe that the present complaint is being filed by the Assistant Director, Directorate of Enforcement (ED), Ministry of Finance, Government of India, pursuant to the authorization, issued by the Government of India, Ministry of Finance, Department of Revenue *vide* F.No.6/14/2008-ES dated 11.11.2014. Further, the present complaint is stated to have been preferred within a period of 60 (sixty) days of arrest of accused persons, namely, Rakesh Kumar Gulati (**Accused No. 11**), Ajay Yadav (**Accused No. 12**), and Paramjeet @ Paramjeet Sharma (**Accused No. 13**), as per the mandate of Section 65 PMLA read with Section 167 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as '**Cr.P.C.**'*). Apposite to further note at the outset, the present complaint has been preferred against a total of 25 (twenty-five) accused (*hereinafter collectively referred to as the '**accused**'*), comprising of both, companies/juristic entities as well as individuals and wherein, as aforenoted, Accused Nos. 11, 12 and 13 are presently under judicial custody in relation to the present proceedings.

2. Tersely put, the case of the prosecution/ED is that the aforenoted FIR bearing; RCHG2020A0021, dated 31.12.2020 was registered by CBI, ACB, Chandigarh against M/s. Sunstar Overseas Limited and its then, directors for the offences under IPC and PC Act, as specified hereinabove, basis a complaint filed

by the (then) Chief Manager of Punjab National Bank, Hindu College Branch, Sonepat, Haryana, against the said company other individuals, as specified under **para 2.1** of the present complaint. Relevantly, under the said complaint it was *inter alia* averred that the said company and individuals/accused persons availed of various credit facilities from a *'consortium of 9 (nine) lender banks'*, however, diverted/siphoned off the said loan funds, thereby, failed to repay the loan amounts to the banks and the process committed, deliberately, intentionally, willfully and while acting in connivance/criminal conspiracy, the said offences. It was further alleged therein that the accused company also violated the terms and conditions of the loan agreements, in so far as, the hypothecated goods, against the loan(s)/credit facilities, were wrongfully/illegally disposed of, without deposition the sale proceeds thereof in the 'Cash Credit Accounts', in turn, violating the mandate of such agreements. As a consequence of such fraud committed by M/s. Sunstar Overseas Ltd., acting also through its directors/promoters/employees and other(s), offences of; criminal conspiracy, criminal misappropriation, criminal breach of trust, cheating, fraud, etc., were committed by such individuals/entities, causing a wrongful loss of around Rs. 951.88 Crore to the consortium bank, comprising of; Punjab National Bank (complainant in the said FIR case), Corporation Bank, City Union Bank, Karur Vysya Bank, Karnataka Bank, Canara Bank, ICICI Bank, IDBI Bank and State Bank of India. Strikingly, on the various acts/omissions/incidents of fraud/offences being found out/determined, the account of accused company was marked as Non-Performing Asset/NPA w.e.f. 31.03.2015 by the Statutory Auditor on 31.03.2017 and the consortium of lender banks approved a Master Restructuring Agreement Package on 07.11.2015. Significantly, the lead banker of the consortium, *i.e.,* Karur Vysya Bank, Karol Bagh Branch, New Delhi, declared the account of the accused company as '*fraud*' and reported it to RBI on 08.07.2019. Apposite to further reiterate here that considering that the provisions under Section 120B r/w Section(s) 406, 409, 420 IPC and Section 13(2) r/w Section 13(1)(d) of PC Act are specified as scheduled offences under PMLA, investigation was initiated by ED, upon registration of instant ECIR on 09.04.2021.

3. Relevantly, upon conclusion of investigation in the FIR case, chargesheet was filed on 25.01.2023 is the Court of Ld. Special Judicial Magistrate (CBI), Panchkula and *vide* order dated 05.04.2023, Ld. Special Judicial Magistrate directed further investigation on the allegations of arbitration records and disposal of stocks. Consequently, upon further investigation being undertaken, CBI filed its chargesheet on 20.11.2023 under Section 173 Cr.P.C. before the Court of Sh. Vinod Kumar, Special Judicial Magistrate, CBI, Haryana at Panchkula (CNR No. HRPK030152212023). Notably, the finding of CBI Investigation, as per chargesheet have been detailed under **para 2.5** of the present case.

4. Strikingly, **para 4** of the instant complaint specifies that based on an application filed by ICICI Bank Ltd., in terms of the provisions under Section 7[1] of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as '**IBC**'*), before the National Company Law Tribunal (*hereinafter referred to as '**NCLT**'*), Corporate Insolvency Resolution Process (*hereinafter referred to*

[1] Section 7 IBC provides, *"7. **Initiation of corporate insolvency resolution process by financial creditor-**(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.***(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5)…"*

as 'CIRP') was initiated in respect of M/s. Sunstar Overseas Ltd., which commenced on 20.07.2018 and an Interim Resolution Professional/IRP[2] was appointed, upon admission of such application. Notably, as per the report of IRP before NCLT, the claim amount, as admitted by the Financial Creditors (*hereinafter referred to as 'FCs'*) and duly verified by IRP, stood at Rs. 1091,95,57,209/- (Rupees One Thousand Ninety One Crore Ninety Five Lakhs Fifty Seven Thousand Two Hundred and Nine only), as on 14.08.2018. As per the mandate IBC, Mr. Gian Chand Narang was approved as the Resolution Professional/RP[3] for the accused company, pursuant to order dated 20.07.2018 of NCLT. Pertinent to further note, pursuant to ensuing CIRP, NCLT *vide* its order dated 12.09.l2019, approved the resolution plan of the Resolution Applicant[4], Ajay Yadav & Co., body of individuals, through its Special Purpose Vehicle (*'SPV' for short*), M/s. Umaiza Infracon LLP (**Accused No. 21** herein). As per the approved Resolution Plan dated 20.04.2019, total admitted claims of the accused company stood at Rs. 1274.14 Crore, comprising of claims of the Financial Creditors/FCs to a tune of Rs.1091.96 Crore, whilst that of Operational Creditors, were admitted as Rs. 182.18 Crore. Pertinently, as per the approved Resolution Plan[5], an amount of Rs.196 Crore was agreed to be paid in total on or before 11.10.2019 by the Resolution Applicant, whereupon the total shareholding of M/s.

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[2] Section 13 IBC provides, *"**13. Declaration of moratorium and public announcement**-(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order –***(c) appoint an interim resolution professional in the manner as laid down in section 16…"*

[3] As per Section 22 of IBC.

[4] Section 5(25) IBC provides, *"(25) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25 or pursuant to section 54K, as the case may be."*

[5] Refer to Section 31 of IBC.

Sunstar Overseas Ltd. was to be held/taken over by M/s. Umaiza Infracon LLP.

5. Markedly, **para nos. 5, 6** and **7** of the instant complaint specify the particulars of search conducted during PMLA investigation; statements of key persons of corporate entities, involved in the instant case, their aides and associates and individuals, recorded under Section 50(2) of PMLA and scrutiny of seized documents/records/etc., by the concerned authorities during such investigation, respectively. In particular, it is specified that search in terms of the provisions under Section 17 PMLA was conducted during the period from 16.01.2024 to 18.01.2024 at twenty-one premises, related to Sunstar Group of companies, its ex-directors/promoters and other key persons located at Delhi, Haryana, Punjab and Gujarat. The same is stated to be followed by searches of lockers on various occasions, based on the lockers identified and frozen under Section 17(1A) of PMLA, during such search operation, besides seizure of certain properties and documents from the premises of M/s. Sunstar Overseas Ltd., its ex-directors, promoters and other entities, key persons, etc., were made/carried out. Notably, the said search is proclaimed to have led to the seizure of several incriminating documents and records, including digital records, cash amount valued at Rs. 1.19 Crore and gold bullion of 226 gm. Pertinent to note that pursuant to the proceedings undertaken under the Original Application/OA, dated 14.02.2024, filed under Section 17(4) of PMLA, before the Hon'ble Chairperson, Adjudicating Authority (PMLA), New Delhi for seeking retention of seized documents/records and properties, the Hon'ble Adjudicating Authority, is asserted to have allowed the said OA and confirmed

the retention of seized properties and documents/records *vide* its order dated 21.06.2024.

6. The complaint further specifies that the scrutiny of air tickets and hotel booking details for travel from Delhi to Mumbai, Amritsar, etc., recovered and seized from accused Paramjeet's cabin at premises of M/s. Shivakriti Agro Pvt. Ltd. during search under Section 17 of PMLA established that accused, Ajay Yadav visited the Mumbai office of NBFCs along with accused persons, namely, Paramjeet and Rohit Aggarwal, Manik Aggarwal, etc., to give effect to the diversion of *'proceeds of crime'* from entities owned/controlled by Rohit Aggarwal and Manik Aggarwal to his entity, i.e., M/s. Umaiza Infracon LLP, which was, eventually, used in NCLT proceedings/CIRP to acquire M/s. Sunstar Overseas Ltd. Ajay Yadav is also asserted to have visited with Rohit Aggarwal to Amritsar, where another plant of M/s. Sunstar Overseas Ltd. is situated. The said tickets/hotel bookings are further proclaimed to have been purchased/made by accused, Paramjeet, with the dates of travel to Mumbai asserted to be in proximity in time, with the dates of diversion of funds/proceeds of crime through NBFCs. It is also specified under the complaint that during the course of investigation that ensued and upon finding sufficient reasons to believe that the accused persons, namely, Rakesh Kumar Gulati (**Accused No. 11**), Ajay Yadav (**Accused No. 12**), and Paramjeet @ Paramjeet Sharma (**Accused No. 13**) to be guilty of the offence under Section(s) 3/4 of PMLA, the said accused persons were arrested on 01.07.2024, in terms of the provisions under Section 19(1) PMLA, and produced before the Ld. Predecessor Judge on 02.07.2024, leading to their initial remand with ED, pursuant to order dated 02.07.2024 of the Ld. Predecessor Judge,

followed by their subsequent judicial custody on 09.07.2024, which has been extended from time to time.

7. Conspicuously, **para 9** of the instant complaint specifies the results of ensuing investigation under PMLA and the money trail. In this regard, it has been outrightly asserted under the complaint that the scrutiny of case records collected, as well as from the revelations/disclosure/submissions made by various persons under Section 17/50 of PMLA, several groups of debtor firms/companies were identified, which were found to be either fictitious or created as fictitious debtor(s) by M/s. Sunstar Overseas Ltd., solely for the purpose of generation of 'proceeds of crime' by diversion/siphoning off of rice stocks procured out of bank loans provided by lender banks. In particular, upon scrutiny of list of debtors of M/s. Sunstar Overseas Ltd. (as on 31.03.2019), it was determined that trade receivables against the sale of goods (rice) to domestic companies/firms which remained outstanding or became bad debt, were asserted by the accused company, leading to initiation of arbitration proceedings, culminating into pronouncement of arbitration awards, either in favour of the claim of M/s. Sunstar Overseas Ltd. or dismissal of claims (and counter claims, if any) before it had gone to CIRP proceedings. Relevantly, upon such scrutiny it was determined that the said arbitral proceedings were collusive and basis sham transaction or liabilities or entities, leading to the passing of such award. Conclusively, upon investigation, identification and quantification of the 'proceeds of crime' to the tune of Rs.194,42,68,188/-, generated out of such criminal activity relating to the scheduled offences, was ascertained by the investigating authorities.

8. Concomitantly, investigations revealed that M/s. Sunstar Overseas Ltd., purportedly sold/purchased rice to/from four Delhi-based firms, namely, M/s Aastha Enterprises, M/s RA Enterprises, M/s Om Sai Traders and M/s Universal Agro and upon the analysis of the bank accounts of M/s. RA Enterprise (A/c. No.- 03302560009006), M/s. OM Sai Traders (A/c. No.- 03302560009290) and M/s. Aastha Enterprise (A/c. No.- 50200014812321), maintained with HDFC bank, it is asserted to have been determined that during the period from 12.03.2013 to 26.06.2018, M/s. Sunstar Overseas Ltd. made fake sales/purchases with the said fictitious buyers/sellers and as a result, it siphoned off an amount of Rs. 75,39,32,847/-, without there being any underlying purchase of rice, as otherwise proclaimed. It is further proclaimed that pursuant to investigation, it was revealed that M/s Sunstar Overseas Ltd. purportedly showed stock as sold to another Delhi-based firm, namely, M/s. Tushar Trading Co., which was shown as the buyer of M/s Sunstar Overseas Ltd. for rice stock, however, there was no genuine sale of rice as this firm never sold or purchased rice from M/s Sunstar Overseas Ltd. It is also revealed that there was no actual business in this firm and whatever dealings were shown in the name of above firm with M/s Sunstar Overseas Ltd. was done only on commission basis and not backed by underlying actual sale/purchase of rice or any commodity. As per the complainant, the *modus operandi* was determined pertaining to the involvement of all the said entities in sham trade transactions known as *'Circular Trading'*, involving M/s. Sunstar Overseas Ltd., leading to the siphoning off stock of rice to the tune of Rs. 245,21,15,283/-. Conclusively, it is professed to have been determined that M/s. Sunstar Overseas Ltd., through its the then

directors/promoters, i.e., Rohit Aggarwal and Manik Aggarwal, created the aforenoted fictitious buyers, spanning over the time, so that the rice stock could be disposed of completely without the knowledge of the lender banks as well as the stock and/or the loan amounts could be diverted to its, then, related entities, *i.e.,* M/s Star Global Multi Ventures Pvt. Ltd. and M/s. Star Rice Land Pvt. Ltd. Further, reiterating the same, the complaint records that the aforesaid firms were shown by M/s. Sunstar Overseas Ltd. as fictitious buyers just to hide the fact of diversion of rice stock and loan funds to its aforenoted related entities and thereby, to siphon-off the loan funds availed from the lender banks to both its related corporate entities, eventually, leading to generation of 'proceeds of crime' to the tune of Rs. 322,01,18,130/- by M/s. Sunstar Overseas Ltd. out of criminal activity relating to the scheduled offences, registered in the FIR of the CBI.

9. It is also asserted in the complaint that it was revealed on investigation that there was generation of 'proceeds of crime' through transactions with overseas buyers under the garb of exports. In particular, a sum of Rs. 14,88,27,686/-, was determined to be shown outstanding on M/s. JFP Gulf General Trading LLC on account of M/s. Sunstar Overseas Ltd., which was diverted to M/s. Star Rice Land Pvt. Ltd. under the cover of sham export transactions and M/s. Star Rice Land Pvt. Ltd. later siphoned off the said funds to M/s. Umaiza Infracon LLP to be ultimately used in the acquisition of assets and properties of M/s. Sunstar Overseas Ltd. in NCLT. Correspondingly, it emerged during the course of investigation that while M/s. SLT Imports Inc. continued to hold an indirect but actual debt of M/s. Sunstar Overseas Ltd. for an amount of Rs. 11,32,15,718/- (as on

31.03.2019), M/s. Star Global Multi Ventures Pvt. Ltd. (related entity of M/s. Sunstar Overseas Ltd.), persevered to supply rice to M/s. SLT Imports Inc. as a major overseas counterpart. It is also proclaimed to have been revealed pursuant to the investigation that the directors of Sunstar Overseas Ltd. knew these facts, however, still permitted to continue its business with their related entity. Investigations are stated to have further revealed that bill discounting was in practice in such export consignments, whereby, actual price paid by M/s. SLT Imports Inc. to such overseas related buyer entity was known to them only and not to the Indian exporting entities and that the export proceeds were received only through Jashan Trading LLC or AV Tradelinks or Narva Foodstuff LLC, Dubai as the case may be for all such export consignments to M/s. SLT Imports Inc. In particular, it is asserted that it was emerged that the outstanding amount of Rs. 8,04,90,685/-, pending with M/s. SLT Imports Inc. (consignee) for shipments done by M/s. Basic India Ltd. on account of M/s. Sunstar Overseas Ltd. was diverted through M/s. Jashan Trading LLC (Buyer) or AV Tradelinks to M/s. Star Global Multi Ventures Pvt. Ltd. Ergo, complaint records that an amount of Rs. 8,04,90,685/-, outstanding on M/s. SLT Imports Inc. was diverted to M/s. Star Global Multi Ventures Pvt. Ltd. under the cover of overvalued/sham export transactions, which amount was further siphoned off to M/s. Umaiza Infracon LLP, ultimately used in the acquisition of assets and properties of M/s. Sunstar overseas Ltd., before NCLT in CIRP. Cumulatively, as per the complainant/complaint; M/s Star Rice Land Pvt. Ltd. and M/s. Star Global Multi Ventures Pvt Ltd., siphon-off the loan funds availed from the lender banks to both these corporate entities involved in the money-laundering leading to generation, concealment and travel of 'proceeds of crime' totaling to the tune of Rs. 22,93,18,371/- by M/s. Sunstar Overseas Ltd. through it's the then directors out of criminal activity relating to the scheduled offences registered in the FIR of the CBI. Conclusively, it is proclaimed under the complaint that the aforenoted activities of M/s. Sunstar Overseas Ltd., through its ex-directors/ promoters led to generation of 'proceeds of crime', cumulatively amounting to a tune of Rs. 539,37,04,689/-, out of criminal activity relating to the scheduled offences registered in the FIR of the CBI, in the following manner;

Sr. No.	***Activity Asserted***	***Proceeds of crime identified. (in INR)***
1.	*Creation of Fictitious Indigenous Buyers companies/ firms & Debtors and sham Arbitration proceedings*	*1,94,42,68,188/-*
2.	*Fictitious trade transactions with M/s. Sunstar Overseas Ltd. and its related entities*	*75,39,32,847/- + 1,40,70,000/- + 2,45,21,15,283/-*
3.	*Transactions with overseas buyers under the garb of sham/ overvalued export transactions*	*22,93,18,371/-*
	TOTAL	***5,39,37,04,689/-***

10. Relevantly, it is further asserted in the complaint in the investigation conducted by ED, as on date, exposed layers of acquisition, concealment, diversion, and projection as untainted property of 'proceeds of crime' found involved in the instant case, as specified under **para 9.7** of the complaint. In particular, the complaint records that M/s. Star Global Multi Ventures Pvt. Ltd., and M/s. RRPL Foods Pvt. Ltd., related entity of M/s. Sunstar Overseas Ltd., which are asserted to be found involved in the activities of money laundering, were determined to be beneficially owned/controlled by accused Rohit Aggarwal (Accused No. 6) and Naresh Aggarwal (Accused No. 8). Similarly, as per the investigations conducted, *i.e.,* M/s. Star Rice

Land Pvt. Ltd., M/s. Broadway Distribution Pvt. Ltd., and M/s. D.H. Trading Co., which are asserted to be found involved in the activities of money laundering, were determined to be beneficially owned/controlled by accused, namely, Manik Aggarwal (Accused No. 7) and Rakesh Aggarwal (Accused No. 9).

11. Correspondingly, it is asserted under the complaint (under **para 9.8** thereof) that it was determined upon investigation that certain indigenous Assets Reconstruction Company(ies)/ARC and Non-banking Financial Companies/NBFCs were deployed by the ex-directors/promoters of accused company, in order to enable diversion of the 'proceeds of crime' generated and concealed through the entities of M/s. Sunstar Overseas Ltd., hereinunder observed, and the proceeds of crime to a tune of Rs. 72 Crore is proclaimed to be found routed/transferred from the said related/unrelated and dummy entities/firms to certain NBFCs under the cover of sham borrowings by such NBFCs. Notably, in the ensuing investigation, it is proclaimed that the names of two NBFCs, *i.e.,* M/s. Compact Capital Ltd. and M/s. Kalptaru Fincap Ltd., as well as, one ARC, M/s. Omkara Assets Reconstruction Pvt. Ltd. emerged during investigation.

12. The complaint further records that it was revealed upon investigation that the proceeds of crime to a tune of Rs. 6 Crore and Rs. 4 Crore were transferred on 18.10.2019 and 07.11.2019 by M/s. Star Global Multi Ventures Pvt. Ltd. to two unrelated entities, i.e., M/s Vinod Rice Mill Pvt. Ltd. and M/s Purshotam Profiles Pvt. Ltd., respectively. Notably, one Madan Gheek, a friend of Rohit Aggarwal, is further asserted to have been determined as the director and owner of M/s. Vinod Rice

Mill Pvt. Ltd., whilst, Sachin Aggarwal, close relative (brother-in-law or *saadu*) of Rohit Aggarwal, ex-director/promoter of the accused company was determined to be the director/promoter of M/s Purshotam Profiles Pvt. Ltd. Scrutiny of statement of HDFC Bank A/c No.; 00030340062694 of M/s Star Global Multi Ventures Pvt. Ltd., is also declared to have revealed that the company diverted proceeds of crime to a tune of Rs. 1,35,00,000/- to M/s Aastha Enterprises on 05.10.2018 at 13:05 hrs., under the garb of sham trade transaction. However, M/s. Aastha Enterprises instantaneously on the same day, i.e., on 05.10.2018 at 14:28 hrs. is proclaimed to have transferred the said proceeds of crime, after deducting Rs. 15,120/- as commission, to M/s Shivakriti Fashion Pvt. Ltd. (later renamed as M/s. Shivakriti Agro Pvt. Ltd.), being a sham transaction, as M/s. Aastha Enterprises was determined to have no real business of sale/purchase and only issued fake bills, besides the said fund was also found to have never been returned to M/s. Aastha Enterprises.

13. Conspicuously, under **para 9.10** of the complaint, it is recorded that the pursuant to the investigation conducted by ED, it was determined that varied overseas corporate entities were involved in concealment and diversion of the 'proceeds of crime' under sham/overvalued export transactions. In particular, from a scrutiny of statement of Axis Bank account No. 918020001523205 of M/s. Shivakriti Agro Pvt. Ltd., it was revealed that it received Rs. 64,14,79,414/- from the Emirates Islamic Bank (UAE) account of M/s. Jashan Trading LLC, out of which, Rs.8,19,56,274/- was determined to be received till 11.10.2019. Concomitantly, M/s. Meenaraj General Trading LLC transferred from its Abu Dhabi Commercial Bank (UAE), fund

of Rs. 1,84,77,27,118/-, out of which, Rs.4 5,99,34,754/- was determined to have been received till 11.10.2019. Significantly, **para 9.11** of the complaint details the manner in which, the 'proceeds of crime' have been asserted to be utilized for acquisition of M/s. Sunstar Overseas Ltd. by M/s. Umaiza Infracon LLP, in the ongoing proceedings before NCLT. In particular, it has been recorded that the 'proceeds of crime' diverted through various layers and routes, as explicated under the complaint, was utilized by Ajay Yadav & Co. through its SPV, i.e., M/s. Umaiza Infracon LLP (through its partner Ajay Yadav), in order to acquire the ownership of M/s. Sunstar Overseas Ltd., including its assets and properties at Bahalgarh and Amritsar, in NCLT on 12.09.2019. In this endeavor, the investigation findings are further asserted to have revealed that Ajay Yadav, active individual of Ajay Yadav & Co. as well as active partner of M/s. Umaiza Infracon LLP, acted on the directions and advice of ex-directors/promoters of M/s. Sunstar Overseas Ltd. It is further fervently emphasized under the instant complaint that the successful Resolution Applicant of M/s. Sunstar Overseas Ltd. in NCLT, *i.e.,* Ajay Yadav & Co. through its SPV, M/s. Umaiza Infracon LLP, is merely its sham owner even post CIRP/resolution process, whereas, the ex-directors/promoters of M/s. Sunstar Overseas Ltd. led by Rohit Aggarwal and Manik Aggarwal, persevere to have its indirect control and actual business from behind a frontal entity, *i.e.,* M/s Shivakriti Agro Pvt. Ltd., which finally acquired M/s. Sunstar Overseas Ltd. by means of a sham instrument of Facility Agreement. By this *modus operandi*, it is further declared under the complaint that the ex-directors/controllers/promoters of M/s. Sunstar Overseas Ltd., knowingly became a party and were/have been actually involved in projecting the assets and properties of Sunstar Overseas Ltd. acquired by using said ‘proceeds of crime’ as untainted property (as also detailed under **para 9.12** of the complaint).

14. Considerably, during the course of proceedings before this Court, Ld. SPP for ED argued and reiterated the *modus operandi*/manner in which the offence of money laundering is asserted to have been committed by the accused. In particular, Ld. SPP for ED submitted that the identification of activities and processes connected with the ‘proceeds of crime’ involved in the instant case, led to the determination of the following *‘four-step procedure/modus operandi’*, adopted by the accused persons/entities for commission of money-laundering in the instant case;

A. At the outset, Ld. SPP for ED reaffirmed that in the first step, M/s. Sunstar Overseas Ltd., through its then directors/promoters, generated proceeds of crime to a tune of Rs. 539,37,04,689/- (Rupees Five Hundred and Thirty Nine Crores Thirty Seven Lakhs Four Thousand Six Hundred and Eighty Nine only) by following three modes;

i) creation of fictitious indigenous buyer companies/firms and debtors by M/s. Sunstar Overseas Ltd., through its then directors and subsequent engagement in sham Arbitration proceedings before Ld. Arbitral Tribunal(s), generating ‘proceeds of crime’ to a tune of Rs. 194,42,68,188/- (Rupees One Hundred and Ninety Four Crores Forty Two Lakhs Sixty Eight Thousand One Hundred and Eighty Eight only);

ii) engagement in fictitious trade transactions between M/s. Sunstar Overseas Ltd. and its related entities, *i.e.,* M/s.

Star Global Multi Ventures Pvt. Ltd. and M/s. Star Rice Land Pvt. Ltd. with fictitious sellers/buyer firms under the garb of sham trade transactions, thereby, generating proceeds of crime, amounting to Rs. 322,01,18,130/- (Rupees Three Hundred and Twenty Two Crores One Lakh Eighteen Thousand One Hundred and Thirty only);

iii) engagement of transaction by M/s. Sunstar Overseas Ltd. and its related entities, *i.e.,* M/s. Star Global Multi Ventures Pvt. Ltd. and M/s. Star Rice Land Pvt. Ltd. with overseas buyers, *i.e.,* M/s. JFP Gulf General Trading LLC and M/s. SLT Imports Inc and Jashan Trading LLC, under the garb of sham/overvalued export transactions resulting in diversion of outstanding export proceeds, consequently, generating proceeds of crime to a tune of Rs. 22,93,18,371/- (Rupees Twenty Two Crores Ninety Three Lakhs Eighteen Thousand Three Hundred and Seventy One only).

Ld. SPP for the ED further asserted that the above proceeds of crime, were acquired, concealed, and possessed by aforenoted two related entities of Sunstar Overseas Ltd. Further, as per Ld. SPP for ED, M/s. Star Rice Land Pvt. Ltd., diverted the proceeds of crime so acquired and concealed by it to its two shell entities, namely, M/s. Broadway Distribution Pvt. Ltd. and M/s. DH Trading Co. under the garb of sham trade transactions and/or diversion of rice stocks;

B. In the second step, entities beneficially owned/controlled by ex-directors/promoters of Sunstar Overseas Ltd., i.e., M/s. Star Global Multi Ventures Pvt. Ltd., M/s. Star Rice Land Pvt. Ltd., M/s. Broadway Distribution Pvt. Ltd. and M/s. DH

Trading Co. are proclaimed by Ld. SPP for ED to have diverted the 'proceeds of crime' to NBFC, *i.e.,* M/s. Kalptaru Fincap Ltd., out of aforenoted acquired, concealed and diverted 'proceeds of crime', either directly or through layers of ARC and other NBFCs, namely, M/s. Omkara Assets Reconstruction Pvt. Ltd. and M/s. Compact Capital Ltd., under the cover of sham borrowings/ loans and investments. M/s. Kalptaru Fincap Ltd., is consequently proclaimed to have thenceforth, possessed, concealed and diverted the above said 'proceeds of crime' to the tune of Rs.72 Crore to a shell entity*, i.e.,* M/s. Umaiza Infracon LLP, created as special purpose corporate vehicle of the successful Resolution Applicant, namely, Ajay Yadav & Co. The said concealment as well as diversion is further avowed by Ld. SPP for ED to be carried out under the garb of sham loan/borrowings. Subsequently, M/s. Umaiza Infracon LLP is declared to have deployed the said 'proceeds of crime', received from aforesaid entities in acquiring the assets and properties of M/s. Sunstar Overseas Ltd., in NCLT. Notably, it was further asserted that the proceedings before NCLT were conducted without verifying the source and nature of funds used by successful resolution applicant. Correspondingly, two other indigenous companies, namely, M/s. Vinod Rice Mill Pvt. Ltd. and M/s. Purshotam Profiles Pvt. Ltd. also involved themselves and knowingly assisted in possession, concealment, and diversion of 'proceeds of crime' to the tune of Rs. 10 Crore from M/s. Star Global Multi Ventures Pvt. Ltd. to M/s. Umaiza Infracon LLP, which proceeds of crime, was further declared to have been used to acquire the assets and properties of M/s. Sunstar Overseas Ltd. in NCLT;

C. Ld. SPP further asserted that in the third step, the dummy entity(ies) of ex-directors/promoters of M/s. Sunstar Overseas Ltd., *i.e.,* M/s. Shivakriti Agro Pvt. Ltd. acquired 'proceeds of crime' by way of diversion of stocks of rice from M/s. Sunstar Overseas Ltd. and M/s. Star Global Multi Ventures Pvt. Ltd. as its certain seller firms, *i.e.,* M/s. AJ International, M/s. Sudhanshu Exim Pvt. Ltd. and M/s. Om Sai Traders, etc., engaged for purchase of rice/paddy during initial period of rice business, were found fictitious during investigation. Further, the 'proceeds of crime' to the tune of Rs. 1.35 Crore was asserted to be found possessed and diverted from M/s. Star Global Multi Ventures Pvt. Ltd. to M/s. Shivakriti Agro Pvt. Ltd. through a fictitious seller/buyer firm, *i.e.,* M/s. Aastha Enterprise, under the garb of sham trade transactions without any underlying sale/purchase of rice. M/s. Shivakriti Agro Pvt. Ltd. is further asserted by Ld. SPP for ED to have possessed, concealed and further diverted the said 'proceeds of crime' to M/s. Umaiza Infracon LLP on the same day itself. Further, as per Ld. SPP for ED, M/s. Shivakriti Agro Pvt. Ltd. received 'proceeds of crime' diverted from M/s. Sunstar Overseas Ltd. to overseas erstwhile related entity, i.e., M/s. Jashan Trading LLC and related entity, i.e., M/s. Meenaraj General Trading LLC, under the cover of advances against future exports;

D. Lastly, as per Ld. SPP for ED, in the fourth step, out of aforesaid possessed 'proceeds of crime', M/s Shivakriti Agro Pvt. Ltd. concealed and diverted the 'proceeds of crime' to the tune of Rs. 146 Crore, during a period from 24.09.2019 to

20.03.2020, under the cover of a sham instrument of Facility Agreement dated 30.09.2019 intending to take over the assets and properties of M/s. Sunstar Overseas Ltd. This agreement, is further avowed by Ld. SPP for ED to have been preconceived and designed by the ex-directors/ex-promoters of M/s. Sunstar Overseas Ltd., with the aid and associates, solely with an intention to regain, indirect but actual control and business of M/s. Sunstar Overseas Ltd. with the help of a shell entity*, i.e.,* M/s. Umaiza Infracon LLP and dummy entity M/s. Shivakriti Agro Pvt. Ltd. even after NCLT proceedings and thereby, causing huge loss to the banks.

15. Notably, the role/conduct of each of the accused named in the instant complaint is detailed and enumerated under **para 10** of the present complaint, which was strenuously accentuated by Ld. SPP for ED and thoroughly perused by this Court. Needless to mention, Ld. SPP for ED has further referred to the statements of various persons/accused/witnesses, recorded by ED in terms of the provisions under Section 50 of PMLA.

16. The averments of Ld. SPP for ED have been heard as well as documents, material, evidence, notes, etc., placed on record of this Court have been thoroughly perused.

17. Before proceeding further, this Court deems it pertinent to outrightly make a reference to the order passed by the Ld. Predecessor Judge dated 02.07.2024 in ED's application under Section 65 PMLA r/w S. 167 Cr.P.C., *inter alia*[6]*,* dealing

[6] Ld. Predecessor Judge had further rejected the objection of lack of territorial jurisdiction in view of the decision of the Hon'ble Supreme Court in ***Rana Ayyub v. Directorate of Enforcement, (2023) 4 SCC 357***, wherein the Hon'ble Court *inter alia* observed, *"40. Coming to the second question arising for our consideration, clause (a) of sub-section (1) of Section 44 leaves no semblance of any doubt that the offence of money-laundering is triable only by the Special Court constituted for the area in which the offence of money-laundering has been committed. <u>To find out the area in which the offence of money-laundering has been committed, we may have to go back to the definition in Section 3 of the PMLA</u>.*41. As we have pointed out earlier, the <u>involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money-laundering. These processes or activities include : (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property</u>.*42. In other*

with the objection as to the accused persons before the Ld. Predecessor Judge, as to the aspect of maintainability of the said/instant proceedings *qua* the said accused, as being admittedly not named as an accused under predicate/scheduled offence. In this regard, Ld. Predecessor Judge, remarked as under;

> *"16. It has to be seen that as per the ratio of the judgment titled Pavana Dibbur Vs. the Directorate of Enforcement decided on 29.11.2023 arising out of criminal appeal no. 2779 of 2023, <u>it is not necessary that a person against whom, the offence u/s 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence</u>. As such, I am of the opinion that the submission of the ld. Counsels for the accused persons that the accused persons have not been shown as the accused in the scheduled offence is also not sustainable…"*
>
> *(Emphasis supplied)*

18. Apposite at this stage for this Court to make a reference to the decision of the Hon'ble Supreme Court in ***Pavana Dibbur v. Enforcement Directorate, 2023 SCC OnLine SC 1586***, wherein the Hon'ble Court in the aforenoted/akin context, noted as under;

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*words, <u>a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money-laundering has been committed. To put it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed</u>.*43. In addition, the definition of the words "proceeds of crime" focuses on "deriving or obtaining a property" as a result of criminal activity relating to a scheduled offence. <u>Therefore, the area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money-laundering is committed</u>.***48. Therefore, the question of territorial jurisdiction in this case requires an enquiry into a question of fact as to the place where the alleged proceeds of crime were : (i) concealed; or (ii) possessed; or (iii) acquired; or (iv) used. This question of fact will actually depend upon the evidence that unfolds before the trial court. It will be useful in this regard to extract para 38 of the decision in Kaushik Chatterjee [Kaushik Chatterjee v. State of Haryana, (2020) 10 SCC 92: (2021) 1 SCC (Cri) 36] which reads as follows;…"* Notably, in so far as the aspect of jurisdiction of this Court is concerned, **para 15** of the *instant* complaint further records, *"…it is submitted that the <u>scheduled offence was committed, among others, at New Delhi and FIR RCHG2020A0021 dated 31.12.2020 was registered by ACB, CBI, Chandigarh based on a complaint from Punjab National Bank against M/s. Sunstar Overseas Ltd. operating from its registered office at 4119/7, 1st Floor, Naya Bazar, New Delhi-110006 which availed various credit facilities from 'Consortium of 9 lender banks' and also that Karur Vysya Bank's Corporate Business Unit, having branch at MRJ Tower, 3rd Floor, Faiz Road, Karol Bagh, New Delhi – 110005, was the lead bank of the consortium arrangement through which various loans were availed by M/s. Sunstar Overseas Ltd</u>. The Hon'ble Court is notified as the Special Court U/s 43(1) of the PMLA, 2002 to try the offence of money-laundering and the cause of action for the offence of money-laundering has arisen within the jurisdiction of this Hon'ble Court"*

"17. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PMLA."

(Emphasis supplied)

19. Correspondingly, the Hon'ble High Court of Delhi in ***Anand Chauhan v. Directorate of Enforcement, 2017 SCC OnLine Del 7790***, on an earlier occasion, unambiguously remarked as under;

"27. A reading of Section 3 shows that the person who commits the offence of money laundering need not necessarily be a one who may have been involved in the acquisition of the proceeds of crime. Thus, even if the petitioner herein is assumed to be not guilty of the offence under Section 13(2) read with Section 13(1)(e) of the PC Act, nevertheless, he is a person charged with abetting the said offence and with the laundering of the proceeds of the crime of Sh. Vir Bhadra Singh.

28. I cannot agree with the submission of the petitioner that for the purpose of Sections 3 and 4 of the PMLA, the person accused of the commission of the offence under the PMLA should have committed the scheduled offence and acquired the proceeds of crime. The proceeds of crime may be acquired by another person who commits one of the scheduled offences, and the person charged with money laundering may have only, directly or indirectly, assisted or knowingly become a party, or may be actually involved in the process or activity of, inter alia, concealing, possessing, acquiring or using and projecting or claiming the said proceeds of crime as untainted property. The purpose of scheduling the offences under the PMLA appears to be to enlist the various crimes through which the proceeds of crime may be generated. Thus, the submission of the petitioner that he cannot be charged under the PMLA, does not appear to have any merit."

(Emphasis supplied)

20. Apropos the present discourse, it is pertinent to further make a reference to the provision under Section 2(1)(u) of PMLA, which defines, 'proceeds of crime[7]' as, *"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."* The term, scheduled offence, is in turn, defined under Section 2(1)(y) of the said enactment as under;

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

**** *** ****

(y) "scheduled offence" means—

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule…"

(Emphasis supplied)

[7] ***Indian Bank v. Government of India, 2012 SCC OnLine Mad 2526.***

21. The penal provision under PMLA is envisaged under Section 3 thereof, which defines the offence of money laundering, punishable under Section 4[8] of PMLA, as under;

> *"3. **Offence of money-laundering**-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*
>
> *Explanation.—For the removal of doubts, it is hereby clarified that,—*
>
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—*
>
> *(a) concealment; or*
> *(b) possession; or*
> *(c) acquisition; or*
> *(d) use; or*
> *(e) projecting as untainted property; or*
> *(f) claiming as untainted property,*
> *in any manner whatsoever;*
>
> *(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."*
>
> *(Emphasis supplied)*

22. Here, it is also pertinent to make reference to the provision under Section 70 of PMLA, which *inter alia* provides that in a case where the person, committing a contravention of any of the provisions of the said enactment or of any rule, direction or order made thereunder is a company, *"every person*

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[8] Section 4 of PMLA provides, *"4. **Punishment for money-laundering.**—Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:***Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."*

who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly" Relevant to also refer to the provision under Section 2(1)(fa) of PMLA, which defines 'beneficial owner' as an individual, *"who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person".*

23. Pertinent at this stage to also make a reference to provisions under Section 46(1) of PMLA which provides, *"Save as otherwise provided in the Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session…"* Notably, Section 200 Cr.P.C. provides for cognizance of offences in a complaint case which *inter alia* provides that it is not incumbent on the magistrate to examine the complainant, *i.e.,* no pre-summoning evidence is required to be recorded in a complaint case which has been instituted by a public servant in writing, *"while acting or purporting to act in discharge of his official duties".* Relevantly, Chapter VII of PMLA *inter alia* provides for constitution, jurisdiction, powers, etc., of Special Courts constituted under the said enactment. Strikingly, Section 44(1)(b) of PMLA, empowers such Special Court to take cognizance of offence under Section 3 thereof, without the accused being committed to it for trial, upon a complaint

authorized in this behalf under the said enactment. Correspondingly, Section 44(1)(d), a Special Court provides that a Special Court, *"while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session."* Hence, in considered opinion of this Court and the above specific provisions contained in Section 44 of the PMLA, there is no requirement of recording of any pre-summoning evidence or of any pre-charge evidence in the matter even otherwise and trial for an offence under Section 3 PMLA in this case, as made punishable by Section 4 of the Act, has to be conducted in accordance with procedure laid down in Chapter XVIII of the Cr.P.C., which does not lay down any separate procedure for trial of cases instituted on a police report or otherwise than on police report, as is the case with trial of warrant cases before a Magistrate as per provisions contained in Chapter XIX of the Cr.P.C.

24. Ergo, in light of the foregoing facts and circumstances, as well as being cognizant of the provisions hereinunder observed, this Court notes from the perusal of voluminous record/documents placed on record, including the statements recorded during investigation, *prima facie* there is sufficient material, at this stage, to believe that through a series of concerted actions and by using a complex web of companies and layers of financial transactions, the funds were concealed, diverted, and siphoned off by M/s. Sunstar Overseas Ltd., though, its then promoters, directors, etc., indulging in series of sham transactions with related, unrelated companies, firms, shell companies, beneficial owners, entities, individuals, NBFCs,

ARC, etc., whereby further indulging in acquisition, concealment, possession, transfer, diversion, use and in order to eventually regain indirect, but actual control and business including assets and properties of the same company, i.e., M/s. Sunstar Overseas Ltd., *inter alia* with the help of a shell entity, namely, M/s. Umaiza Infracon LLP and dummy entity, namely, M/s. Shivakriti Agro Pvt. Ltd. even after NCLT proceedings and thereby, causing huge loss to the banks(ers)/lender banks. Needless to reiterate that ED has placed on record, documents, including the statement of witnesses recorded during investigation, which further *prima facie* demonstrates and satisfies the ingredients of the offence, as defined under Section 3 r/w Section 70 of PMLA, punishable under Section 4 thereof.

25. Correspondingly, in view of the above, and after going through the contents of complaint, statements of witnesses recorded during the course of investigation and also the oral and documentary evidence collected by the investigating agency, it appears to this Court that all the accused named in the instant complaint, i.e., *M/s. Sunstar Overseas Ltd.*[9] *(Accused No. 1),*

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[9] Reference is made to the provisions under Section 32A read with Section 5(24) of the IBC as well as the decision of the Hon'ble Supreme Court in ***Manish Kumar v. Union of India, (2021) 5 SCC 1*** *inter alia,* observing, *"317.4. The change in the management or control of the corporate debtor must not be in favour of a person, with regard to whom the relevant investigating authority has material which leads it to entertain the reason to believe that he had abetted or conspired for the commission of the offence and has submitted or filed a report before the relevant authority or the Court. This last limb may require a little more demystification. The person, who comes to acquire the management and control of the corporate person, must not be a person who has abetted or conspired for the commission of the offence committed by the corporate debtor prior to the commencement of the CIRP. Therefore, abetting or conspiracy by the person, who acquires management and control of the corporate debtor, under a resolution plan, which is approved under Section 31 of the Code and the filing of the report, would remove the protective umbrella or immunity erected by Section 32-A in regard to an offence committed by the corporate debtor before the commencement of the CIRP. To make it even more clear, if either of the conditions, namely, abetting or conspiring followed by the report, which have been mentioned as aforesaid, are present, then, the liability of the corporate debtor, for an offence committed prior to the commencement of the CIRP, will remain unaffected.* 318. The first proviso in sub-section (1) declares that if there is approval of a resolution plan under Section 31 and a prosecution has been instituted during the CIRP against the corporate debtor, the corporate debtor will stand discharged. This is, however, subject to the condition that the requirements in sub-section (1), which have been elaborated by us, have been fulfilled. In other words, if under the approved resolution plan, there is a change in the management and control of the corporate debtor, to a person, who is not a promoter, or in the management and control of the corporate debtor, or a related party of the corporate debtor, or the person who acquires control or management of the corporate debtor, has neither abetted nor conspired in the commission of the offence, then, the prosecution, if it is instituted after the commencement of the CIRP and during its pendency, will stand*

M/s. Star Global Multi Ventures Pvt. Ltd. (Accused No. 2), M/s. Star Rice Land Pvt. Ltd. (Accused No. 3), M/s. Broadway Distribution Pvt. Ltd. (Accused No. 4), M/s. DH Trading Company (Accused No. 5), Mr. Rohit Aggarwal (Accused No. 6), Mr. Manik Aggarwal (Accused No. 7), Mr. Naresh Aggarwal (Accused No. 8), Mr. Rakesh Aggarwal (Accused No. 9), Mr. Sumit Aggarwal (Accused No. 10), Mr. Rakesh Kumar Gulati (Accused No. 11), Mr. Ajay Yadav (Accused No. 12), Mr. Paramjeet @ Paramjeet Sharma (Accused No. 13), M/s. Shanker Credits Pvt. Ltd. (Accused No. 14), M/s. Kalptaru Fincap Limited (Accused No. 15), M/s. Omkara Assets Reconstruction Pvt. Ltd. (Accused No. 16), M/s. Compact Capital Ltd. (Accused No. 17), M/s. Vinod Rice Mill Pvt. Ltd. (Accused No. 18), M/s. Purshotam Profiles Pvt. Ltd. (Accused No. 19), M/s. Ajay Yadav & Company[10] *(Accused No. 20), M/s. Umaiza Infracon LLP (Accused No. 21), M/s Shivakriti Agro Pvt. Ltd. (Accused No. 22), M/s. RRPL Foods Pvt. Ltd. (Accused No. 23), M/s. Anir-Arin Holdings Pvt. Ltd. (Accused No. 24), and M/s. Gleam Finance Pvt. Ltd. (Accused No. 25)*, are either directly or indirectly found to have indulged or attempted to indulge in or knowingly assisted or have been a party to or actually involved,

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discharged against the corporate debtor. Under the second proviso to sub-section (1), however, the designated partner in respect of the liability partnership or the officer in default, as defined under Section 2(60) of the Companies Act, 2013, or every person, who was, in any manner, in charge or responsible to the corporate debtor for the conduct of its business, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. This is despite the extinguishment of the criminal liability of the corporate debtor under sub-section (1). Still further, <u>every person, who was associated with the corporate debtor in any manner, and, who was directly or indirectly involved in the commission of such offence, in terms of the report submitted and report filed by the investigating authority, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor</u>. 319. Thus, <u>the combined reading of the various limbs of sub-section (1) would show that while, on the one hand, the corporate debtor is freed from the liability for any offence committed before the commencement of the CIRP, the statutory immunity from the consequences of the commission of the offence by the corporate debtor is not available and the criminal liability will continue to haunt the persons, who were in charge of the assets of the corporate debtor, or who were responsible for the conduct of its business or those who were associated with the corporate debtor in any manner, and who were directly or indirectly involved in the commission of the offence</u>, and they will continue to be liable."*

[10] Explanation to Section 70 PMLA provides, *"**Explanation 1**-For the purposes of this section,-(i) "company" means any body corporate and <u>includes a firm or other association of individuals</u>; and*(ii) "director", in relation to a firm, means a partner in the firm."*

etc., in the process or activities related to generation of the above proceeds of crime or its concealment, possession, acquisition, use and projection or claiming the same as untainted property. Hence, cognizance of the offence of money laundering as defined under Section 3 read with Section 70 of PMLA, and as made punishable under Section 4 of the said Act is hereby taken by this Court and since sufficient grounds exist for proceeding further in the matter against all the above twenty-five accused (Accused No. 1 to Accused No. 25), though, some further investigation with regard to the other persons/entities involved in the case is still asserted to be pending by ED. In particular in this regard, under para 14.3 of the instant complaint it is specifically recorded by ED/complainant that in the course of further investigation, "*if any 'proceeds of crime' are found invested/placed/parked and wherever other person(s) is/are found involved in the offence of money-laundering, if any, further action under PMLA, 2002 may be taken and consequential supplementary prosecution complaint shall be filed.*"

26. Consequently, ***Accused Nos. 1 to Accused No. 25, (through the concerned IO) are directed to be summoned to appear and face trial before this Court for the above said offence***. Needless to reiterate that since, accused namely, ***Rakesh Kumar Gulati (Accused No. 11), Ajay Yadav (Accused No. 12), Paramjeet @ Paramjeet Sharma (Accused No. 13) are presently under judicial custody, let production warrants be issued against the said accused to physically appear before this Court on the next date of hearing***.

27. Further, as specified under **para 16** of the complaint and also as pleased by Ld. SPP for ED, being cognizant of the fact that the complainant is a public servant and the present

complaint has been filed by him in his official capacity, the presence of the complaint before this Court on each and every date, during the course of further proceedings and trial is being exempted.

28. List for appearance of accused and further proceedings on **14.10.2024 at 02.00 p.m.**

ABHISHEK GOYAL Digitally signed by ABHISHEK GOYAL Date: 2024.09.25 16:13:09 +0530

Announced in the open Court
On 25.09.2024.

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi