IN THE COURT OF SHRI HASAN ANZAR,
SPECIAL JUDGE, PC ACT (CBI-03),
ROUSE AVENUE DISTRICT COURT, NEW DELHI

Enforcement Directorate Vs. Jagmohan Kejriwal & Ors.
CT No. 11/20
IA No. 30/2025

17.05.2025

ORDER

1. This order shall decide an application moved by the applicant/Indian Overseas Bank under section 8(8) of the Prevention of Money Laundering Act 2002 (hereinafter referred to as PMLA), filed on behalf of the applicant/Indian Overseas Bank for release of the following properties :-

i. H. No. B-2/232, Paschim Vihar, New Delhi in the name of Anju Kejriwal.

ii. Land at Kewat No. 67/60, 67/68 Khatoni No. 104 Kila No. 9/14, 15, 16, 17 Mouja Village Dehkora, Tehshil Bahadurgarh, Haryana in the name of Jagmohan Kejriwal.

iii. Agricultural Land bearing Survey No. 430 (acres 4-06 Gunths), 431 (acres 4-07 Gunths), 432 (acres 5-13 Gunths), 433-34 (acres 8-22 Gunths) & 435 (acres 4-17 Gunths) situated at Village Chopadva, Taluka Bhachau, District Kutch (Gujarat) in the name of M/s Green Valley Plywood Ltd.

iv. Plant and Machinery of Plant III Survey No. 430 (acres 4-06 Gunths), 431 (acres 4-07 Gunths), 432 (acres 5-13 Gunths), 433-34 (acres 8-22 Gunths) & 435 (acres 4-17 Gunths) situated at Village Chopadva, Taluka

Bhachau, District Kutch (Gujarat) in the name of M/s Green Valley Plywood Ltd.

2. It is contended that applicant bank had extended credit facility in the year 2002 to the borrower and the borrower mortgaged number of properties in favour of the applicant bank including the properties as detailed above. It is contended that since borrower company failed to maintain the financial discipline and violated the terms and conditions of the credit facility and failed to re-pay back the loan due to which the account was classified as **"Non-Performing Assets"** on 31.10.2011. It is also contended that Debt Recovery Tribunal vide order dated 09.10.2017 was pleased to hold that applicant/company was entitled to recover the sum of Rs.123,29,70,587/- (Rs. One Hundred Twenty Three Crores Twenty Nine Lakhs Seven Thousands Five Hundred and Eighty Seven only) alongwith simple interest @ 12.00% per annum and DRT also directed that the amount can be recovered from the sale of hypothecated goods/mortgaged properties. It is also contended that applicant bank had filed a complaint against the borrower company and its director that in pursuance to the criminal conspiracy, the applicant bank was cheated to the tune of Rs.71.79 crores which led to the registration of the FIR by the CBI. It is also contended that thereafter the investigation was also conducted by the Enforcement Directorate and vide order dated 30.10.2018, the Provisional Attachment Order No. 9/2018 in ECIR/10/ DLZO-I/2017/3754/LOIL was passed in respect of the above-mentioned properties.

3. It is also contended that Enforcement Directorate lodged a complaint before the Designated Adjudicating Authority under PMLA and the Adjudicating Authority vide order dated 22.04.2019 was pleased to pass an order for the confirmation of attachment of the four properties, as indicated above. It is also contended that an appeal bearing no. 3089 of 2019 under section 26 of PMLA was filed by the applicant bank by assailing the order dated 22.04.2019 passed by the Adjudicating Authority. It is also contended that applicant bank being a Financial Creditor had also filed an application bearing no. CP/IB/733/ND/2024 under section 7 of the Insolvency & Bankruptcy Code, 2016 before the National Company Law Tribunal seeking initiation of Corporation Insolvency Resolution Process against the borrower company.

4. It is also contended that applicant bank had suffered a quantifiable loss due to the offence of money laundering by the borrower and its directors and therefore, as per section 8 of the PMLA, the claimant with a legitimate interest in the property acting in a good faith and not involved in the offence of the Money Laundering would be entitled for the restoration of such a property. It is also contended that legitimate interest was created in favour of the applicant bank in 2002 prior to the commission of the offence. It is also contended that there is an order in favour of the applicant bank vide which it was entitled to recover Rs.123.29 Crores alongwith interest. It is further

contended that since the value of the mortgaged/hypothecated property is depreciating and on account of attachment, the property is also getting deteriorated and therefore, it is deemed proper that if the mortgaged/hypothecated property is put into the sale then the claim of the applicant bank could be satisfied.

5. Reply of the application was filed by the Enforcement Directorate in the form of submissions *inter-alia* contending that four properties, as indicated above, were attached by way of the Provisional Attachment Order and the same was also confirmed by the Adjudicating Authority. Submissions were also made in the reply and in paragraph no. 10 of the reply, it is stated **"that in light of the above, the complainant Directorate of Enforcement has no objection if the attached properties are restituted to the bonafide claimant with legitimate interest in the property in terms of Section 8(8) second proviso read with Rule 3A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016."**

6. The notice of the application was also issued to accused nos. 1 to 3. Separate written submissions were filed on behalf of A-1 and A-2. A-1 and A-2 stated that the application under section 8(8) of PMLA is not maintainable as the power to release the properties attached by the Adjudicating Authority could be considered only at the stage of the trial or after the conclusion of the trial. It is also contended that the

case is in initial stage and trial of the case is yet to commence. It is also contended that Rule 3A of 2016 of PMLA provides that the Special Court could release property only after framing of charge. It is also contended that Section 32A of Insolvency & Bankruptcy Code protects the assets of a corporate debtor from the criminal prosecution to prevent its further operation from being effected and the resolution of plan would be defeated, if the prosecution for the acts committed prior to the commencement of the Corporate Insolvency process are allowed to continue. It is also contended that three employees of the applicant bank have also been arrayed as an accused in the predicate offence and therefore, the contention of the applicant bank that its claim is bonafie and legitimate does not make out.

7. Separate written submissions were filed on behalf of accused Anju Kejriwal/A-3 by contending that a status quo order was granted with respect to the initiation of order under SARFAESI Act vide orders dated 09.02.2012, 16.02.2012 & 28.02.2012.

8. It is also contended that despite pendency of the appeal against the order passed by the Adjudicating Authority, the present application has been filed by the applicant and the release of the property in favour of the applicant would compromise the integrity of financial recovery.

9. Ld. Counsel for the applicant bank has relied upon the following

judgments, *i) Directorate of Enforcement vs. JSW Steels Limited and others (SLP No. 29327/19 order dated 11.12.2024), ii) Union of India and Ors. v. Major General Madan Lal Yadav, (1996) 4 SCC 127, iii) Order dated 29.01.2025 passed by the Ld. Special Judge, Rouse Avenue Court Complex, New Delhi in ED v. P.K. Tewari & Ors., CJ Case No. 22/2021, iv) J.K. Industries Ltd. v. Union of India, (2007) 13 SCC 673, v) State of Maharashtra v. Jagannath Achyut Karandikar, 1989 Supp (1) SCC 393, vi) Bajaj Finance Ltd. v. Joint Director, Directorate of Enforcement, 2018 SCC OnLine ATPMLA 54, vii) Naresh Grover v. Joint Director, Directorate of Enforcement, 2018 SCC OnLine ATPMLA 52, viii) State Bank of India v. Joint Director Directorate of Enforcement 2017 SCC OnLine ATPMLA3.*

10. Ld. Special PP for Enforcement Directorate has relied upon the judgments; *i) Directorate of Enforcement Vs. JSW Steel Ltd. & Ors. Civil Appeal No. 3362/2020 ii) Government of India vs. M/s Indian Bank & Anr., SLP No (s). 2507-2508/2022 and iii) Citi Union Bank Ltd. Vs. Directorate of Enforcement & Ors., Misc. Appeal (PMLA) 25/2024.*

11. Ld. Counsel for applicant/accused Anju Kejriwal has relied upon *Union of India & Ors vs. M/s Cipla Ltd. & Anr., 2017(1) ALJ 363 of Hon'ble Supreme Court of India.*

12. I have considered the submissions made on behalf of the

applicant bank as well as accused nos. 1 to 3 and Enforcement Directorate and also perused the written submissions filed by the parties.

13. Section 8 of PMLA deals with respect to the adjudication of the properties which is the subject matter of the investigation. Section 8(1) of PMLA is triggered when an application is moved before an Adjudicating Authority to the effect that an offence has been committed or the person is holding a property which is essentially the proceeds of crime. Section 8(3) of PMLA provides that if the Adjudicating Authority comes to the conclusion that the property is involved in money laundering then the Adjudicating Authority shall confirm the order of attachment. Needless to say the aforesaid proceedings before the Adjudicating Authority requires that the principle of natural justice is followed by seeking reply or issuing notice to the necessary parties.

14. Sections 8(5) to 8(8) of PMLA deal with the situation as to how the properties which were attached by the Adjudicating Authority could be dealt. Section 8(5) of PMLA provides that if the Special Court comes to the conclusion that the property is involved in the offence of the money laundering then such a property can be confiscated to the Central Government. Section 8(6) of PMLA provides that if the Special Court comes to the conclusion that the

offence of money laundering has not been committed then such a property could be released in favour of the person who is entitled for the same. Section 8(7) of PMLA provides that if the trial is not conducted for any reason such as the death of the accused or the accused was declared as Proclaimed Offender or the trial having commenced could not be concluded then on an application moved by the Director or any person entitled to the possession of the property which is attached under section 8(3) of the PMLA then Court could pass an order for confiscation or release of the property, if such a property in the opinion of the Court is involved in the offence of money laundering after considering the material placed before it. Section 8(8) of PMLA provides that a Special Court could pass an order for the release or confiscation of the property and the Special Court could direct the Central Government to restore the confiscated property in favour of the claimant with legitimate interest in the property and had suffered a quantifiable loss due to the offence of the money laundering. Section 8(8) of PMLA is subject to the condition that such a claimant has to establish that he had acted in good faith and had suffered loss despite taking all the reasonable precautions and is not involved in the offence of the money laundering. Second proviso of Section 8(8) of PMLA provides that a Special Court could order for the restoration of the property in favour of the claimant in favour of the claimant subject to the conditions.

15. The present application is moved on behalf of the applicant bank

under section 8(8) of PMLA by which it seeks for the release of the properties. A close look at Section 8(8) of PMLA would indicate that a property can be released in favour of the person which was confiscated to the Central Government under section 8(5) of PMLA. Therefore, if one is construing the present application under section 8(8) of PMLA then Section 8(5) of PMLA cannot be ignored. Second proviso to Section 8(8) of PMLA provides that a Special Court could order for the restoration of the property in favour of the claimant. Hon'ble Telangana High Court in *M/s VANPIC Ports Pvt. Ltd. Vs. The Directorate of Enforcement Rep by Assistant Director, Hyderabad in CMSA No. 6 of 2020 dated 27.09.2022* observed that **"Second proviso however provides that even during the trial, the Special Court may consider the claim of the claimant for the purpose of restoration of such property, if it thinks fit. 24.4. A bare reading of sub-section (8) of Section 8 would show that it will come into play only after the Special Court has confiscated the attached property to the Central Government after conclusion of trial.** ***Therefore, the second proviso appears to be contrary to the intent of the main provision of sub-section (8) since it deals with restoration of attached property during the trial whereas the main provision deals with a situation on conclusion of trial."***

16. Prevention of Money Laundering Act 2002 provides that any person aggrieved or the Director could prefer an appeal to the

Appellate Tribunal under section 26 of the PMLA. It is also noteworthy to mention that against the order passed by the Appellate Tribunal, the remedy of filing an appeal before Hon'ble High Court has been provided under section 42 of the PMLA.

17. It is evident from the composite reading of Section 8(3) of PMLA, Section 26 of PMLA and Section 42 of the PMLA that the statute itself has provided a mechanism and an avenue to the Director or any person aggrieved by the order of an Attachment to take recourse to the remedy as provided in the statute. Perusal of the pleadings in between the parties i.e. applicant bank and the accused persons would indicate that an appeal against the order for the Attachment is pending before the Ld. Appellate Tribunal and yet the applicant bank has invoked the jurisdiction of this court for the release of the properties, as detailed above. Although, it is vehemently contended on behalf of the applicant bank that even if a party had invoked a separate remedy and if there exists another remedy then such a party would be entitled to invoke the same and material disclosure had already been made by the applicant bank in its application.

18. The submissions of the applicant bank that if it had invoked a remedy and if there exists another remedy and such a party invokes that remedy then it cannot be non-suited if sufficient ground or

explanation exists for invoking such a remedy. It depends on the remedy as well as the peculiar facts and circumstances of the case as well as the provisions of the Statute whether it had provided any guideline or the manner in which the relief sought could be considered or granted.

19. Prevention of Money Laundering Act, 2002 is an exhaustive legislation providing the complete mechanism as to how the property relatable to the proceed of crime could be dealt at pre-trial stage, at the stage of the trial and the post trial stage. The various tiers which are provided under PMLA 2002 is the testimony of the adequate application of mind by the Legislature as to how the properties which are/were attached could be dealt and, therefore, in light of the specific mechanism as provided under the PMLA 2002, the applicant bank cannot bypass the statutory mandate by filing the present application under section 8(8) of PMLA.

20. It was vehemently contended on behalf of the respondent accused that present application is not maintainable as the trial of the case is yet to start as no charges have been framed and place reliance on the judgment of *Hardeep Singh Vs State of Punjab, AIR 2014 Supreme Court 1400*. After referring number of judgments, it was observed that the word 'trial' is not defined and the same is distinguishable from the word 'inquiry' and it further held that in Warrant Trial Case, the trial commenced when the charges are framed

and in Summons Cases when the accused is called upon to put his appearance and called upon to answer whether he pleads guility or has any defence to offer. *Hardeep Vs. State of Punjab (supra)* has interpreted the word 'trial' in relation to the criminal proceedings.

21. Rule 3A(1) in Prevention of Money (Restoration of Confiscated Property) Rules 2016 had itself made the Legislative mandate in second proviso to Section 8(8) of PMLA by providing that an application for restoration could be considered by the Special Court only after the framing of charge. It would be appropriate to refer Rule 3A(1) of Prevention of Money (Restoration of Confiscated Property) Rules 2016.

> **Section 3A in The Prevention of Money-laundering (Restoration of Confiscated Property) Rules, 2016**
>
> (1)The Special Court, **<u>after framing of the charge</u> 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.

22. Hon'ble Supreme Court of India in *Opto Circuit India Ltd. v. AXIS Bank & Ors, [2021] 2 SCR 81 (3 Judges Bench)* was pleased to

observe that :

> "This Court has time and again emphasized that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of Chandra Kishor Jha vs. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder: "It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner".

23. One of the possible justification for the use of word 'trial' in second proviso to Section 8(8) of PMLA while considering any application for release of the attached property could be that it is only after hearing the arguments on the charge, the court could come to a conclusion whether an offence under PMLA has been committed or not and without making the said determination, it would be difficult for the Special Court to release the property in favour of any claimant and it is apparently for the said reason the relevant Rule as extracted above has used the word *'after framing of the charge'*. There could be some circumstances or situation where an attached property could be released, if the property that has been attached, is found to be not linked with the offence of money laundering or some Judicial Authority or a Tribunal had come to the conclusion that such a property could be disposed of to meet out the claim of any person. Mere fact that a property has been mortgaged would not be a ground to infer that it has to be necessarily treated as process of crime. In certain

circumstances and situation when a property which is attached by the Adjudicating Authority looses its status or connection with the borrower who happens to be an accused then such an application might be considered by making reference to the second proviso to Section 8(8) of PMLA. For instance, pursuant to the proceedings u/s 32 (A) of IBC, the resolution professional was permitted to take either the possession of the property or to dispose of the property in accordance with the resolution plan or an official liquidator has been appointed and the company has been liquidated.

24. Ld. Counsel for the applicant bank has relied upon, *Enforcement Directorate Vs. Mavent Restructuring LLP Liquidator of PSL Limited, LPA NO. 512 of 2021 dated 27.02.2025* and contended that Attachment Order qua the sale proceed of the assets of the Corporate Debtor can be permitted to liquidate the assets of the Corporate Debtor to avoid any further deterioration of the assets. The cited judgment is totally inapplicable in reference to the present application as it appears from the relied upon order that one of the parties had challenged the order passed in the Writ Petition filed by an Official Liquidator.

25. The applicant bank has relied upon *Directorate of Enforcement Vs. JSW Steels Ltd. & Ors. (supra).* A bare perusal of the said order as passed by the Apex Court would reveal that it was the consent order and moreover, there is no adjudication with respect to application

under section 8(8) of PMLA.

26. The facts of the case in relation to the present application would indicate that with respect to some of the attached property, there is status quo order in favour of the respondent accused and admittedly, the application of applicant bank u/s 7 of IBC, 2016 is pending adjudication before the NCLT. It is also reflected from the proceedings sheets that there are other parties including other banks who have also moved an appeal for before the Appellate Tribunal against the order of Adjudicating Authority and trial of the case is yet to commence.

27. In view of the above-mentioned discussion and also taking into consideration the totality of the facts and circumstances, the application under section 8(8) of the Prevention of Money Laundering Act 2002 (IA No. 30/2025), filed by the applicant bank i.e. Indian Overseas Bank, is dismissed.

28. Nothing stated herein shall tantamount to an expression of an opinion on the merits of the case.

HASAN ANZAR

Digitally signed by HASAN ANZAR
Date: 2025.05.17 16:08:49 +0530

(Announced in the open court today i.e. on 17.05.2025).

(HASAN ANZAR)
Special Judge (PC Act) CBI-03,
RADC/New Delhi/17.05.2025.