Neutral Citation Number : 2023/DHC/000481

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 29 November 2022**
Judgment pronounced on: 24 January 2023

\+ W.P.(C) 13361/2018, CM APPL. 51972/2018 (Stay), CM APPL. 53437/2018 (Direction), CM APPL. 33666/2022 (E.H.)

M/S PRAKASH INDUSTRIES LIMITED ..... Petitioner

Through: Mr. Ankur Chawla, Mr. Gurpreet Singh, Mr. C.B. Bansal, Mr. Amir Khan, Mr. Shivam Tandon and Mr. Aamir Khan and Ms. Prerna Mahajan, Advs.

versus

UNION OF INDIA AND ANR. ..... Respondents

Through: Mr. Zoheb Hossain and Mr. Vivek Gurnani, Advs. with Mr. Santokh Singh, DD and Ms. Kumud Ranjan, EO for ED.

AND

\+ W.P.(C) 4962/2019, CM APPL. 22073/2019 (Interim Stay), CM APPL. 33664/2022 (E.H.)

PRAKASH THERMAL POWER LIMITED ..... Petitioner

Through: Mr. Ankur Chawla, Mr. Gurpreet Singh, Mr. C.B. Bansal, Mr. Amir Khan, Mr. Shivam Tandon and Mr. Aamir Khan and Ms. Prerna Mahajan, Advs.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr. Zoheb Hossain and Mr. Vivek Gurnani, Advs. with Mr. Santokh Singh, DD and Ms. Kumud Ranjan, EO for ED.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

A.	**PROLOGUE**	Paras 1 - 14
B.	**PRELIMINARY OBJECTIONS**	Paras 15 - 25
C.	**PETITIONER'S ARGUMENTS**	Paras 26 - 35
D.	**E.D.'s CONTENTIONS**	Paras 36 - 42
E.	**UNDERPINNINGS OF THE PAO**	Paras 43 - 56
F.	**SCOPE OF SECTIONS 3 AND 5**	Paras 57 - 81
G.	**POWERS ENTRUSTED WITH THE E.D.**	Paras 82 - 86
H.	**SECTION 66(2) AND ITS RAMIFICATIONS**	Paras 87 - 93
I.	**PERIPHERAL ISSUES**	Paras 94 - 105
J.	**THE SECTION 8(3)(a) ARGUMENT**	Paras 106 - 108
K.	**CONCLUSION**	Para 109

A. PROLOGUE

1. These two writ petitions raise an important question relating to the powers of the **Enforcement Directorate**[1] to provisionally attach properties under Section 5 of the **Prevention of Money Laundering Act, 2002**[2] even though no proceedings relating to the predicate offense may have been initiated by the competent agency functioning under an independent statute and in terms of which the scheduled offense stands created. The ancillary and yet equally fundamental issue which the Court is called upon to answer is whether the ED could be recognised to have the jurisdiction to enforce the measures contemplated in Section 5 of the Act solely upon it being of the opinion that the material gathered in the course of an investigation or enquiry evidences the commission of a predicate offense. The questions posited would also raise the ancillary issue of the powers that the ED could be recognised to derive from the Act while investigating an offense of money laundering.

2. The writ petitions principally assail the action taken by the ED which had proceeded to pass a **Provisional Attachment Order**[3] dated 29 November 2018. W.P.(C) 13361/2018 came to be instituted on or about 09 December 2018 and at a time when the petitioner was yet to be served with the PAO. The connected writ petition directly assails the order of 29 November 2018 noticed above. The proceedings drawn by the ED emanate from a **First Information Report**[4] bearing

[1] ED
[2] The Act
[3] PAO/Provisional Attachment Order
[4] FIR

RC No. 219 2014 E-0002 dated 26 March 2014 registered by the **Central Bureau of Investigation**[5] and ECIR No. 3 of 2014 which came to be lodged on 29 December 2014 by the respondent. During the pendency of the instant writ petitions, ED also proceeded to file a separate complaint referable to Section 45 of the Act and on which further investigation is still stated to be continuing. Similar is the position insofar as the ECIR is concerned.

3. Turning firstly to the proceedings on the FIR registered at the behest of the CBI, the record would bear out that a Closure Report was submitted before the competent court on 30 August 2014. A protest petition came to be filed by the complainants thereafter on 02 November 2016. Upon the aforesaid protest petition coming to be filed, a prayer was made before the competent court for CBI being accorded permission to conduct further investigation. On the conclusion of that investigation, a chargesheet came to be filled before the competent court on 17 November 2021 against the petitioner and other named accused. The competent court took cognizance on the aforesaid chargesheet in terms of its order of 31 January 2022 and issued summons against the named accused.

4. The aforesaid order was assailed by the petitioner by way of S.L.P (CRL.) Nos. 656–657/2022 and 3360/2022. On the aforenoted Special Leave Petitions, interim orders came to be passed on 06 and 09 May 2022 respectively staying further proceedings before the Special Judge. Those interim orders continue to operate.

[5] CBI

5. Insofar as the ECIR is concerned, the Special Judge has in its order of 22 October 2022 noted that as per the ED further time was required to complete investigation. Awaiting a report on conclusion of further investigation, the matter was thereafter adjourned and remains pending at that stage. Similarly on the Section 45 complaint, the order sheet would reflect that the matter has been continually adjourned to enable the respondent to complete investigation.

6. When W.P.(C) 13361/2018 came to be entertained by the Court, the following interim order came to be passed on 08 January, 2019:-

> "In view of the order dated 12.12.2018 passed in similar matter in LPA No.588/2018, the adjudicating authority will proceed with the matter but the final order shall not be passed without leave of this Court.
>
> Counsel for the respondents submits that counter affidavit is ready and the same would be filed within two days.
>
> Rejoinder thereto, if any, be filed before the next date of hearing.
>
> Renotify on 15th March, 2019."

7. On W.P.(C) 4962/2019 an interim order to the following effect came to be passed on 09 May 2019: -

> "Issue notice.
> Learned counsel accepts notice on behalf of the respondents and seeks time to file counter affidavit.
> Let needful be done within a period of six weeks.
> Rejoinder thereto, if any, be filed within four weeks thereafter.
> Renotify on 21.08.2019.
> In view of the order dated 11.01.2019 passed by Hon'ble the Supreme Court in SLP No. 33919-33920/2018, proceeding against the petitioner before the Learned Adjudicating Authority shall remain stayed.
> Dasti"

8. By virtue of the aforenoted interim orders, no final orders as contemplated under Section 8 of the Act have come to be passed till date. For the purposes of appreciating the questions which arise for determination, the Court deems it apposite to notice the following essential facts.

9. The proceedings drawn by the ED emanate from an allocation of the Fatehpur Coal Block located in the State of Chhattisgarh. On 13 November 2006, the Ministry of Coal in the Union Government published an advertisement inviting applications for allocation of 38 coal blocks. The petitioner in pursuance of the said advertisement submitted an application dated 12 January 2007 for allotment of the aforenoted coal block. On 06 November 2007 the Union Government apprised the petitioner of it considering the allotment of the coal block. It called upon the petitioner and its joint venture partner to submit options as described in that letter for the purposes of a formal order being drawn. Based on this letter, the petitioner addressed a letter on 17 November 2007 to the **Bombay Stock Exchange**[6] apprising it of the allotment of the Fatehpur Coal Block in its favour. A letter of allocation came to be made in favour of the petitioner and its joint venture partner M/s S.K.S Ispat and Energy. Ltd. on 06 February 2008. On 26 March 2014, CBI proceeded to register an FIR alleging commission of offences referable to Section 120B read with Section 420 of the **Indian Penal Code, 1860**[7] along with Sections

[6] BSE
[7] IPC

13(2) and 13(1)(d) of the **Prevention of Corruption Act, 1988**[8]. The said FIR alleged that the petitioner had actively misrepresented in its application for allocation of a coal block insofar as disclosures with respect to net worth were concerned. It was specifically alleged that while the application had set out the net worth of the petitioner as being Rs. 532 crores, in the course of enquiry it came to light that its actual net worth was Rs. (-)144.16 crores at that time. It was further alleged that despite the Ministry of Power having not framed any positive recommendations in favour of the petitioner, the Screening Committee constituted by the Ministry of Coal in its meeting held on 13 September 2007 recommended the allocation of the coal block in favour of the petitioner along with its joint venture partner. Following close on the heels of the said FIR being registered, the ED lodged the ECIR on identical allegations. The said ECIR upon noticing the substratal facts which formed the bedrock of the FIR lodged by the CBI proceeded to record that on the commission of the aforenoted criminal offences, the respondent have reason to believe that proceeds of crime had been generated.

10. It becomes relevant to note at this juncture that the allocation of the Fatehpur Coal Block in favour of the petitioner ultimately came to be cancelled in light of the judgment rendered by the Supreme Court in **Manohar Lal Sharma vs. The Principal Secretary & Ors.**[9] It was after the aforesaid judgment had been rendered on 24 September 2014 that the ECIR came to be registered.

---

[8] The 1988 Act
[9] (2015) 13 SCC 35

11. As was noticed in the preceding parts of this decision, the ECIR undisputedly came to be registered after a final report had come to be submitted by the CBI before the Special Judge on 30 August 2014. While further investigation was continuing both in respect of the FIR as well as the ECIR, on 17 July 2018 a complaint came to be lodged by ED asserting it to be one under Section 45 of the Act. Upon its institution, the Special Judge on the same day at 6:15 PM proceeded to pass the following order:-

> **"CRC NO.**
> **ECIR/03/CDZO/2014**
> **Directorate of Enforcement Vs. M/s Prakash Industries Ltd and**
> **Ors.**
> **U/s. 3&4 PMLA, 2002**
>
> **Fresh prosecution complaint u/s 45 PMLA, 2002 has been filed by IO Assistant Director Sh. Santokh Singh, ED, Chandigarh.**
>
> **It be checked and registered.**
>
> **<u>At 06.15 pm</u>**
>
> **17.07.2018**
>
> Present: Ld. Special P.P Sh. N.K. Matta and Ld. Special PP Ms. Tarannum Cheema for Directorate of Enforcement along with IO Assistant Director Sh. Santokh Singh.
>
> Upon enquiry about the facts and circumstances of the case and the consequent investigation carried out in the matter it was submitted that though further investigation in the matter is still being carried on but the urgency to file the complaint arose on account of the recent amendment in section 8 of PMLA, 2002 wherein any attachment, if effected can be continued only if some proceedings are pending before a Court.
>
> Heard. Perused.

As a number of queries raised by the Court have remained unanswered so it is directed that IO shall produce the case file on the next date as he states that no case diary is maintained by ED during the investigation of the cases.

Matter is simply being put up for consideration on 18.08.2018.

(Bharat Parashar)
Special Judge, (PC Act),
(CBI-07), DD/PHC
17.07.2018"

12. Investigation on the ECIR as well as the complaint case are still ongoing. It is only in the FIR proceedings that a chargesheet has come to be filed. On 29 November 2018, the Deputy Director came to pass the impugned PAO. It becomes pertinent to note that apart from the allegations which form subject matter of the FIR, the ECIR as well as the complaint, the PAO also alludes to the petitioner having allegedly conspired to manipulate its share prices by issuance of 62,50,000 equity shares on a preferential basis. This is evident from the following recitals as they appear in the PAO:-

"5.3. That in reply to the department's query, a letter dated 19.10.2016 was received from SEBI, in response to the department's letter dated 07/10/2016, forwarding report of BSE Investigation into surge of share price during 2007 2008. This letter inter-alia disclosed that:-

(i) On 05.12.2007 the company informed BSE Ltd. that it is holding EGM for allotment of 62,50,000 equity shares on preferential basis to Mutual Funds, Financial Institutions, FIIS, Body Corporate, NRIs, promoters and their associates;

(ii) Members at the EGM had approved investments by way of issue of warrants convertible into equity shares on preferential basis to Barclays Capital Mauritius Ltd. or its nominees by sale of shares the said company;

(iii) On 19.11.2007 the company informed BSE Ltd. that ministry had allotted a Coal Block in Chhattisgarh for expansion of capacities in the power plant.

(iv) During the period of Examination by BSE Ltd. there were various announcements regarding issue & conversion of warrant shares and also regarding expansion of capacities, establishment and operation of new power plant.

(v) Price of the share increased from Rs.35.75 (open as on January 02, 2007) to Rs.354.60 (high as on January 01, 2008) with average daily volume 1,89,820 shares."

13. The PAO ultimately proceeds to record as under: -

"7.5 That all the investors except one also submitted in their respective statements that they were made to believe to the false declaration regarding allocation of coal block to the BSE which led to rise in the share value of M/s Prakash Industries Ltd. and they were made to invest in the equity shares of M/s Prakash Industries Ltd. on preferential basis at a premium of Rs. 180/- per share and further stated that their decision for investment was not appropriate and as the rise in the price could not get sustained and they had to sell the purchased equity shares on a meager value of Rs. 39/- per share. It is pertinent to note that the value of the shares as on 01.04.2007 was also Rs. 31/- per share.

7.6 The issuance of shares at the premium basis having been based on artificial rise in the share value due to false declaration to BSE resulted into undue gain of Rs. 118.75 crores to M/s Prakash Industries Ltd. The gain was actually based upon the commission of scheduled offence as had the party not misrepresented their financial figures during making of an application for allocation of coal block, there would not have been any false declaration to BSE regarding allocation of Fatehpur coal block and further there would not have been gain of Rs. 118.75 crores.

7.7 That M/s Prakash Industries Ltd. as an extension of the criminal activity submitted false declaration to the BSE in order to create hype in the share value. The created hype resulted into increase in their share value and the increased value of the share was further got encashed through issuance of equity shares on preferential basis on premium of Rs. 180/- per share by way of subscription by

the five investors. As the whole process was based upon the committed criminal activity and resulted into generation of proceeds of crime to the tune of Rs. 118.75 crores, which was an offence of money laundering u/s 3 of PMLA, 2002. That such proceeds of crime were further utilized by M/s Prakash Industries Ltd. in the continuous expansion of their manufacturing activities.

7.8 The undue gain of Rs. 118.75 crores is **proceeds of crime** in this case as envisaged vide section 2(1)(u) of the PMLA, 2002 which is reproduced hereunder :

*Section 2(1)(u) "**Proceeds of crime**" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to schedule offence or the value of any such property.*

7.9 The proceeds of crime was further used by the party in their continuous investment process and the proceeds of crime are liable to be attached under section 5 of the PMLA, 2002."

14. In Para 8, the PAO proceeds to set out the details of the immovable and movable properties which are stated to have been derived and obtained from the commission of scheduled offences and thus constitute the proceeds of crime. It becomes pertinent to highlight here that the allegations relating to the manipulation of share prices and the inducement made for the purposes of allotment of preferential shares do not form part of either the FIR or the ECIR allegations. Since the complaint was not placed on the record, the Court is unable to ascertain whether the subject of preferential allotment of shares forms part of those proceedings.

B. PRELIMINARY OBJECTIONS

15. Before proceeding to notice the rival submissions which were addressed, it would be apposite at this juncture to advert to the

preliminary objections which were addressed by Mr. Hossain, learned counsel appearing for the ED.

16. Mr. Hossain urged that the challenge in the present writ petitions pertains to the PAO relating to a coal block which had been allocated to the petitioner. Mr. Hossain also submitted that the cancellation of coal blocks was an issue which directly concerned the Supreme Court in **Manohar Lal Sharma vs. The Principal Secretary & Ors**[10]**.** He specifically referred to the order of 25 July 2014 passed in the aforesaid matter in terms of which the Supreme Court had provided that any prayer for stay or any order impeding the progress of investigation relating to coal block allocations would be liable to be placed before the Special Court only and that no other court could entertain the same. Mr. Hossain contended that in view of the aforesaid directions issued by the Supreme Court, it would not be permissible for this Court to either entertain the present writ petition or take cognizance of the challenge which stands raised. The aforesaid submission was sought to be buttressed further by the subsequent orders made by the Supreme Court in **Manohar Lal Sharma** and more particularly on 18 July 2014 and 01 September 2015 in that case.

17. It would be relevant to note that by the first order of 25 July 2014 passed in **Manohar Lal Sharma,** the Supreme Court had provided that all cases pending before different courts pertaining to coal block allocation matters shall stand transferred to the court of the

[10] (2015) 13 SCC 35

Special Judge. It was the said order that had appointed the Special Judge to deal with all criminal cases arising out of the allocation of coal blocks. By its order of 18 July 2014, the Supreme Court had directed the Chief Justice of this Court to nominate an officer of the Delhi Higher Judicial Service to be posted as the Special Judge to deal with and exclusively try offences pertaining to the allocation of coal block under the IPC, the PC Act and PMLA. The aforesaid order is extracted hereinbelow:-

> "1. We direct the Secretary General of this Court to write to the Registrar General of the High Court of Delhi to take order from the Hon'ble the Chief Justice, Delhi High Court nominating an officer of Delhi Higher Judicial Service to be posted as Special Judge to deal and exclusively try the offences pertaining to coal block allocation matters under the Indian Penal Code, 1860, Prevention of Corruption Act, 1988, Prevention of Money-Laundering Act, 2002 and other allied offences. The Registrar General, High Court of Delhi shall communicate the decision of the Hon'ble the Chief Justice on or before 25.7.2014.
>
> 2. List this group of matters on 25.7.2014 at 2 P.M."

Directions for transfer of all pending cases were framed by the Supreme Court in terms of its order of 01 September 2014.

18. Mr. Hossain submitted that the aforesaid orders were considered by a learned Judge of the Court in **Girish Kumar Suneja vs. Central Bureau of Investigation**[11] and in view thereof it had proceeded to dismiss a petition preferred by the accused in the coal block allocation case under Section 482 of the Code of Criminal Procedure, 1973. Mr. Hossain had also referred for the consideration of this Court the judgment rendered by the Supreme Court in **Girish**

[11] 2016 SCC OnLine Del 5751

Kumar Suneja vs. Central Bureau of Investigation [12] which had affirmed the judgment of the learned Judge of this Court noticed hereinabove.

19. It becomes pertinent to note that in **Girish Kumar Suneja,** the Supreme Court was called upon to examine a challenge to the restrictive directions which had been framed in **Manohar Lal Sharma** in terms of which a Special Court came to be constituted for trying all cases pertaining to coal block allocations and the directions divested all other courts of the authority to deal with challenges arising therefrom. The restrictions so imposed and which also constricted the right of a High Court to exercise powers conferred by Articles 226 and 227 of the Constitution or for that matter its revisional and inherent powers were ultimately affirmed. While upholding the aforesaid restrictions, the Supreme Court in **Girish Kumar Suneja** observed as follows:-

> **"43.** In our opinion, it is not as if one single case has been taken up for allegedly discriminatory treatment out of an entire gamut of cases. All the cases relating to the allocation of coal blocks have been compartmentalised and are required to be treated and dealt with in the same manner. The Coal Block Allocation cases form one identifiable category of cases that are distinct from other cases since they have had a massive impact on public interest and there have been large-scale illegalities associated with the allocation of coal blocks. It is therefore necessary to treat these cases differentially since they form a unique identifiable category. The treatment of these cases is certainly not arbitrary—on the contrary, the classification is in public interest and for the public good with a view to bring persons who have allegedly committed corrupt activities, within the rule of law. It is hence not possible to accept the submission that by treating the entire batch of Coal Block

[12] (2017) 14 SCC 809

Allocation cases in a particular manner different from the usual cases that flood the courts, there is a violation of Article 14 of the Constitution.

45. Insofar as the present appeals are concerned, the cases fall in a class apart, arising as they do out of the illegal and unlawful allocation of coal blocks. It is only in respect of these cases that this Court monitored the investigations and it is only in respect of these cases that the order was passed by this Court on 25-7-2014 [*Manohar Lal Sharma* v. *Union of India*, (2015) 13 SCC 35 : (2015) 13 SCC 37 : (2016) 1 SCC (Cri) 418 : (2016) 1 SCC (Cri) 419] . The cases are concerned with large-scale corruption that polluted the allocation of coal blocks and they form a clear and distinct class that need to be treated in a manner different from the cases that our justice-delivery system usually deals with. The classification being identifiable and clear, we do not see any violation of Article 14 of the Constitution.

57. There is obviously some misconception in this regard as far as the appellants are concerned. This Court is not in any manner monitoring the progress of the trial in the Coal Block Allocation cases nor is it supervising the trial. Conducting the trial is entirely the business of the learned Special Judge. Para 10 of the order only results in the removal of any impediment in the progress of the trial. To ensure that the trial is concluded at the earliest not only in the interest of the accused persons but also in public interest, any application intended to stay or impede the trial will be subject to orders of this Court. This out of the ordinary step has been taken given the serious nature of allegations made against those believed to be involved in the illegal allocation of coal blocks and in the interest of the accused as well as in larger public interest. As mentioned above, there is a need for maintaining a balance between the rights of an accused and the rights of an individual victim and society.

59. The submission that para 10 of the order passed by this Court fetters the discretion of the High Court in granting a stay of proceedings proceeds on the assumption that the High Court has an unfettered discretion to stay a trial. This is simply not so—the stay of a trial is a rather an extraordinary step and cannot be given for the asking."

20. This Court, however, finds itself unable to accede to the preliminary objection which is raised in this respect for the following

reasons. As would be evident from the various orders which were passed in **Manohar Lal Sharma**, the Special Court which came to be constituted was so identified solely to deal with and exclusively try offences emanating from coal block allocations and for the trial of offences that may have been alleged to have been committed either under the IPC, the PC Act and the Act with which we are concerned. The direction for transfer of pending cases also clearly appears to be confined to criminal matters arising out of coal block allocations. The **Girish Kumar Suneja** judgment of this Court was also dealing with a petition under section 482 of the CrPC and which had challenged an order passed by the Special Judge directing framing of charges.

21. It is thus manifest that the directions in **Manohar Lal Sharma** stood confined to criminal proceedings instituted in relation to coal block allocations. Those directions cannot possibly be construed or interpreted as extending to PAO's that may be made under the Act. The Court also bears in mind the fact that the Special Judge so constituted to try criminal cases and offences would clearly lack the authority to either deal with or rule upon the validity of PAOs that may be made. If the submission addressed by and on behalf of the ED in this regard were be accepted, it would also amount to short-circuiting the adjudicatory mechanism with respect to attachment orders as structured and placed in terms of the provision of the Act. That clearly neither appears to be the intent of the orders passed in **Manohar Lal Sharma** nor can those directions be possibly construed as denuding this Court of the jurisdiction to entertain a challenge

relating to a PAO and the exercise of power by the ED under Section 5 of the Act.

22. Mr. Hossain while referring to the orders which were passed by the Supreme Court in **Manohar Lal Sharma** had also placed reliance upon the decision rendered by a Division Bench of the Bombay High Court in **Ashok Sunderlal Daga vs. Union of India & Ors.**[13] to contend that a challenge to PAO's would also amount to delaying or impeding the investigation or trial of coal block allocation cases. It becomes pertinent to note that in **Ashok Sunderlal Daga,** the Bombay High Court was principally dealing with a challenge to the ECIR which had come to be registered. While dealing with the aforesaid challenge, it was also noticed that orders of attachment under Section 8(5) of the PMLA had come to be passed. It was, however, pertinently noted that the aforesaid attachment orders formed subject matter of challenge before the concerned appellate authority. It was in that backdrop that the Bombay High Court observed as follows:-

> "24. These observations of Hon'ble Supreme Court therefore, clearly show that all matters which question any such investigation or offence pertaining to coal block allocation and related matters under Penal Code, 1860, Prevention of Corruption Act, 1988, Prevention of Money Laundering Act, 2002 and other allied offences must be looked into by the Hon'ble Supreme Court.
>
> 25. Facts of case at hand reveal that provisional attachment order and complaint filed by the Assistant Director, Directorate of Enforcement beyond doubt show the nexus of proceeds of crime with coal block allotment. The contention of enforcement department that it got knowledge of proceeds of crime only through investigation into coal block allotment, cannot be disputed at this stage. The reply on preliminary objection to the

[13] 2017 SCC OnLine Bom 10204

maintainability of the petition filed by respondents, shows that on the basis of FIR dated 07.08.2014, CBI, New Delhi registered a case under Section 120B and 420 of Penal Code, 1860 and a charge sheet came to be filed on 31.12.2015 before the Additional Sessions Judge and CBI Special Court, New Delhi against petitioner and his company. That FIR and charge sheet was forwarded by CBI to respondents as case involved economic offence and offence of money laundering. Respondents claim that it is the only organization empowered to investigate offence of money laundering. They submit that in case in Criminal Writ Petition No. 697/2017, the proceeds of crime relating to scheduled offence, were noticed and the provisional attachment order was made on 12.09.2016 attaching properties worth Rs. 1.67 Crores. Paragraph no. 9 thereof discloses that the adjudicating authority has on 31.01.2017 confirmed the attachment of property.

26. Accused persons have filed an appeal on 24.03.2017 before the Appellate Tribunal under 2002 Act at New Delhi and it is pending before that Tribunal.

27. These facts sufficiently reveal, at least at this stage and before this Court in its jurisdiction under Article 226, that the link between the pending prosecution for coal block allotment and the attachment order which gave rise to present writ-petitions cannot be ignored.

30. In the light of this discussion, we uphold the preliminary objection raised by learned A.S.G.I. We declare that Criminal Writ Petitions filed before this Court are not maintainable. We also clarify that the observations made by us supra, are in the light of arguments advanced and only to the extent necessary to evaluate the same. The same will not have any bearing or influence on the pending appeal before the Appellate Authority under 2002 Act, or pending prosecutions before the Special Court at New Delhi."

23. This Court is of the considered view that a challenge to a PAO on merits cannot possibly be assailed before the Special Judge who has come to be appointed pursuant to the orders of the Supreme Court in **Manohar Lal Sharma**. The Special Judge and the court which consequently came to be constituted pursuant to the directions of the Supreme Court is essentially concerned with the trial of offences

relating to and arising out of allocation of coal blocks. On a consideration of the various orders passed by the Supreme Court in **Manohar Lal Sharma,** it is manifest that they were essentially intended to centralize the trial of all offences arising out of allocation of coal blocks and in any case cannot possibly be read as conferring jurisdiction on the Special Judge to deal with the validity of attachment orders that may be passed by the competent authorities under the Act. If the submission of Mr. Hossain were to be accepted, it would essentially amount to recognizing a power inhering in the Special Judge to not only don the robes of the Adjudicating Authority under Section 8 but to also deprive the appellate forums of the jurisdiction to decide appeals against the orders that may ultimately come to be passed under Section 8 of the Act. The objections thus raised on this score stand negatived.

24. Mr. Hossain had also argued that when the writ petition was initially filed, the Court had entertained the same since the CBI had come to file a closure report before the Special Court. It was submitted that subsequent thereto, a supplementary chargesheet came to be filed by the CBI on 17 November 2021. In view of the aforesaid, it was contended by Mr. Hossain that the jurisdictional ground on which the writ petition had been entertained clearly did not survive and therefore the petitioner must be relegated to the alternative statutory remedy of raising all objections before the Adjudicating Authority.

25. The Court notes in this regard that while it may be true that the CBI had subsequently and during the pendency of the present writ petitions submitted a chargesheet, the petitioners have raised substantial jurisdictional challenges to the PAO. The petitioners have asserted that the PAO is founded on allegations and facts which neither constitute a part of the FIR allegations nor for that matter the ECIR and the complaint. According to the petitioners, ED cannot possibly be recognized as having been conferred the authority to investigate the commission of a scheduled offence. These as well as the other challenges which shall be noticed hereinafter clearly constitute substantive grounds justifying the retention of the writ petitions and for a decision being rendered by this Court under Article 226 of the Constitution.

C. PETITIONER'S ARGUMENTS

26. Appearing for the petitioners, Mr. Chawla, learned counsel, addressed the following submissions. Learned counsel submitted that the PAO impugned in the present writ petitions is wholly illegal since it is based on various factual allegations and assertions which do not form part of either the FIR, the ECIR or for that matter the complaint that subsequently came to be lodged. According to learned counsel, the foundation of the PAO goes far beyond the allegations relating to the predicate offence as embodied in the FIR and the ultimate chargesheet which was submitted by the CBI. It was contended that a reading of the PAO would establish that it is based on an allegation that the petitioner raised a sum of Rs. 118 crores by issuing

preferential shares at an exorbitant premium and that this amount would constitute proceeds of crime. It was submitted by Mr. Chawla that the aforesaid facts neither form part of the chargesheet which was submitted by the CBI nor do those allegations form part of the ECIR or the criminal complaint which came to be lodged by the ED in exercise of powers conferred by Section 45 of the Act.

27. Mr. Chawla submitted that the power to provisionally attach properties under the PMLA can only be exercised if there be substantiation of an offence as contemplated under Section 3 being evidenced. It was submitted that the definition of *"proceeds of crime"* as contained in Section 2(1)(u) of the PMLA links the same to criminal activity relating to a scheduled offence. According to Mr. Chawla, the issue of whether the petitioner had committed a crime in the course of allocation of preferential shares does not form part of the criminal investigation which had been initiated against it in terms of the FIR and ECIR. In view of the above, Mr. Chawla would contend that the respondent could not have provisionally attached properties based on allegations which were wholly foreign to the reports which pertained to the predicate offence.

28. Mr. Chawla contended that PMLA does not empower the ED to either investigate or register reports in respect of a scheduled offence. Learned counsel submitted that the respondents are conferred jurisdiction only to try and investigate an offence of money laundering. That power, according to Mr. Chawla, cannot possibly be read as extending to the ED being empowered to independently

investigate scheduled offences or provisionally attach properties based upon what it may perceive as activities amounting to the commission of a scheduled offence. The substance of the contention was that in the absence of any criminal proceedings having been registered or lodged relating to the allocation of preferential shares, the PAO insofar as it rests upon those allegations, is clearly rendered unsustainable.

29. Mr. Chawla then submitted that this Court has already ruled against the respondent insofar as an allocation of a coal block constituting proceeds of crime is concerned. Reference in this regard was made to the judgment rendered by the Court in **Prakash Industries Ltd. And Another vs. Directorate of Enforcement**[14] **[Prakash Industries-I]**. It was further contended that the challenge in the present proceedings in any case is liable to succeed in view of the judgment rendered by the Court in **Himachal EMTA Power Limited vs. Union of India and Others**[15]. Mr. Chawla submitted that undisputedly although the Fatehpur Coal Block had been allocated to the petitioner, it was never utilised and no coal as such was extracted pursuant thereto. It was in the aforesaid backdrop that Mr. Chawla commended **Himachal EMTA** for the consideration of the Court.

30. In **Himachal EMTA,** the Court was dealing with a challenge to a PAO which came to be made by the ED attaching investments made by the petitioners in a joint venture company as well as certain amounts which were held in Fixed Deposit. The Court found that

[14] 2022 SCC OnLine Del 2087
[15] 2018 SCC OnLine Del 11078

inarguably no mining activity had been undertaken by the petitioner there pursuant to the allocation having been made in its favor. Dealing with the issue of whether the investments made by the petitioner could be held to constitute proceeds of crime, the Court held as follows:-

> **"18.** A plain reading of the impugned order indicates that there is no material whatsoever on the basis of which the ED could have possibly concluded that the investments made by HEPL were 'derived or obtained' as a result of any criminal activity relating to a scheduled offence. In the impugned order, the ED has elaborately discussed the allegation made against HEPL. It is also recorded that at the time of filing of the application for allocation of coal block, the capital of HEPL was Rs. 5 lakhs which had swelled upto Rs. 7.91 crores after filing application for a coal block. The investment made by joint venture constituents of HEPL, namely, Himachal Pradesh Power Corporation Ltd. and EMTA, were further invested by HEPL; including in subscribing to the shares of CGL. The same cannot by any stretch be held to be proceeds of crime. The ED has, essentially sought to attach the investments made in HEPL on the allegation that the same have been used in commission of a scheduled offence. This is apparent from paragraphs 7 and 16 of the impugned order which are set out below:
>
> "7. AND WHEREAS, the investment of Rs. 7.91,00,000/- was made after filing for allocation of Coal Block, and the same has been used in commission of scheduled offence. i.e. the allocation of coal block by fraudulent means and to further obtain mining lease on the basis of said allocation. Further, there is a balance of Rs. 1,33,700/- lying in the bank accounts as mentioned at Para 5(xiv) and the fixed deposit No. 015340100288/8 dated 4.7.2017 amounting to Rs. 11,86,710/-.
>
> ***
>
> 16. AND WHEREAS, the following amounts have been used in the commission of scheduled offence and are proceeds crime in terms of Section 2 (u) and 2 (v) of PMLA, 2002:—

S. No.	Amount in Rs.	Remarks
1.	2,45,00,000	Investment in M/s GCL By M/s HEPL and lying in Corporation Bank, Bhowanipur

		Branch, Kolkata A/c No. 510101003473693 of M/s GCL.
2.	11,86,710	Lying as fixed deposits No. 015340100288/8 dated 04.07.2017
3.	1,26,540	Lying in A/c No. 0153201100424
4.	7,160	Lying in A/c No. 0153201002578
Total	2,58,20,410	

> **19.** The said assumption that any amount used in commission of a scheduled offence would fall within the expression "proceeds of crime" as defined under Section 2(1)(u) of the PML Act is fundamentally flawed. In the present case, the allegation against HEPL is that it had obtained allocation of coal block on the basis of misrepresentation. However, it is not disputed that mining of the coal from the block had not commenced, therefore, HEPL did not derive or obtain any benefit from the coal block. The ED has also not indicated any reason, which could lead one to believe that HEPL had derived any other benefit from the allocation of the coal block in question."

31. Mr. Chawla would submit that in **Himachal EMTA** too, the allegation was that on the strength of the coal block allocation, investments came to be made. While dealing with the aforesaid challenge, the Court had held that the procedure adopted by the ED was fundamentally flawed. It was noted that while it had been alleged that the coal block had been obtained by way of misrepresentation, no mining activity pursuant thereto was undertaken and thus it could not be said that the petitioner had derived or obtained any benefit from the said allocation.

32. Mr. Chawla then submitted that the premise on which the respondent has proceeded to doubt the allocation of preferential shares

is also clearly misconceived since the petitioners had to statutorily make a disclosure with respect to the coal block allocation bearing in mind the provisions contained in the **Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015**[16]. It was further contended that the premium of Rs. 180/- per share was also calculated strictly in accordance with the SEBI guidelines for preferential issues. It was submitted that the petitioner could not have been faulted for having convened any Extraordinary Meeting of its body of shareholders to approve the issuance of preferential shares since that was a mandatory requirement under Section 81 of the **Companies Act, 1956**[17].

33. It was further asserted that the impugned action of the respondent is in clear contravention of Section 8(3) of the Act. It was contended that the record would establish that the complaint under Section 45 came to be lodged on 17 July 2018 and thus evidently prior to the passing of the impugned order on 29 November 2018. It was submitted that as would be evident from a perusal of the order passed by the Special Judge on 17 July 2018 itself, the complaint came to be lodged late in the evening on the said date and only to circumvent the rigors of Section 8. According to learned counsel, the order of the Special Judge itself records and bears testimony to the above.

34. The challenge based on Section 8(3) proceeds on the following lines. According to Mr. Chawla, Section 8(3)(a) as it stood at the

[16] SEBI Regulations
[17] The 1956 Act

relevant time contemplated the Adjudicating Authority confirming an attachment and which was to not exceed 90 days. This position prevailed prior to Section 8(3)(a) being amended in terms of the Finance Act, 2018 which came into force on 29 March 2018. Mr. Chawla would submit that as per Section 5, the validity of a PAO could not have exceeded 180 days. That order, in terms of Section 8(3)(a) as it stood prior to its amendment in 2018, would have to be necessarily confirmed within a period of 90 days. The cumulative period of 270 days when computed from the date of the passing of the PAO would thus expire on 26 August 2019. It was submitted that even if the amended Section 8(3)(a) were to be assumed to apply, the maximum period for which the PAO could have operated would be 180 days + 365 days. Mr. Chawla submitted that viewed in that light, the provisional attachment could have continued only for a period of 545 days [180 + 365 days] and thus expire on 27 May 2022. Mr. Chawla essentially submitted that the filing of the complaint was clearly mala fide and clearly amounts to a fraud upon the statute. It was contented that the complaint came to be preferred and instituted at a time when a final report recommending closure had already been submitted by the CBI and even prior to the submission of a chargesheet which admittedly came to be filed before the competent court on 17 November 2021. According to learned counsel, the aforesaid facts would clearly establish that the action of the ED was wholly arbitrary and illegal.

35. Mr. Chawla submitted that the action of the respondents in continuing to keep the various properties of the petitioner

provisionally attached is also manifestly unjust since they have failed to conclude investigation either with respect to the ECIR or the complaint lodged under Section 45. Taking the Court through the order sheet relating to the aforesaid proceedings, it was pointed out that it would be evident that the proceedings are being continually adjourned since the respondent has failed to conclude investigation. It is in the aforesaid backdrop that it was asserted that the action of the respondents fairly amounts to a fraud upon the statute itself.

D. E.D.'s CONTENTIONS

36. Mr. Hossain, learned counsel appearing for the ED, has urged the following submissions for the consideration of the Court. It was firstly submitted that the chargesheet filed by the CBI establishes the nine instances of misrepresentation practiced by the petitioner leading up to the allocation of the coal block. He further highlighted the fact that one of those misrepresentations was with respect to the net worth of the petitioner being Rs.532 crores when, in fact and as would be evident from Para 16.34 of the chargesheet submitted by CBI, the said calculation was found to be patently incorrect and misleading. In view of the aforesaid facts, Mr. Hossain contended that the respondents would have the requisite jurisdiction to attach the proceeds of crime and which would extend to any property derived or obtained directly from the commission of the said scheduled offence. Mr. Hossain laid emphasis on the usage of the phrase "*relating to*" in Section 2(1)(u) to submit that the expressions "relating to" or "relatable" are clearly aimed at expanding the scope of the definition

of *"proceeds of crime"* and cannot be conferred a restrictive or narrow meaning. Mr. Hossain in support of the aforesaid contention sought to draw sustenance from the following observations as entered by the Supreme Court in **Doypack Systems (P) Ltd. vs. Union of India**[18]:-

> "**50.** The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context, see *State Wakf Board* v. *Abdul Azeez* [AIR 1968 Mad 79, 81, paras 8 and 10] , following and approving *Nita Charan Bagchi* v. *Suresh Chandra Paul* [66 Cal WN 767] , *Shyam Lal* v. *M. Shyamlal* [AIR 1933 All 649] and 76 *Corpus Juris Secundum* 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 *Corpus Juris Secundum* at pages 620 and 621 where it is stated that the term "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

37. It was his contention that paragraph 7.6 of the PAO would clearly establish that illegal gains were obtained and derived by the petitioner as a result of criminal activity and more particularly upon commission of the offence of criminal conspiracy to cheat. Mr. Hossain submitted that Section 120B of the IPC is an independent and standalone offence and must be understood and construed as such. It was his submission that the acts of the petitioner relating to the

[18] (1988) 2 SCC 299

issuance of preferential shares and allotment thereof at a premium had a direct nexus and relation to the misrepresentation made in their original application of 12 January 2007 for allocation of the coal block. It was submitted that from inception, the petitioner had sought to mislead and misrepresent the Union Government in order to obtain the allocation and that all steps taken in connection therewith were in continuation of the intent to cheat and derive undue benefits. It was contended that the chargesheet submitted by CBI reveals that apart from the misrepresentation made on several accounts, the petitioner had also deliberately submitted a Techno-Economic Feasibility Report instead of submitting a Project Report as required in terms of the advertisement. Mr. Hossain pointed out that the aforesaid TEFR itself related to the expansion of an integrated steel plant at Chamba and Korba and contained no mention of the setting up of a 500 MW power plant for which the allocation itself had been sought. These facts, according to Mr. Hossain, are evidenced from a reading of paras 16.3, 16.4 and 16.22 of the CBI chargesheet. The relevant parts of the chargesheet are extracted hereinbelow:-

> "16.3 During investigation the allegations of the FIR were not substantiated and it was found that M/s Prakash Industries was having sufficient net worth as per the criteria of Ministry of Power for allocation of the coal block for the end use capacity for which the coal block was allocated to it. However, some procedural error was noticed on the part of the officers of Ministry of Coal in wrong calculation of the coal share of M/s Prakash Industries Ltd in Fatehpur Coal Block. Therefore, an SPs report recommending Such Action as deemed fit against Shri K C Samaria, the then Director, Shri VS Rana, the then Under Secretary and Shri R N Singh the then Section Officer was sent to the Ministry of Coal by CBI vide letter dated 23/02/2015.

> 1.6.4 Thereafter a Report u/s 173(2) of Cr.PC, recommending closure of the case was filed in this Hon'ble Court on 20/11/2014. However, during hearings on the said closure report Sh. Prakash Javadekar, Sh. Hansh Raj Ahir and Shri Bhupender Yadav, whose complaint had been forwarded by CVC to CBI for enquiry, filed protest petition through their advocates and opposed the closure of the case. The issues raised in the protest petition as well as certain new aspects which subsequently came to light were further investigated by CBI under Intimation to the Hon'ble Court.
>
> 6.22 Investigation has further revealed that M/s Prakash Industries Ltd in its application form dated 12.01.2007 for Fatehpur coal block in Chhattisgarh had misrepresented that Detailed Project Report (DPR) for the end use project had been prepared and the same was appraised by the Financial Institution. But Instead of submitting "Project Report" as mentioned in the advertisement, it submitted a Techno-Economic Feasibility report (TEFR) with respect to expansion of Integrated Steel Plant at Champa and Korba and setting up of Integrated Steel Plant for Jagdalpur, Chhattisgarh under signature of Sh. AK. Chaturvedi, President (Corporate Affairs) as its Authorised Signatory. In this Techno-Economic Feasibility report (TEFR), there is no mention about setting up of 500 MW captive power plant at Village Champa, Distt. Janjgir, Chhattisgarh. The said TEFR inter alia belonged to a 375 MW captive Thermal Power Plant (Fluidized Bed Boller) proposed to be set up by the company at Distt. Korba, Chhattisgarh, whereas the location of the EUP i.e. Captive Power Plant for which the coal block had been applied by the company was District Janjgir Champa, Chhattisgarh. As such it was the TEFR for a different project. However, in the corresponding column No. 21 (1) and (ii) of the application form wherein it was asked whether DPR has been prepared and if yes, whether appraised by FI (Financial Institutions), M/s Prakash Industries Ltd mentioned "Yes" In both columns."

38. It was also pointed out that the chargesheet submitted by CBI ultimately and clearly establishes that not only did the petitioner misrepresent the net worth of the company, a larger conspiracy was hatched from the inception to induce the Union Government to allot the coal block. It was submitted that the petitioner had in furtherance of the aforesaid design acted along with various other individuals

including those who were posted at that time in the Ministry of Coal. It was submitted that not only had the petitioner made a series of misrepresentations with regard to its net worth, it had also deceived and misled the Union Government with respect to the total land available for the project, civil constructions, orders for plant and machinery and environmental clearance. It was pointed out that the petitioner had falsely alleged that it was in possession of 505.89 acres of land when in fact an integrated steel plant had already been set up thereon and, therefore, the entire parcel of land was not available for establishment of a 500 MW captive power plant. Mr. Hossain argued that the misinformation with respect to arrangements relating to availability of water as well as environmental clearance are apparent from the facts recorded by the CBI in paras 16.48 and 16.63 of the chargesheet. It was further contended that the statement made on behalf of the petitioner that it had already invested Rs.1150 crores and that the balance amount would be arranged through equity and borrowings from banks and financial institutions was also ultimately found to be false. The misrepresentations, according to Mr. Hossain, were taken notice and cognisance of by the Special Judge in the order of 10 February 2022. According to Mr. Hossain, the aforesaid facts would clearly justify the provisional attachment as affected by the ED.

39. Turning then to the proceeds obtained by the petitioner from allotment of preferential shares, Mr. Hossain submitted that they would clearly constitute illegal gains relatable to a scheduled offence of criminal conspiracy to cheat. It was contended that a false declaration was made by the petitioner to the BSE on 17 November

2007 asserting that the coal block in question had been allotted in its favour when in fact the allocation came to be made only on 06 February 2008. Mr. Hossain referred to the conclusions and reasons which have been recorded in paragraphs 7.5 to 7.9 of the PAO insofar as this aspect is concerned.

40. It was submitted that the financial gains which were acquired by the petitioner from the allotment of preferential shares would clearly amount to illegal gains obtained and derived by the utilisation of the coal block allocation and would thus satisfy the tests of proceeds of crime as were enunciated by the Court in **Prakash Industries-1**. In any case according to Mr. Hossain, the gains attained from the allotment of preferential shares were unmistakably based upon the commission of a scheduled offence. This since had the petitioner not misrepresented facts pertaining to the net worth of the company during the course of submission of the application for allocation of the coal block, they would have neither been eligible to be allotted the same nor would they have been in a position to make an illegal profit of Rs.118.75 crores by the allotment of preferential shares after ensuring that the share price of the petitioner had astronomically risen.

41. Mr. Hossain then, while controverting the submissions addressed at the behest of the petitioner and relating to an asserted violation of Section 8(3)(a) of the Act submitted that the writ petition is bereft of any pleadings or prayers in respect of the contention addressed on the anvil of Section 8(3)(a). Mr. Hossain submitted that the contention that the complaint under Section 45 was filed unfairly

and was only aimed at stopping the march of limitation as enshrined in Section 8(3)(a) would essentially amount to a challenge to the investigation itself. It was submitted that merely because further investigation on the said complaint is ongoing, that cannot constitute a ground which may be sufficient in law for this Court to hold that the original complaint itself has been vitiated. In any case according to Mr. Hossain, there can be no challenge to the prosecution complaint in the absence of any reliefs having been claimed or sought in the writ petition in this respect.

42. Mr. Hossain further submitted that the power of the ED to undertake further investigation in terms of Section 44(2) of the PMLA has been recognised as a wholesome provision by the Supreme Court in **Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.**[19] and in acknowledgment of the statutory position of it being empowered to file subsequent complaints. According to learned counsel, all additional or subsequent complaints would be deemed to be a part of the original complaint that had been lodged. Mr. Hossain further submitted that merely because in the perception of the petitioner the investigation by ED remains either incomplete, ongoing or cognizance on the chargesheet having not been taken by the court, would not deprive it of the right to proceed under the Act. It was submitted that Section 8(3)(a) unambiguously stipulates and prescribes that a PAO will continue to remain in operation till proceedings are pending in any court. In view of the above, it was submitted that it cannot possibly be said that the attachment was

[19] 2022 SCC OnLine SC 929

illegal. It was further urged by Mr. Hossain that the interim order of the Supreme Court which has merely stayed further proceedings before the Special Judge would not efface or wipe out the factum of a scheduled offence having been committed or proceeds of crime having been derived and obtained.

E. UNDERPINNINGS OF THE PAO

43. Having noted the rival contentions which have been addressed and before proceeding further, the Court is of the considered opinion that it would be relevant to firstly advert to the nature of the allegations which stood leveled in the FIR and chargesheet filed by the CBI, the ECIR registered at the behest of the ED and the complaint referable to Section 45. As was noticed in the earlier parts of this decision, the FIR came to be registered by CBI on 26 March 2014 alleging the commission of offences referable to Sections 120B read with Section 420 IPC as well as Sections 13(2) read with Section 13(1)(d) of the PC Act. The FIR arraigned the Promoters/Directors of the petitioner, members of the 35th Screening Committee constituted by the Ministry of Coal, unknown officials of that Ministry and other unknown persons. The FIR firstly refers to the policy of captive coal mining by private entities engaged in the power, steel and cement sectors of the national economy. It takes notes of the constitution of a Screening Committee which had been constituted by the Ministry for drawing recommendations for allocation of the shortlisted coal blocks. It also alludes to the Guidelines framed by the Ministry of Coal and which were to govern the framing of recommendations by the

Screening Committee. The FIR proceeds to record that on 13 November 2006, an advertisement was published for allotment of 35 coal blocks for captive mining. Out of the aforesaid, 15 blocks were reserved for power generation projects while the remaining were reserved for the steel and cement sectors.

44. The petitioner is stated to have submitted an application for allotment of a coal block for setting up a power plant of 650 MW at village Champa, District Janjgir in the State of Chhattisgarh. The aforesaid application is stated to be dated 12 January 2007. The said application appears to have been examined by the Ministry of Power as well as the Central Electricity Authority. According to the allegations leveled, the net worth of an applicant company was required to be 0.50 Crore per MW of the maximum capacity laid down for Ultra Mega Power Plants. The project capacity was pegged at a minimum of 500 MW. According to the FIR allegations, on a screening of a total of 187 applications which were received, 115 stood prequalified. On a further shortlisting, 44 applications were identified. The petitioner did not meet the criteria as adopted and was not included in the list of these 44 applications. The matter is thereafter stated to have been further examined by the Ministry of Power which identified and recommended 27 entities according to specified blocks to the Screening Committee for allocation. The name of the petitioner did not appear even in this list of 27 shortlisted applicants.

45. The FIR then goes on to assert that the petitioners in their application form had declared their net worth as on 31 March 2006 to be Rs.532 crore. However, and it is so alleged in the FIR, on due inquiry and investigation it has been found that the net worth of the petitioner as on that date was actually Rs. (-) 144.16 crores. The FIR then proceeds to allege that despite these facts existing on the record, the Screening Committee proceeded to rest its recommendation in favour of the petitioner solely on the self-declarations made by it and failed to even consider the same being examined independently by financial experts. Based on the recommendations of the Screening Committee, the Fatehpur Coal Block ultimately came to be allocated to the petitioner formally on 06 February 2008.

46. The record would further bear out that initially CBI submitted a final report recommending closure in terms of Section 173 of the Criminal Procedure Code. While the aforesaid final report was not formally accepted since protest objections came to be filed in the meanwhile by the complainants, CBI ultimately came to submit a chargesheet on 17 November 2021. The chargesheet while dealing with the proceedings which were taken before the Screening Committee and the Ministry of Coal lays the following allegations: -

> "16.13 Investigation has further revealed that regarding processing of application forms in the Ministry of Coal following instructions were mentioned in the advertisement under the heading "Processing of Application":-
>
> > "The applications received in the Ministry of Coal in five copies, after being checked for eligibility and completeness, would be sent to the Administrative Ministry/State Government concerned for their evaluation and recommendations. After receipt of the

recommendations of the Administrative Ministry/State Government concerned the Screening Committee would consider the applications and make its recommendations. Based on the recommendations of Screening Committee, Ministry of Coal will determine the allotment.

16.14 Subsequently, in the Ministry of Coal, It was decided that all the companies who had applied for coal blocks for Power sector would be called for giving presentation in respect of their End Use Project (EUP) and will also submit a Feed Back form mentioning the latest status of their EUP.

16.15 Investigation has further revealed that Fatehpur Coal block was a non coking coal block located in the state of Chhattisgarh and was earmarked for power sector. Total 69 applicant companies Including M/s Prakash Industries Ltd. had submitted their applications for Fatehpur coal block. M/s Prakash Industries Ltd had applied for its existing 65 MW + proposed 500 MW Thermal Power Plant to be setup at Village Champa, Distt. Janjgir, Chhattisgarh. Application of M/s Prakash industries ltd was submitted on 12.01.2007 under Signature of Sh. AK Chaturvedi, President (Corporate Affairs) who had been authorized for the same by Sh; G. L Mohta, the then whole time Director of the Company vide 6PA dated 20th April, 2006.

16.16 Investigation has further revealed that M/s Prakash Pipes and Industries Ltd was Incorporated In the year 1980 and was registered with RoC, Delhi & Haryana on 31.07.1980 vide Registration Mo. 10724 of 1980-81. Later on, its name was changed to M/s Prakash Industries Ltd. vide RoC approval fetter No, 21/H-10724/20166 dated 01.11.1990.

16.17 Investigation has further revealed that in the Ministry of Coal applications received in response to the advertisement for allocation of coal blocks were not checked for their eligibility and completeness as was mentioned In the advertisement and were sent to the Administrative Ministry / State Government concerned for their evaluation and recommendations without the same. Sh H, C. Gupta, the then Secretary, and Sh, K. S. Kropha, the then Joint Secretary, Ministry of Coal were well aware that the applications were being sent to the state Govt. and administrative Ministry without being checked for eligibility and completeness.

16.18 Investigation has further revealed that vide letter Mo. 130i6/55/2006-CA-I dated 19/28.02.2007, Ministry of coal had sent the applications received for Fatehpur Coal Block to the Govt. of Chhattisgarh.

16.19 Sh. Debasish Das, Special Secretary, Govt. of Chhattisgarh, Energy Department vide letter No. 1293/2/13/ED/Coal BI, Allot./2007 Raipur Dated 18.06.2007 conveyed the recommendation of the State Govt. of Chhattisgarh for non coking coal blocks. M/s Prakash Industries Ltd. was recommended for allocation of a coal block for 715 MW captive power plant capacity.

16.20 investigation has further revealed that Ministry of Coal vide letter No. 13016/65/2005-CA-I (Part) dated 17.04,2007 under the signature of Sh. V. S. Rana, Under Secretary had forwarded the applications received for Power sector to the Ministry of Power for their comments with the approval of Sh. K. C. Samria, Py. Secretary, Ministry of Coal.

16.21 Vide letter No. Nil dated 30.07.2007, Secretary, Ministry of Power forwarded its recommendation to the Secretary, Ministry of Coal, Ministry of Power had not recommended allocation of any coal block to M/s Prakash Industries Ltd.

16.22 Investigation has further revealed that M/s Prakash Industries ltd In its application form dated 12.01.2007 for Fatehpur coal block in Chhattisgarh had misrepresented that Detailed Project Report (DPR) for the end use project had been prepared and the same was appraised by the Financial Institution. But instead of submitting "Project Report" as mentioned in the advertisement, it submitted a Techno-Economic Feasibility report (TEFR) with respect to expansion of Integrated Steel Plant at Champa and Korba and setting up of Integrated Steel Plant for Jagdalpur, Chhattisgarh under signature of Sh. A.K. Chaturvedi, President (Corporate Affairs) as its Authorised Signatory. In this Techno-Economic Feasibility report (TEFR), there is no mention about setting up of 500 MW captive power plant at Village Champa, Distt. Janjgir, Chhattlsgarh. The said TEFR inter alia belonged to a 375 MW captive Thermal Power Plant (Fiuidized Bed Boiler) proposed to be set up by the company at Distt. Korba, Chhattisgarh, whereas the location of the EUP i.e. Captive Power Plant for which the coal block had been applied by the company was District Janjgir Champa, Chhattisgarh. As such it was the TEFR for a different project. However, in the corresponding column No. 21 (i) and (ii) of She application form wherein it was asked whether DPR has been prepared and if yes, whether appraised by FI (Financial Institutions), M/s Prakash Industries Ltd mentioned "Yes" in both columns.

16.23 Investigation has further revealed that "Project Report" was one: of the essential documents to be submitted along with the application form as mentioned in the advertisement Issued by the Ministry of Coal, for assessment of the applicant company by

Administrative Ministry for making suitable recommendation to the Screening Committee.

16.24 Whereas, M/s. Prakash Industries Ltd submitted an Irrelevant TEFR, which had no details of the proposed 500 MW power plant at Village Champa, Distt. Janjgir, Chhattisgarh, As per requirement of the advertisement issued by the Ministry of Coal, if Project Report in respect of End Use Plant was not submitted along with the application, the application form would have been treated as incomplete and It should have been rejected at the initial stage.

16.25 Investigation has further revealed that Sh, H.C. Gupta, the then Secretary, Ministry of Coal and Sh. K.S. Kropha, the then Joint Secretary of Ministry of Coal did not ensure the scrutiny of the application forms received from the applicant companies for its eligibility and completeness and proceeded ahead to consider the incomplete applications which should have been rejected at the initial stage.

16.26 In the application form, M/s. Prakash Industries Ltd had made the following claims regarding Its preparedness for setting up of its EUP I.e. 500 MW Captive power plant at Champa, Janjgir, Chhattisgarh.

S. No	Heads	Claim
1	Net worth as on 31.03.2006	532.73 Cr.
2	Land	200 Ha in possession
3	Water	Tied up / Agreement Executed.
4	Equipment	Orders placed.
5	Finance	Applied to source
6	Investments already made	Rs. 1150 crore
7	Clearances	Applied for MOEF clearance through State Pollution Board.
8	Existing capacity	65 MW CPP and 8 Itpa SI Plant
9	DPR	Prepared and apprised by the FI
10	Earlier allocation	Chotia and Madanpur (North)

16.27 Investigation has further revealed that Screening Committee meetings were held on 20.06.2007, 21.06.2007, 22.06.2007, 23.05.2007, 30.07.2007 and 13.09.2007.

16.28 During 20.06.2007 to 23.05.2007 the applicant companies gave presentations before the Screening Committee and submitted Feed-Back forms. Sh, H.C. Gupta, Secretary, Ministry of Coal and Sh. K.S. Kropha, Joint Secretary, Ministry of Coal had attended the said meetings as Chairman and Member Convener respectively of the Screening Committee.

16.29 Investigation has further revealed that notice for the Screening Committee meeting wherein companies had to make the presentation was issued to M/s. Prakash Industries Ltd. on 06th June, 2007 under the signature of Sh. K.C, Samria, Director, Ministry of Coal. During the presentation, the applicant company had to submit the Feed Back form in 25 copies. The feed-back form was titled as "latest status of end use plant", for which application for coal block had been made."

16.30 Investigation has further revealed that on 21.06.2007, Sh. Ved Prakash Agarwal, CMD, Sh. HR Surana, ED(MD), Sh. K P Singh, President, Sh. AK Chaturvedi, Executive Director(CA) and Sh. Sanjay Jain, VP (Project) appeared before the Screening Committee for presentation on behalf of M/s Prakash Industries Ltd. The presentation before Screening Committee was jointly made by Sh. Ved Prakash Agarwal and Sh. AK Chaturvedi and Feed-back form consisting of the latest status of EUP was also submitted wherein the following claims regarding setting up of the EUP was made by the Company.

S. No	Heads	Claim
1	Net worth as on 31.03.2006	532 Cr.
2	Land	200 acres already acquired
3	Water	23500 M^3/ day tied up
4	Equipment	15% of equipments commissioned
5	Finance	Financial closure achieved, and Rs. 250 crores already invested.
6	Investments already made	Rs. 250 crores
7	Clearances	Environment clearance for 1st phase of 125 MW already obtained and balance capacity under progress.
	Status of Civil Clearance	35%
8	Existing capacity	65 MW CPP and 8 Itpa SI Plant
9	DPR	Prepared

10	Earlier allocation	Chotia and Madanpur (North)"

47. CBI is thereafter stated to have enlisted the assistance of two financial experts of Coal India Limited. According to the two experts, which were nominated by Coal India Limited, the net worth of the petitioner on verification came to Rs. 264.20 crores only. This is evident from Para 16.34 of the chargesheet which is extracted hereinbelow: -

> "16.34 Thereafter, two officers of GIL namely Sh. Samiran Dutta and Smt. Sushmita Sengupta both Senior Managers (Finance) of Coal India Ltd. reported to Sh. K. S. Kropha, Joint Secretary, MoC and Sh. K C Samria, Director, CAT Section, MoC. As per the directions of the Sh. K. S. Kropha and Sh. K. C. Samria they verified the net worth of the applicant companies from the balance sheet etc submitted by the applicant companies along with their applications and submitted a report. The said net worth verification report was got typed by Sh. K C Samria but he did not obtain signatures of Sh. Samiran Dutta and Smt Sushmita Sengupta on the same. However, the said report collected from the Ministry of Coal bears the scribbles In the hand writings of Sh. K. S. Kropha. As per the said report, the net worth of M/s Prakash Industries Ltd. was calculated as Rs. 264.20 crore only as on 31.03.2006 against its claim of Rs. 532 Crores made in the application form and feedback form. The said two financial experts of QL however, did not confirm the genuineness of the said documents as these do not bear their signatures."

48. The CBI while dealing with the issue of the land in possession of the petitioner has observed as under: -

> "16.51 Investigation revealed that M/s. Prakash Industries Ltd. in Its application had claimed the requirement of land as 500 hectares and in possession 200 hectares (i.e. 494.2 acres). In the Feedback form M/s. Prakash Industries Ltd. mentioned the requirement of land as 500 acres and already acquired as 200 acres.

16.52 In the letter dated 01.09.2007 sent to SIPB, Chhattisgarh M/s. Prakash Industries Ltd. had claimed the possession of 505.89 acres of land and being in the process of acquisition of 42.68 acres of land through SIPB, 98.75 acres of land through the Forest Dept. and direct purchase of 123 acres of land.

16.53 Investigation revealed that M/s. Prakash Industries Ltd. was allotted 326 Acres of land during year 1990-91 by MP Audyogik Kendra Vikas Nigam, the predecessor of Chhattisgarh State Industrial Development Corporation (CSIDC) for a project of sponge iron Chhattisgarh State Industrial Development Corporation (CSIDC) for a project of sponge iron and other steel and alloys and purpose ancillary thereto. Further m year 2001-02, M/s. Prakash Industries Ltd. was allotted 77.05 Acres of Govt. land by CSIDC for manufacturing of sponge iron and purpose ancillary thereto and the possession of the land was also given. Subsequently, M/s. Prakash Industries Ltd. submitted another application dated 04.01.2007 for allotment of 40.897 Hectare (101.0568) of Govt. land in Distt. Janjgir Champa for the expansion of sponge iron plant which was allocated by CSIDC vide their letter dated 05.11.2007.

16.54 Investigation further revealed that In addition to the above M/s Piakash Industries Ltd had also applied for acquisition of 17,139 Hect (42 Acres) private land for expansion of their integrated steel plant to SIPB in February-March, 2007 which was forwarded to industries department vide SIPB letter dated 01.03.2007, Department of Commerce and Industries, Govt. of Chhattisgarh accorded in-principle approval for allotment of the said land to the company vide their letter dated 01.02.2008. Consequently, Collector Janjgir Champa passed the Award for 11.391 acres of land only in favour of the Company on 20.08.2010. However, till date the possession of land has not been transferred by the collector to the industries department for further transfer to M/s. Prakash Industries Ltd.

16.55 Investigation further revealed that M/s Prakash Industries ltd. had also applied for lease of 97.50 Hectares of land under Forest Conservation Act, 1988 to the Conservator of Forest, Rajpur vide their letter dated 17.10.2006 for the purpose of expansion of its integrated steel plant at Champa. After due process, the Chief Conservator of Forest Land Management vide their letter dated 12.07.2010 directed the Conservator of Forest Bilaspur to transfer 39.25 Hectare of land to M/s Prakash Industries Ltd. Finally on 29.07.2010, 39.25 Hectares of forest land was transferred to the Company by the Area Forest Officer, Champa. Thus, till date of submission of application form, Feed Back form and information to the state Govt. by the Company on 01.09.2007 no forest land was allotted and transferred to M/s Prakash Industries Ltd.

> 16.56 Investigation further revealed that accused A.K. ChaturvedI on behalf of M/s Prakash Industries had also executed an agreement dated 09.03.2007 with Sh. Parmeshwar Baish, a property dealer of Village Hathneora, Champa, Chhattisgarh, vide which Sh. Parmeshwar had agreed to arrange the sale of 123 acres of land at village Hathneora, Champa in favour of M/s Prakash Industries Ltd. by the villagers / land owners. However, after around one & half months only of execution of the said deed AK Chaturvedi informed Sh. Parmeshwar Baish that M/s Prakash Industries Ltd. had dropped its plan to set up a power plant and therefore, it did not require any land. Thus, M/s Prakash Industries Ltd. had no intentions to purchase any private land and execution of the agreement with Sh. Parmeshwar Bais was only an eye wash."

49. Dealing with the tie-up with respect to water, the chargesheet alleges as under:-

> "16.59 Investigation revealed that M/s. Prakash Industries was allocated 23000 CM of water vide allocation letter dated 05.10.2004 by the Water Resources Deptt., Govt. of Chhattisgarh for their Integrated Steel Plant with 100 MW CPP which included 25 MW Power Cogeneration and 75 MW FSB and consequently an agreement dated 10.12.2004 for the same was executed by Water Resources Department. Thus, the aforesaid allocation of water was not for 500 MW CPP of M/s Prakash Industries Ltd. In fact on 13.01,2008 M/s Prakash Industries Ltd. had applied for allocation of 50,000 CM per day for its 525 MW CPP for which Fatehpur coal block had been allocated to it and the same was cleared by the Water Resources Dept on 14.01.2011. Thus, the company had mis-represented regarding water tie up."

50. CBI in the chargesheet has also found that the claim of the petitioner that it had obtained environmental clearances with respect to 125 MW of the proposed power plant was also false. This is so recorded in Para 16.63 which reads as under: -

> "16.63 Thus, the company had neither applied nor been issued environment clearance for any part of the 500 MW CPP which was in feet the proposed power plant of M/s Prakash Industries Ltd. for which the coal block" had been applied for by it. The claim of M/s Prakash Industries Ltd. made in the application, feedback form and

letter to SIPB that it had applied for environment clearance through State Pollution Control Board and obtained MOEF clearance for 125 MW capacity of the 1st Phase is false and it had mis-represented on this count."

51. Similar misstatements and misrepresentations are noted with respect to the declarations made by the petitioner in respect of equipment, civil construction, existing capacity and finance/investment made so far. It has ultimately leveled the following allegations against the petitioner: -

"16.71 In the application form and Feed Back form M/s Prakash Industries Ltd. had claimed its net-worth as Rs. 532.73 Crores. As per the Net-worth calculation Report purportedly prepared by the CIL experts its net-worth was Rs.264.20 Crores and the net-worth got calculated by the experts of PFC as per UMPP Formula, during investigation, was Rs.312.69 Crores. During investigation the net-worth of M/s Prakash Industries Ltd. was got re-calculated by the same CIL experts as per UMPP formula and it was calculated as Rs. 258.58 Crores.

16.72 Thus, investigation revealed that calculation of Net-worth has been a subjective issue for every expert as per the assigned purpose. Therefore every calculation gives a different figure. However, none of the aforesaid experts have calculated the net-worth of M/s Prakash Industries Ltd. as Rs. 532 Crores as claimed by it in its application and Feed Back Form.

16.73 Investigation further revealed that based on the information and documents submitted by Sh. A.K. Chaturvedi vide letter dated 01.09.2007 to SIPB, Dy. Director, SIPB, Chhattisgarh compiled the information on the proforma and forwarded the same to Energy Department vide letter dated 03.09.2007. In the said proforma, it was mentioned that 505.89 Acres of land was already in possession of M/s Prakash Industries Ltd. for the entire project, 8.40 MCM per annum i.e. 23000 CM per day of water was allocated to it for the entire project, 65 MW CPP was in operation and approximately 75% of construction was completed for 185 MW CPP and Environment clearance for 87.5 MW CPP had been granted by MOEF vide letter

dated 27.01.2005. The said report along with verification reports in respect of other applicant companies was forwarded to the Ministry of Coal by Sh. Debasish Das, Special Secretary, Energy Department vide letter dated 05.09.2007 & 11.09.2007.

16.74 Investigation further revealed that on 13.09.2007 in 35th Screening Committee meeting, which was attended by H.C. Gupta and K.S. Kropha as Chairman and Member Convener respectively and also by Sh KC Samria, Director, CA-I section, MoC, M/s Prakash Industries Ltd. was recommended allocation Fatehpur Coal block situated in the state of Chhattisgarh jointly with M/s SKS Ispat and Power Ltd.

16.75 In the minute of the 35th Screening Committee which was prepared under the instructions of Sh. KS Kropha and Sh. KC Samria and was subsequently shown to Sh. HC Gupta before putting up In the file, it is falsely mentioned that verification reports from most of the State Govts as requested, were received and the information received was complied and placed before the Screening Committee, Financial strength of applicant companies was scrutinized independently with the help of financial experts from CIL. However, no such reports were provided to the members of the Screening Committee for perusal.

16.76 Investigation further revealed that in the annexure-II of the Minutes of the Screening Committee the capacity of the EUP of M/s Prakash Industries Ltd. was mentioned as 625 MW whereas the company had mentioned its capacity as 500 MW only in its feedback form. The Minutes of the Meeting was also intentionally not circulated to any members for their confirmation / perusal / objection, if any.

16.77 Investigation further revealed that in Para 8 of the Minutes of Screening Committee, it was falsely mentioned that “Based on the data furnished by the applicants and the feedback received from the State Governments and the Ministry of Power, the Committee assessed the applications having regard to matters such as techno-economic feasibility of end-use project, status of preparedness to set up the end-use project, past track/record in execution of projects, financial and technical capabilities of applicant companies, recommendations of the State Governments and the Administrative Ministry concerned etc."

16.78 Further, in Para 13 of the Minutes of 35th Screening Committee, It was again falsely mentioned that "The Screening Committee, thereafter, deliberated at length over the information furnished by the applicant companies in the application forms, during the presentations

and subsequently. The committee also took into consideration the views / comments of the Ministry of Power, Ministry of Steel, State Governments concerned, guidelines laid down for allocation of coal blocks, and other factors as mentioned in paragraph 10 above."

16.79 Investigation revealed that no inter-se merit of the applicant companies were assessed by the Screening Committee as no comparative chart ms prepared by the Ministry of Coal and provided to the members of the Screening Committee during the meeting. Ministry of Power had also not recommended allocation of any block to M/s Prakash Industries Ltd. due to Inadequate preparedness for setting up of the power plant- However, its views were Ignored by Sh. H. C. Gupta and K. S, Kropha arid they recommended allocation of Fatehpur Coal block to M/s Prakash Industries Ltd, jointly with M/s SKS Ispat Ltd.

16.80 Investigation further revealed that the minutes of the 35th Screening Committee meeting were put up In file by Sh. R. N. Singh, Section Officer, CA-I section, MoC on 14,09.20007 for approval by the Secretary, Coal through Sh, K. C. Samria, Director, CA-I, Sb. K. S. Kropha and after being approved by Sh. HC Gupta, Secretary, Coal, the same was put up to the PM as Minister of Coal on 16.09.2007 through Sh. Dasari Narayana Rao, Minister of State for Coal. The file submitted to PMO was however received back with PMO ID No. 200/31/C/83/06-ES-1 dated 21.09.2007 for comments of Ministry of Coal on a representation of M/s Bhushan Energy Ltd, forwarded by Sh. Sushil Kumar Shinde, the then Minister of Power to the Prime Minister. After examination of the said representation, the file was again put up to the PM, The recommendations of the Screening Committee were approved by PM as Minister of Coal and the same was communicated to Ministry of Coal vide note dated 23.10,2007 of Sh. Ashish Gupta, Director, PMO. As such, allocation of Fatehpur Coal Block was allocated jointly to M/s Prakash Industries Ltd. and M/s SKS Ispat and Power Ltd.

16.81 Investigation revealed that in accordance with the approval of Prime Minister as Minister of Coal, the option letter dated 06.11.2007 was issued to M/s Prakash Industries Ltd. and M/s SKS Ispat and Power Ltd, the joint allocattees, under the signature of Sh. VS Rana, Under Secretary, MoC to ascertain the option chosen by-them for development and mining of the coal block jointly. In response to the option, letter, both M/s Prakash Industries Ltd. and M/s SKS Ispat and Power Ltd vide letter dated 29^ Jan, 2008, submitted their willingness and Joint Venture Agreement under Option-I. The option received from allocattee companies was processed on file and the same was approved by Sh. H. C. Gupta on 05.02.2008.

16.82 Accordingly, Joint Allocation letter dated 06.02.2008 was issued to M/s Prakash Industries Ltd. and M/s SKS Ispat and Power Ltd under Option-I, under signature of Sh. V. S. Rana, Under Secretary, MoC for the following capacity of EUP/Quantity of coal.

SN	Name of the coal Block	Geological Reserve	Tentative Mine capacity	Name of the company	Coal requirement for 30 years	Proportionate shares of reserves of coal
1	Fatehpur	120 Mt	3.0 Mtpa	M/s SKS Ispat and Power Ltd.	4.6 X 30 « 138 for 1000 MW IPP at Kharsfa Tahsil, Distt. Ralgarh, Chhattlsgarh	73.86 MT
2				M/s Prakash Industries Ltd.	2.875 K 30=86.2,5 for 625 MW (CPP) at Village, Champa, Distt. Jangir, Champa Chhattisgarh.	46.15 MT

16.83 As such, M/s Prakash Industries Ltd was allocated coal for its 625 MW capacity against the capacity of 500 MW as mentioned In die Feed Back form.

16.84 During further investigation the claim of waiver of loan to the tune of Rs, 372 Crores as reflected in the Balance Sheets of M/s Prakash Industries Ltd for the year 2003-04 and 2004-05 was also verified which was found to be genuine.

16.85 Thus, investigation revealed that M/s. Prakash Industries Ltd., Sh. Ved Prakash Agarwal, its CMD, Sh. A. K. Chaturvedi, its Executive Director and Sh, G. L Mohta, its Director obtained Fatehpur coal block allocation by making false claims regarding its preparedness in setting up the proposed captive power plant and/submitting false /fabricated documents. Sh. H. C, Gupta, the then Secretary, Ministry of Coal, Sh. K. S. Kropha, the then Joint Secretary, Ministry of Coal and Sh. K. C. Samria, the then Director, Ministry of Coal in connivance with the aforesaid officers of the company processed incomplete application of the company without scrutinizing the same and allocated coal block in violation of the guidelines issued by Ministry of Coal in this regard. They also misled,

the Minister of Coal through PMO that the allocations were made on merits.

16.86 Investigation has further revealed that M/s Prakash Industries Ltd., Sh. Ved Prakash Agarwal, CMD, Sh. Sh A. K, Chaturvedi, Executive Director (Company Affairs) and Sh. G. L Mohta, Director of M/s Prakash Industries Ltd. entered into a criminal conspiracy with Sh. H.C. Gupta, the then Secretary, Ministry of Coal & Chairman, 35th Screening Committee and Sh. K.S. Kropha the then Joint Secretary, Ministry of Coal & Member Convener, 35th Screening Committee and in pursuance of the said criminal conspiracy M/s Prakash Industries Ltd. submitted incomplete application and misrepresented and submitted false information regarding preparation of DPR end its appraisal by financial: institution, acquisition of land, allotment of water, Environment Clearances, Orders for Equipment, Civil Construction, Investments already made, Net-worth etc for its SOO MW Power Plant to be set up at Champa, Distt. Janjgir, Chhattisgarh In order to show its better preparedness for securing allocation of Fatehpur coal block and got Fatehpur Coal block allocated for 625 MW capacity against the capacity of its EUP shown as 500 MW only in its Feed Back Form and thereby cheated the Ministry of Coal and Sh. H.C. Gupta, the then Secretary, Ministry of Coal & Chairman, 35th Screening Committee and Sh. K.S. Kropha the then Joint Secretary, Ministry of Coal & Member Convener, 35th Screening Committee processed and; considered the Incomplete application and showed undue favour to M/s Prakash Industries Ltd. by way of recommending Fatehpur Coal Block Jointly in the name of M/s Prakash Industries Ltd. & M/s SKS Ispat and Power Ltd and thereby committed criminal misconduct being a public servant.

16.87 The aforesaid acts on the part of M/s Prakash industries Ltd., Sh, Ved Prakash Agarwal its CMD, Sh. A.K. Chaturvedi, its Executive Director (CA), Sh. G. L. Mohta, its Director, Sh. H.C. Gupta, the then Secretary, Ministry of Coal & Chairman, 35th Screening Committee and Sh. K.S. Kropha the then Joint Secretary, Ministry of Coal a Member Convener, 35th Screening Committee constitute commission of offences punishable u/sec 120-B r/w 420 IPC & 13(2) r/w 13(1)(d) PC Act, 1988 and substantive offence thereof."

52. Insofar as the ECIR is concerned which came to be subsequently registered on 29 December 2014, the respondent herein on the strength of the FIR which was registered laid the following allegations: -

"7. Enquiry by CBI further revealed that M/s Prakash Industries ltd had misrepresented in its application/Feed Back form on the count of networth in setting up its proposed Thermal Power Plant. The company, in the application form and feedback form, had furnished its networth as on 31.03.2006 at Rs. 532 Crores. However during the course of enquiry it was found that the networth of company as on 31.03.06 was actually Rs.(-)144.16 Crores.

8. Enquiry by CBI further revealed that the officials of Ministry of Coal overlooked the aspect of networth of the company which otherwise would have rendered the company ineligible for allocation of coal block. The Minutes of 35th Meeting of Screening Committee speak that the Financial Strength of applicant companies was scrutinized independently with the help of financial experts from CIL. However, no such report of CIL experts was either placed before the Screening Committee or on record in files. Thus the networth verification was not done, as suggested, or if it was done so, the same was ignored by the Screening/Public Servants of Ministry of Coal.

9. It was further revealed that despite not being recommended by the Ministry of Power and the company having misrepresented on the aforesaid count, the Screening Committee in its meeting held on 13.09.2007, recommended the allocation of Fatehpur coal block jointly to M/s Prakash Industries Ltd and M/s SKS Inspat Pvt. Ltd. The final allocation letter to the allocate companies was issued by the Ministry of coal on 6th January 2008.

10. Thus M/s Prakash Industries Ltd obtained Fatehpur coal block on the basis of misrepresentation of facts. Further the members of 35th Screening Committee and officials of Ministry of Coal committed criminal misconduct by deliberately not following the guidelines for allocation of coal block and showing undue favour to M/s Prakash Industries Ltd.

11. The above stated criminal activities committed by the suspected company/persons to acquire the allotment Coal Block, prime-facie disclose commission of the offence of Criminal Conspiracy, Cheating and abuse of Official Position, which are punishable under Section 120-B, r/2 420 of IPC and 13(2) r/2 13(1)(d) of Prevention of Corruption Act, 1988, which are the Schedule offences of PMLA 2002 (as amended) as defined under Section 2(1)(y) of the said Act."

53. Before this Court it is not disputed that the complaint which ultimately came to be filed under Section 45 does not travel beyond the allegations which stand comprised in the FIR, the subsequent chargesheet which was submitted and the ECIR**.** The allegations with respect to share price manipulation and the generation of proceeds of crime from such activities is contained and set forth for the first time in the PAO. This is evident from a reading of the following paragraphs as appearing in the PAO: -

> "5.1 That investigation conducted so far by the Directorate of Enforcement disclosed that the shares of M/s Prakash Industries saw astronomical rise which coincided with the their application for allocation of "Fatehpur Coal Block" in Chhattisgarh followed by event of furnishing false information/declaration to "BSE Ltd." on 17/11/2007, before its actual allocation on 06/02/2008.
>
> 5.2 That for the purpose of proper analysis of inter-alia the trend of increase in the share prices during the relevant period, on 17.03.2016 M/s Duggal Gupta & Associates, Chartered Accountants were appointed by Directorate of Enforcement Chandigarh. Upon basis of the record based facts, M/s Duggal Gupta & Associates submitted its report dated 16.08.2016 inter-alia disclosing that:
>
> (i) Promoters of this company offloaded i 16.26 Lac shares & 66.96 Lac (66,96,316 shares) shares during F.Y. 2006-07 & 2007-08, respectively.
>
> (ii) As on 31.03.2006 promoters held 70.25% of the company s shares. As on 31.03.2007 it was reduced to 61.74% and as on 31.03.2008 it further reduced to 52.60%.
>
> (iii) Therefore, from 690,64,998 shares as on 31.03.2006 the shares of promoters reduced to 607,42,652 shares, i.e. 83,22,346 shares were offloaded out of which 66,96,316 shares were offloaded by the promoters during FY 2007-2008.
> (iv) During FY 2007-2008, value of shares of M/s Prakash Industries saw exemplary upward movement, which coincided with their application for allocation of Fatehpur Coal block dn the state

of Chhattisgarh. In the beginning of year 2007, and the process for its allocation to them, as under:

As on 02.04.2007, the share price was Rs. 31/ share.

FY 2007 - 2008-

Period	Price per Share
As on 02.04.2007	- Rs. 31
April 2007 end	- Rs. 48.10
May 2007 end	- Rs. 55.90
June 2007 end	- Rs. 54.40
July 2007 end	- Rs. 73.05
Aug 2007 end	- Rs. 94.05
Sep 2007 end	- Rs. 128.95

(Screening Committee meeting held on 13.09.2007 when share price was Rs. 102.00)

Oct 2007 end	- Rs. 187.20	Application sent to BSI on 17.11.2007
Nov 2007 end	- Rs. 239.85	
Dec 2007 end	- Rs. 337.75	
Jan 2008 end	- Rs. 281.35	Touched high of Rs. 354.60 on 01.01.2008
Feb 2008 end	- Rs. 285.00	
Mar 2008 end	- Rs. 249.55	

{M/s SKS Ispat & Power Ltd. & M/s Prakash Industries Ltd were allocated Fatehpur Coal Block vide Coal Ministry's letter No.38011/1/2007-CA-I, **dated 06.02.2008**}.

5.3. That in reply to the department's query, a letter dated 19.10.2016 was received from SEBI, in response, to the department's letter dated 07/10/2016, forwarding report of BSE investigation into surge of share price during 2007-2008. This letter inter-alia disclosed that:
(i) On 05.12.2007 the company informed BSE Ltd. that it is holding EGM for allotment of 62,50,000 equity shares on

preferential basis to Mutual Funds, Financial Institutions, FIIs, Body Corporate, NRIs, promoters and their associates;
(ii) Members at the EGM had approved investments by way of issue of warrants convertible into equity shares on preferential basis to Barclays Capital Mauritius Ltd. or its
nominees by sale of shares the said company;

(iii) On 19.11.2007 the company informed BSE Ltd. that ministry had allotted a Coal Block in Chhattisgarh for expansion of capacities in the power plant.
(iv) During the period of Examination by BSE Ltd. there were various announcements regarding issue & conversion of warrant shares and also regarding expansion of capacities, establishment and operation of new power plant.
(v) Price of the share increased from Rs.35.75 (open as on January 02, 2007) to Rs.354.60 (high as on January 01, 2008) with average daily volume 1,89,820 shares.

5.4 That the aforesaid information / declarations by M/s Prakash Industries Ltd. to BSE Ltd. coincided with surge of share price of the company as well as offloading of shares of the company by its promoters. Foreign investors were stated to be "Barclays Investments Mauritius Ltd. and its nominees"; "FIIs"; NRIs.

5.5 That, the investigation by the department disclosed that M/s Prakash Industries Ltd. and its promoters encashed the aforesaid rise of price of their shares and made huge profits, which is connected with the allocation of Fatehpur coal block to them. It was disclosed that 62,50,000 equity shares were allotted by the Company, on preferential basis (to Mutual Funds, Financial Institutions, FIIs, Body Corporate, NRIs, promoters and their associates, as per the information furnished by the company to BSE Ltd.), coinciding with allotment of "Fatehpur Coal Block". These shares were issued at a premium of Rs. 180 per share, thereby collecting Rs. 112,50;00,000/- as premium itself, whereas the total amount collected was Rs. 118,75,00,000, as detailed below:

Date	Description	Premium (Rs.)	Nominal Amount per share (Rs.)	No. of Shares	Total value (in Rs.)
03.01.2008	Equity Shares allotted on	180	10	6250000	118,75,00,000

	preferential basis at Rs. 190/- per share				
Premium collected @ Rs. 180 X 6250000 shares = Rs.112,50,00,000 Total value @ Rs. 190 X 6250000 shares = Rs.118,75,00,000					

5.6 That as brought out above, as per the information supplied by the company to BSE Ltd. on 05.12.2007 the company informed BSE Ltd. that it is holding EGM for allotment of 62,50,000 equity shares on preferential basis to Mutual Funds, Financial Institutions, FIIs, Body Corporate, NRIs, promoters and their associates. (Ref-BSE Examination Report received by the department under the cover of letter dated 19.10.2016 from Securities and Exchange Board of India- SEBI). Thus apparently, amounts were received from investors including public at large and Mutual Fund Managers."

54. Proceeding further to deal with the actual allotment of preferential shares, the competent authority while provisionally attaching the assets of the petitioner has observed as follows: -

"5.12 Whereas on further investigation, it was found out that the company had allotted new equity shares on preferential basis to the tune of 62.50 lakhs at a premium of Rs.180 per share and the same - were allotted to the following entities:

Sr No.	Name of the investor entity	No. of preferential shares purchased
1	Deutsche Securities Mauritius Limited	25,00,000
2	J. M. Financial Ventures Limited	10,00,000
3	Divya Shakti Trading Services Limited	12,50,000
4	BROMLP Mauritius Holdinqs - II	6,03,000
5	BRPL Mauritius Holding - II	8,97,000
	Total	62,50,000

> As the equity shares were allotted after submission of false declaration to the BSE Limited on 17.11.2007 regarding allocation of fatehpur coal block and in order to ascertain the effect of such declaration on the decision of the investors with regard to their acceptance to purchase the said equity shares on a premium of Rs.180/-, specific investigation was carried out which is detailed below:
>
> 5.13 For the purpose, it was ascertained from the gathered records that the original share certificates in physical form were forwarded to all the above said investors, the persons who received such original share certificates were initially asked about the authenticity of such share certificates. It was found out that in s6fffe of the cases namely BROMLP Mauritius Holdings - II, BRLP Mauritius Holding - II & Divya Shakti Trading Services Limited, the original share certificate were not forwarded to the concerned allottees of the share but were forwarded to third parties namely Vyapak Desai of M/s Nishith Desai Associates in respect of M/s Blue Ridge OMLP Mauritius Holdings II and M/s Blue Ridge LP Mauritius Holdings II and Ms. Iris Rodrigues, Assistant to Madhusuan Kela of Reliance Mutual Funds in respect of M/s Divya Shafei Trading Services Ltd. It was further ascertained that there was association of third parties also in purchase of these shares; therefore the third party representatives were also examined."

55. On the basis of the aforesaid material and facts which were gathered in the course of investigation undertaken by the ED and upon the evidence which came forth in light of the statements recorded under Section 50 of the Act, the competent authority proceeded to observe as under: -

> "7.1 That M/s Prakash Industries Ltd. had been in financial distress up to the year 2I0O6 and was in BIFR and in the year 2006-07, the company struck an agreement with IFCI and other lenders as the settlement deal of IFGI debt of Rs.900 crores for Rs. 240 crores only. The party as on 31.03.2006, declared their net-worth as Rs. 532 crores during making of an application for allocation of coal block and in the ongoing financial scenario at that point in time, the net worth did not appear to be correctly mentioned.
>
> 7.2 That the Ministry of Coal, did not conduct any scrutiny of the financial figures of the party during consideration of the party for

allocation of coal block. Sh. Vijay Singh Rana, the then Under Secretary, Ministry of Coal had categorically stated in his statement dated 05.11.2018 that no such scrutiny of financial declarations was carried out by Ministry of Coal and in this scenario also the declaration of the networth of the company cannot be prima facie considered true and correct as it had not withstood any scrutiny in terms of its veracity.

7.3 That M/s Prakash Industries Ltd. further continued submission of false declarations by having submitted the declaration to Bofnbay Stock Exchange. on 17.11.2007 intimating there under allocation of coal block, which was actually allocated on 06.02.2008. The declaration being false can be ascertained from the fact that there was a apparent purpose for its submission. The declaration besides having been submitted to BSE was also brought in the knowledge of persons like Madhusudan Kela, who was believed to have clout over the potential investors in order to get the requisite leverage out of his recommendations. In real terms the investors were made to believe that the Fatehpur coal block was actually allocated to the party leading to an impression of promising future of M/s Prakash Industries Ltd. Such an impression had a bearing on the investment decision of the investors in favour of investments with M/s Prakash Industries Ltd.

7.4 Madhusudan Kela was roped in on the premise of allocation of coal block on the basis of said false declaration to BSE and further on his recommendations, the following five investors considered the investments as detailed below:

Sr No.	Name of the investor entity	No. of preferential shares purchased
1	Deutsche Securities Mauritius Limited	25,00,000
2	J. M. Financial Ventures Limited	10,00,000
3	Divya Shakti Trading Services Limited	12,50,000
4	BROMLP Mauritius Holdinqs - II	6,03,000
5	BRPL Mauritius Holding - II	8,97,000
	Total	62,50,000

Madhusudan Kela in his statement dated 19.11.2018 had stated that the declaration dated 17.11.2007 to BSE was known to him and

this team along with five investors and it was taken on face value as there was no mechanism available with him and the investors to ascertain the authenticity or genuineness of the declaration and the hype created by the party by way of submission of false declaration to BSE led him to recommend the particular investments in M/s Prakash Industries Ltd. to above said five investors and his decision was not astute/valid. He further stated that the fund manager like him having vast experience normally based their recommendations/ references on certain analytical study, however, in the instant case the reports and studies were not up to the mark as the hype created in the shares was intentional on the part of M/s Prakash Industries Ltd. and the intensity of the hype was such as it could not have been ascertained properly as if the hype was genuine or false and ultimately the investment was made by the above said five investors even after probable due diligence by them. He further stated that the gain of Rs. 118.75 crores triggered by the said false declaration was undue gain and defied any professional propriety on the part of M/s Prakash Industries Ltd. and the declaration to BSE was by default illegal.

7.5 That all the investors except one also submitted in their respective statements that they were made to believe to the false declaration regarding allocation of coal block to the BSE which led to rise in the share value of M/s Prakash Industries Ltd. and they were made to invest in the equity shares of M/s Prakash Industries Ltd. on preferential basis at a premium of Rs. 180/- per share and further stated that their decision for investment was not appropriate and as the rise in the price could not get sustained and they had to sell the purchased equity shares on a meager value of Rs. 39/- per share. It is pertinent to note that the value of the shares as on 01.04.2007 was also Rs.31/- per share.

7.6 The issuance of shares at the premium basis having been based on artificial rise in the share value due to false declaration to BSE resulted into undue gain of Rs. 118.75 crores to M/s Prakash Industries Ltd. The gain was actually based upon, the commission of scheduled offence as had the party not misrepresented their financial figures during making of an application for allocation of coal block, there would not have been any false-declaration to BSE regarding allocation of Fatehpur coal block and further there would not have been gain of Rs. 118.75 crores.

7.7 That M/s Prakash Industries Ltd. as an extension of the criminal activity submitted false declaration to the BSE in order to create hype in the share value. The created hype resulted into increase in

> their share value and the increased value of the share was further got encashed through issuance of equity shares on preferential basis on premium of Rs. 180/- per share by way of subscription by the five investors. As the whole process was based upon the committed criminal activity and resulted into generation of proceeds of crime to the tune of Rs. 118.75 crores, which was an offence of money laundering u/s 3 of PMLA, 2002. That such proceeds of crime were further utilized by M/s Prakash Industries Ltd. in the continuous expansion of their manufacturing activities."

56. Relying on the aforesaid, the competent authority arrived at the conclusion that the investment of Rs.118.75 crores obtained by the petitioner amounts to proceeds of crime. It consequently proceeded to pass PAOs in respect of the immovable and movable properties set out in para 8. Having noticed the contents of the aforesaid, the Court proceeds to deal with the principal questions which arise for determination.

F. SCOPE OF SECTIONS 3 AND 5

57. The Court had deemed it apposite and necessary to copiously reproduce the contents of the FIR, the supplementary chargesheet as well as the ECIR in order to delineate the foundation of the action under the Act. The reproduction of what stands alleged and recorded in the FIR, the supplementary chargesheet as well as the ECIR was also imperative in order to identify the allegations which constitute the bedrock of the predicate offence. Undisputedly, money laundering proceeds on the basis of an inextricable link existing between criminal activity relating to a scheduled offence and property derived or obtained therefrom. This is evident from a reading of the definition of *"proceeds of crime"* which Section 2(1)(u) defines to mean property derived or obtained directly or indirectly by a person as a result of

criminal activity relating to a scheduled offence. The Explanation to Section 2(1)(u) which came to be added by virtue of Act 23 of 2019 clarifies the aforesaid position and further expands the reach of the expression *"proceeds of crime"* by roping in property which may have been directly or indirectly derived or obtained as a result of any criminal activity relatable to the scheduled offence. The expression "relating to" a scheduled offence or relatable to the scheduled offence reemphasises the connection that must exist between property that may have been obtained and criminal activity which satisfies the ingredients of the scheduled offences specified in the PMLA. The offence of money laundering is set forth in Section 3 which defines it to mean any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and further includes the projection of the said property as being untainted. The offence essentially is of any process or activity that may be undertaken by a person in connection with proceeds of crime. The ingredients of the aforesaid offence stand further clarified by virtue of the Explanation which came to be inserted in Section 3 by Act 23 of 2019 and which reads as follows:-

> "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."

58. The power to provisionally attach properties stands enshrined in Section 5 of the PMLA. The aforenoted provision empowers a competent authority to provisionally attach properties which represent proceeds of crime. Upon the competent authority forming a reason to believe on the basis of material available at its disposal, that a person is in possession of proceeds of crime, and that those proceeds are likely to be concealed, transferred or dealt with in any manner and which may ultimately result in frustrating proceedings relating to confiscation, it may proceed to provisionally attach such properties.

59. For the purposes of appreciating the issues which arise it would be pertinent to extract Section 5 hereinbelow:-

"**5.Attachment of property involved in money-laundering**.—4 [(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to

investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1 [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under 3 [sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."

60. It would be pertinent to note that prior to Section 5 being amended and substituted by the Prevention of Money Laundering

(Amendment) Act, 2012, the First Proviso ordained that no order of attachment would be made unless a report had been forwarded to the Magistrate under Section 173 of the Cr.P.C. in relation to the scheduled offence. It would also be pertinent to note that Section 5 prior to its aforesaid amendment also constricted the power of provisional attachment that could be exercised by the competent authority by placing the requirement of such a person having been charged with the commission of a scheduled offence. The emergency provision to attach properties which stands presently contained in the Second Proviso to Section 5 now empowers the competent authority to provisionally attach notwithstanding a person having not been charged of having committed a scheduled offence at the relevant time.

61. Section 5, however and from its inception, hinged on the power to provisionally attach properties which would constitute proceeds of crime. In order to understand property as constituting proceeds of crime, it was imperative, and continues to be so, to establish that the said property had been derived as a result of criminal activity relating to a scheduled offence. It must be borne in mind that principally the ED is charged under the PMLA with the authority to investigate and enquire into offences of money laundering. That entails it to move against property which may be found to have been derived or obtained from criminal activity. What needs to be emphasised is that the commission of a scheduled offence or criminal activity relating or relatable to a scheduled offence is a *sine quo non* or a prerequisite for moving against property on the ground that it constitutes proceeds of crime.

62. The validity of the provisions of the PMLA fell for detailed consideration of the Supreme Court in **Vijay Madanlal**. **Khanwilkar J.** speaking for the three learned Judges constituting the Bench while explaining the ambit of the expression *"proceeds of crime"* observed: -

> "**250.** 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 Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property (mentioned in Section 2(1)(v) of the Act) 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 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)].

> **251.** 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 concerned case (crime), 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 concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of 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 concerned scheduled offence. 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 of the Act."

63. As would be evident from the aforesaid passages as appearing in the decision of **Vijay Madanlal**, the Supreme Court had found that for property being regarded as proceeds of crime, it was essential for it being established that it had been obtained upon the commission of a scheduled offence. The acquisition of property and which could qualify for investigation or enquiry under the PMLA is preceded by the assumption that it had been derived or obtained as a result of criminal activity relating to a scheduled offence. Explaining this

position further, the Supreme Court in **Vijay Madanlal** observed as under: -

> "**253.** Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

64. The indelible connect between the offence of money laundering and the commission of a predicate offence also stands underlined from the following excerpts of the speech made by the then Hon'ble Finance Minister while introducing the Prevention of Money Laundering (Amendment) Bill, 2012 and which was also noticed in **Vijay Madanlal**. This is evident from Para 259 of the Report which is extracted hereinbelow: -

> "**259.** This speech, thus, set the tone for the years to come in our fight against money-laundering. This law was enacted in 2002 yet brought into force in 2005. Later, a speech was made by the then Finance Minister, who had introduced the Prevention of

Money Laundering (Amendment) Bill, 2012 in the Rajya Sabha on 17.12.2012.

> "SHRI P. CHIDAMBARAM : Mr. Deputy Chairman, Sir, I am grateful to the hon. Members, especially ten hon. Members who have spoken on this Bill and supported the Bill. Naturally, some questions will arise; they have arisen. It is my duty to clarify those matters. **Sir, firstly, we must remember that money-laundering is a very technically-defined offence. It is not the way we understand 'money-laundering' in a colloquial sense. It is a technically-defined offence. It postulates that there must be a predicate offence and it is dealing with the proceeds of a crime. That is the offence of money-laundering. It is more than simply converting black-money into white or white money into black.** That is an offence under the Income Tax Act. There must be a crime as defined in the Schedule. As a result of that crime, there must be certain proceeds — It could be cash; it could be property. **And anyone who directly or indirectly indulges or assists or is involved in any process or activity connected with the proceeds of crime and projects it as untainted property is guilty of offence of money-laundering. So, it is a very technical offence. The predicate offences are all listed in the Schedule. Unless there is a predicate offence, there cannot be an offence of money-laundering. Initially the thinking was unless a person was convicted of the predicate offence, you cannot convict him of money-laundering. But that thinking is evolved now. The Financial Action Task Force has now come around to the view that if the predicate offence has thrown up certain proceeds and you dealt with those proceeds, you could be found guilty of offence of money-laundering. What we are trying to do is to bring this law on lines of laws that are commended by FATF and all countries have obliged to bring their laws on the same lines.** I just want to point to some of my friends that this Bill was passed in 2002. In 2002, we felt that these provisions are sufficient. In the working of the law, we found that the provisions have certain problems. We amended it in 2005. We amended it in 2009. We still find that there are some problems. **The FATF has pointed out some problems. And, we are amending it in 2012. It is not finding fault with anyone. All I am trying to say is that this is an evolutionary process**. Laws will evolve in this way, and we are amending it again in 2012."
>
> (emphasis supplied)"

65. Proceeding then to deal with the question of whether the offence under Section 3 could be understood to be a standalone offence, the Supreme Court in **Vijay Madanlal** observed as follows: -

"**281.** The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and *ex-consequenti* proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of

> crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard."

66. The aforesaid passages reiterate the fundamental position that the competent authorities under the enactment would be empowered to prosecute a person for an offence of money laundering only if it be found that properties had been derived or obtained upon commission of a crime included or specified in the Schedule. It becomes pertinent to note that while arriving at the aforesaid conclusion, the Supreme Court also took note of the provisions contained in Section 66(2) of the PMLA and which enables authorities under the said enactment to furnish and share information which may come to light during the course of its own investigation and enquiry under the Act. Section 66(2) is extracted hereinbelow: -

> "**66. Disclosure of information**
>
> xxx xxx xxx
>
> "[(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.]"

67. Proceeding then to explain the significance of the Second Proviso which came to be inserted in Section 5, the Supreme Court in **Vijay Madanlal** made the following pertinent observations: -

> "**289.** The second proviso, as it existed prior to Finance Act, 2015, had predicated that notwithstanding anything contained in Clause (b) of sub-section (1) any property of any person may be attached in the same manner and satisfaction to be recorded that non-attachment of property likely to frustrate any proceeding under the 2002 Act. By amendment vide Finance Act, 2015, the words

"clause (b)" occurring in the second proviso came to be substituted to read words "first proviso". This is the limited change, but an effective one to give full play to the legislative intent regarding prevention and regulation of process or activity concerning proceeds of crime entailing in offence of money-laundering. Prior to the amendment, the first proviso was rightly perceived as an impediment. In that, to invoke the action of even provisional attachment order, registration of scheduled offence and completion or substantial progress in investigation thereof were made essential. This was notwithstanding the urgency involved in securing the proceeds of crime for being eventually confiscated and vesting in the Central Government. Because of the time lag and the advantage or opportunities available to the person concerned to manipulate the proceeds of crime, the amendment of 2015 had been brought about to overcome the impediment and empower the Director or any other officer not below the rank of Deputy Director authorised by him to proceed to issue provisional attachment order. In terms of the second proviso, the authorised officer has to record satisfaction and reason for his belief in writing on the basis of material in his possession that the property (proceeds of crime) involved in money-laundering if not attached "immediately", would frustrate proceedings under the 2002 Act. This is a further safeguard provided in view of the urgency felt by the competent authority to secure the property to effectively prevent and regulate the offence of money-laundering. In other words, the authorised officer cannot resort to action of provisional attachment of property (proceeds of crime) mechanically. Thus, there are inbuilt safeguards provided in the main provision as well as the second proviso to be fulfilled upto the highest ranking ED official, before invoking such urgent or "immediate" action. We fail to understand as to how such a provision can be said to be irrelevant much less manifestly arbitrary, in the context of the purposes and objects behind the enactment of the 2002 Act. Such provision would strengthen the mechanism of prevention and regulation of process or activity resulting into commission of money-laundering offence; and also, to ensure that the proceeds of crime are properly dealt with as ordained by the 2002 Act, including for vesting in the Central Government.

290. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional

> attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act."

68. It was significantly observed yet again that for initiation of prosecution for an offence under Section 3 of the PMLA, registration of a scheduled offence is a prerequisite. It was further held that in case a scheduled offence is not already registered, it would be open to the competent authority to proceed under Section 5 whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the Act. Laying further emphasis on the link which must exist between the property which is attached and a scheduled offence, the Supreme Court observed: -

> "**295.** As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended

provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.

296. Be it noted that the attachment must be only in respect of property which appears to be proceeds of crime and not all the properties belonging to concerned person who would eventually face the action of confiscation of proceeds of crime, including prosecution for offence of money-laundering. As mentioned earlier, the relevant date for initiating action under the 2002 Act — be it of attachment and confiscation or prosecution, is linked to the inclusion of the offence as scheduled offence and of carrying on the process or activity in connection with the proceeds of crime after such date. The pivot moves around the date of carrying on the process and activity connected with the proceeds of crime; and not the date on which the property has been derived or obtained by the person concerned as a result of any criminal activity relating to or relatable to the scheduled offence.

297. The argument of the petitioners that the second proviso permits emergency attachment in disregard of the safeguard provided in the first proviso regarding filing of report (chargesheet) clearly overlooks that the second proviso contains *non-obstante* clause and, being an exceptional situation, warrants "immediate" action so that the property is not likely to frustrate any proceeding under the 2002 Act. Concededly, there is stipulation fastened upon the authorised officer to record in writing reasons for his belief on the basis of material in his possession that such "immediate" action is indispensable. This stipulation has

> reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act."

69. The essential connection between the commission of a predicate offence and that of money laundering is further evident from the Supreme Court in **Vijay Madanlal** finding that if a person named in proceedings relating to a scheduled offence is finally acquitted or absolved, no further action for money laundering could be sustained. It was thus essentially held that once a person stands acquitted of the predicate offence, it would be impermissible for the ED to either draw or continue proceedings under the PMLA treating property to be tainted and falling within the scope and ambit of proceeds of crime. Proceeding to record its conclusions in paragraph 467 of the Report, the Supreme Court had held thus: -

> "**467.** In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—
>
> **(i)** The question as to whether some of the amendments to the Prevention of Money-laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of *Rojer Mathew*.
>
> **(ii)** The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.
>
> **(iii)** The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.

(iv) The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(v)(a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

(vi) Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.

(vii) The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove.

(viii) The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central Government may take necessary corrective steps to obviate confusion caused in that regard.

(ix) The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.

(x) The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.

(xi) Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.

(xii)(a) The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.

(b) We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment.

(xiii)(a) The reasons which weighed with this Court in *Nikesh Tarachand Shah* for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

(b) We are unable to agree with the observations in *Nikesh Tarachand Shah* distinguishing the enunciation of the Constitution Bench decision in *Kartar Singh*; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country.

(c) The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.

(d) As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.

(xiv) The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.

(xv)(a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.

(xvi) Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.

(xvii) The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no

bearing on the validity of the Schedule or any prescription thereunder.

(xviii)(a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.

(c) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.

(xix) Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.

(xx) The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take corrective measures in this regard expeditiously.

(xxi) The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected."

70. It would be relevant to note that in clause '(d)' of the conclusions so recorded, the Supreme Court again laid emphasis on the aspect of the prosecution under the PMLA being impermissible to be initiated or continued either on a notional basis or an assumption

that a scheduled offence had been committed. Their Lordships reiterated their conclusion that where a person comes to be finally discharged or acquitted of the scheduled offence or where the case pertaining to the predicate offence comes to be quashed, no offence of money laundering would sustain.

71. This Court in **Prakash Industries-I** had an occasion to deal with a PAO which had come to be made based on similar allegations of a coal block allotment having been obtained on the basis of misrepresentation. Dealing with the offence of money laundering and its prerequisites, the Court observed and found that even though Section 3 creates a standalone offence, that cannot possibly lead to a conclusion that an offence of money laundering would continue to subsist even though a person may have been acquitted in proceedings relating to the scheduled offence. While dealing with this question, the Court in **Prakash Industries-I** held thus: -

> "**49.** More recently a learned Judge of the Court in *Directorate of Enforcement* v. *Gagandeep Singh* laid down the following principles: —
>
> > **"30.** The offence of money laundering, however, is not to be appreciated in isolation but is to be read with the complementary provisions, that is, the offences enlisted in the Schedule of the Act. The bare perusal of the abovementioned provisions of the PMLA establishes the pre-requisite relation between the commission of scheduled offences under the PMLA and the subsequent offence of money laundering. The language of Section 3 clearly implies that the money involved in the offence of money laundering is necessarily the proceeds of crime, arising out of a criminal activity in relation to the scheduled offences enlisted in the Schedule of the Act. Hence, the essential ingredients for the offence of Section 3 of the PMLA become, first, the proceeds of

crime, second, proceeds of crime arising out of the offences specified in the Schedule of the Act and third, the factum of knowledge while commission of the offence of money laundering. In the present matter, at the initial stage of proceedings, the Respondents were charged for offences under Section 21/25/29 of the NDPS Act and 420/468/471/120B of the IPC, however, the learned Additional Sessions Judge, Amritsar, observed that material produced before the Court as well as the allegations made against the Respondents were largely made upon suspicion. Though certain material, properties and cash, were recovered and attached/seized but the fact that such properties were obtained through proceeds of crime of drug trafficking could not be established.

31. In view of the observation that the no scheduled offence was made out against the Respondents, this Court finds that an investigation and proceedings into the PMLA could not have been established against them at the first instance.

41. Keeping in view the facts of the case, the submissions made, documents on record, judgments cited and the contents of the impugned Order, this Court finds force in the argument that since no offences were made out against the Respondents as specified in the Schedule of the PMLA, the offence under Section 3/4 of the PMLA also, do not arise as the involvement in a scheduled offence is a prerequisite to the offence of money laundering. The Petitioner was not able to establish the allegations against the Respondents and as such the material produced was not sufficient to find guilt against them. Further, at the stage of framing of charges, the learned Additional Sessions Judge, had to only satisfy itself of the apprehension that whether the accused persons had committed the offences based on the material before it, without going into the extensive appreciation of the evidence. Since there was no material on record that casted a shadow of doubt over the Respondents, they were rightly discharged of the offences. Therefore, there is no apparent error, gross illegality or impropriety found in the Order of the learned Additional Sessions Judge."

59. This Court thus comes to the definite conclusion, that while the offense of money laundering may have been correctly described as a

> stand-alone offense in the sense of being a condition precedent for an allegation of money laundering being raised, that in itself would not infuse jurisdiction in proceedings that may be initiated under the Act even after a competent court has come to hold that no criminal offense stands committed or situations where the primary accused is discharged of the offense or proceedings quashed. When the offense of money laundering is described as a stand-alone offense, all that is sought to be conveyed is that it is to be tried separately in accordance with the procedure prescribed under the Act. It is evident from a reading of the Act that while the commission of a predicate offense constitutes the trigger for initiation of proceedings under the Act, the offense of money laundering must be tried and established separately. However, the Court finds itself unable to hold that a charge of money laundering would survive even after the charges in respect of the predicate offense are quashed or the accused is discharged upon the competent court finding that no offense is made out. The predicate offense does not merely represent the trigger for a charge of money laundering being raised but constitutes the very foundation on which that charge is laid. The entire edifice of a charge of money laundering is raised on an allegation of a predicate offense having been committed, proceeds of crime generated from such activity and a projection of the tainted property as untainted. However, once it is found on merits that the accused had not indulged in any criminal activity, the property cannot legally be treated as proceeds of crime or be viewed as property derived or obtained from criminal activity."

72. In **Prakash Industries-I**, one of the contentions which was canvassed for the consideration of the Court was that the allocation of money laundering stemmed and emanated from the facts which had occurred at a time when Sections 420 and 120B of the IPC had not been included as scheduled offences. On the basis of the aforesaid, it had been argued that the initiation of proceedings under the PMLA were violative of Article 20(1) of the Constitution. While dealing with the aforesaid submission, this Court had held as under: -

> "**64.** While evaluating the challenge addressed on the bedrock of Article 20(1) in the facts of the present case, the Court also bears in mind the fact that the Act with which we are concerned, penalises acts of money laundering. It does not create a separate punishment for a crime chronicled or prescribed under the Penal Code. The Act does not penalise the predicate offense. That

offense merely constitutes the substratum for a charge of money laundering being raised. Undisputedly, the offense of money laundering rests on the commission of a predicate offense which in turn may have resulted in a pecuniary benefit being obtained and derived. It fundamentally aims at confiscation of benefits that may be derived as a result of criminal activity and the commission of a scheduled offense. It is aimed at countering and penalising the malaise of wealth and assets acquired as a result of criminal activity. Accordingly, while the commission of the predicate offense may be described as the sine qua non for an allegation of money laundering being laid against a person, it is an offense created independently owing its genesis to the Act which came to be promulgated on 01 July 2005. It would also be pertinent to note that while the punishment in respect of various crimes created under different statutes and which are included in the Schedule did exist prior to 01 July 2005, the crime of money laundering as set out in Section 3 came into being only on that date. Prior to 01 July 2005, there was undisputedly no law in force which constructed or statutorily prescribed an offense for money laundering and empowered the respondents to attach and confiscate proceeds of crime derived from criminal activity.

65. Having outlined the contours of Article 20(1) of the Constitution and the underlying spirit of the Act, it must be held that any act of money laundering as defined in Section 3 which may have been committed and completed prior to the enforcement of the Act cannot be subjected to action under the Act. However, and at the same time it must also be held that an offense of money laundering that may be committed post 01 July 2005 would still be subject to the rigours of the Act notwithstanding the predicate offense having been committed prior to that date. As noted hereinabove, Section 3 creates an offense for money laundering. Neither that provision nor the Act is concerned with the trial of the predicate offense. Thus, any activity or process that may be undertaken by a person post 01 July 2005 in terms of which proceeds of crime are acquired, possessed or used and/or projected as untainted property would still be subject to the provisions of the Act. This because it is the act of money laundering committed after the enforcement of the Act which is being targeted and not the predicate offense. The Court also bears in mind the Explanation (ii) to Section 3 which clarifies that money laundering is a continuing activity and continues till such time as the person is directly or indirectly *"enjoying"* the proceeds of crime by its concealment, possession, acquisition or use and/or projecting it as untainted property. The word *"enjoying"* clearly appears to have been consciously used in order to impress and convey its usage in its

present and continuous form. Therefore, from a reading of Explanation (ii) also it is evident that the action that may be initiated under the Act is aimed at the offense of laundering of criminally acquired gains and profits and such activities and processes answering the description of money laundering which may occur or be indulged in after the Act has come into force. Accordingly, it must be held that while the commission of a predicate offense would constitute the bedrock for initiation of action, the date on which such an offense may have been committed would be of little relevance provided an act of money laundering is alleged to have been committed after the Act had come into force.

67. In *A.K. Samsuddin*, the Kerala High Court made the following pertinent observations:—

> "6. It is evident from the aforesaid provisions in the Act that though the commission of a scheduled offence is a fundamental pre-condition for initiating proceedings under the Act, the offence of money laundering is independent of the scheduled offences. The scheme of the Act indicates that it deals only with laundering of money acquired by committing the scheduled offences. In other words, the Act deals only with the process or activity with the proceeds of the crime including its concealment, possession, acquisition or use. Article 20(1) of the Constitution prohibits conviction except for violation of a law in force at the time of the commission of the offence. In other words, there cannot be any prosecution under the Act for laundering of money acquired by committing the scheduled offences prior to the introduction of the Act. The time of commission of the scheduled offences is therefore not relevant in the context of the prosecution under the Act. What is relevant in the context of the prosecution is the time of commission of the act of money laundering. There is, therefore, no substance in the argument that the investigation commenced as per Ext.P2 is hit by Article 20(1) of the Constitution."

73. Proceeding to reject and negative the arguments based on Article 20(1) of the Constitution, the Court held: -

> "**72.** The Court thus holds that the fact that the predicate offense which gave rise to proceeds of crime was committed prior to 01 July 2005 or that it came to be included in the Schedule on 01 June

> 2009 would clearly not be determinative and in any case an action under the Act founded on the commission of that offense provided the act of money laundering is alleged to have been committed after the coming into force of the Act cannot be held or understood to be a violation of Article 20(1) of the Constitution. As long as the act of money laundering is alleged to have been committed post the enforcement of the Act, proceedings initiated in respect thereof would clearly be sustainable.
>
> **73.** As stated hereinabove, the Act is aimed at the offense of money laundering. While the commission of a predicate offense may be a condition precedent for an allegation of money laundering being laid, it is the activities of money laundering alone which would determine the validity of proceedings initiated under the Act. Consequently, it must be held that the mere fact that the offenses of Sections 420 and 120 B of the Penal Code came to be included in the Schedule on 01 June 2009, that factor would not detract from the jurisdiction of the respondents to initiate action in respect of acts of money laundering that may have taken place or continue post the enforcement of the Act itself."

It would be apposite to note that the drawl of proceedings for an offence referable to Section 3 of the PMLA and those proceedings resting on facts and allegations preceding the inclusion of the predicate offences in the Schedule was one which was also negatived by the Supreme Court in **Vijay Madanlal**.

74. One of the additional questions which had fallen for consideration in **Prakash Industries-I** was whether a coal block allocation could independently fall within the ambit of Section 2(1)(u) and constitute proceeds of crime. Dealing with the said question, the Court had held as follows: -

> "**I. WHETHER ALLOCATION OF COAL IS PROCEEDS OF CRIME**
>
> **91.** Before proceeding to deal with this question, it would be appropriate to recapitulate the essential facts. As is apparent from the recordal of facts in the introductory part of this judgment, while

the facts of these two writ petitions weave through intersecting series of events, they principally arise in the backdrop of a criminal investigation undertaken by the CBI in connection with the allocation of the Chotia coal block in favour of PIL, the wrongful utilization and diversion of coal extracted pursuant to that allocation and the consequential generation of proceeds of crime. The aforesaid allocation ultimately came to be quashed on 24 September 2014 by the Supreme Court in *Manohar Lal Sharma*. However, much before that verdict coming to be rendered, CBI on 07 April 2010 registered **FIR No. RC/AC2/2010/A0001** alleging misrepresentation by PIL in order to obtain the coal allocation as well as diversion of coal extracted from the said block. The Special Judge CBI framed charges against PIL and other accused in C.C. No. 3 of 2012. That chargesheet was challenged by PIL before this Court which on 05 September 2014 quashed the FIR as well as the consequential chargesheet which was submitted. Although that judgment of the Court forms subject matter of challenge before the Supreme Court by way of SLP (Crl.) 2576 of 2015 which is presently pending, the decision of this Court has neither been stayed nor placed in abeyance.

92. The proceedings initiated by the Enforcement Directorate and impugned in these writ petitions emanate from a second FIR registered by the CBI on 02 December 2016 and was numbered as **R.C. No. 221/2016/E0035**. Investigation undertaken in terms of the second FIR has culminated in the filing of a chargesheet numbered 1/2020 before the competent court on 23 January 2020 alleging commission of offenses under Section 120 B read with Section 420 of the Penal Code. The allegations in the second chargesheet essentially are that the petitioners submitted false and forged documents in support of their application for allocation of the coal block, misrepresented facts pertaining to proceedings pending before the BIFR and thus fraudulently and dishonestly obtained the coal allocation. As noted hereinbefore, the aforesaid chargesheet and the proceedings relating to the same form subject matter of challenge in Special Leave to Appeal (Crl.) Nos. 656-657/2022 in which by an order of 06 May 2022, further proceedings before the Trial Court have been stayed. The impugned proceedings emanate from the second chargesheet and relate to the provisional attachment of properties held by sister concerns and entities of PIL. It becomes pertinent to highlight here that while the second chargesheet restricts itself to events which occurred upto 04 September 2003 when the coal block was allocated to PIL, the impugned show cause notices and the provisional attachment orders cover properties acquired prior to as well as post that date.

93. A reading of the second chargesheet establishes that the principal allegations levelled against the petitioners is of having submitted false and forged documents in support of their application for allocation of a coal block. It is alleged that the false, incorrect and misleading particulars were provided by them for the purposes of obtaining the allocation. The allegation of commission of offenses relatable to Section 420 and 120 B IPC is premised on the aforesaid allegations. While it is not for this Court to comment or enter any finding on whether a commission of those offenses is evidenced from the aforesaid allegations, the question which falls for determination is whether even if it were assumed that the said allegations constitute the commission of a scheduled offense and criminal activity, whether the allocation represents or can be understood as proceeds of crime as defined in Section 2(1)(u) of the Act.

94. In order to appreciate the submission of Mr. Sibal that the allocation letter would not fall within the ambit of Sections 2(1)(u) or 3 of the Act, it would be apposite to briefly advert to the system of allocation of coal blocks. In *Manohar Lal Sharma*, the Supreme Court extensively reviewed the system of allocation of coal blocks by the Union Government and explained that procedure as entailing the following steps. The allocation letter enabled the recipient to apply to the appropriate State Government for grant of a prospecting license or a mining lease dependent upon whether the block had been previously explored or not. The applicant was thereafter required to have a mining plan duly approved. The State Government on receipt of that plan was required to obtain the prior consent of the Union whereafter and upon receipt of environmental clearance and other statutory permissions, a mining lease would be granted by that Government. The nature of the right conferred on the allocatee by virtue of the allocation letter was explained by the Supreme Court in *Manohar Lal Sharma* in the following terms:—

> **"75.** We are unable to accept the submission of the learned Attorney General that allocation of coal block does not amount to grant of largesse. It is true that allocation letter by itself does not authorise the allottee to win or mine the coal but nevertheless the allocation letter does confer a very important right upon the allottee to apply for grant of prospecting licence or mining lease. As a matter of fact, it is admitted by the interveners that allocation letter issued by the Central Government provides rights to the allottees for obtaining the coal mines leases for their end-use plants. The banks, financial institutions, land acquisition authorities, revenue authorities and various other entities and so also the State Governments,

who ultimately grant prospecting licence or mining lease, as the case may be, act on the basis of the letter of allocation issued by the Central Government. As noticed earlier, the allocation of coal block by the Central Government results in the selection of beneficiary which entitles the beneficiary to get the prospecting licence and/or mining lease from the State Government. Obviously, allocation of a coal block amounts to grant of largesse.

76. The learned Attorney General accepted the position that in the absence of allocation letter, even the eligible person under Section 3(3) of the CMN Act cannot apply to the State Government for grant of prospecting licence or mining lease. The right to obtain prospecting licence or mining lease of the coal mine admittedly is dependent upon the allocation letter. The allocation letter, therefore, confers a valuable right in favour of the allottee. Obviously, therefore, such allocation has to meet the twin constitutional tests, one, the distribution of natural resources that vest in the State is to subserve the common good and, two, the allocation is not violative of Article 14."

95. The allocation letter was thus recognised to be a grant of largesse by the Government entitling the holder thereof to obtain a mining lease and consequently a right to win minerals falling in a particular block. The holder of the allocation letter thus became entitled to the grant of a lease or a permission to win minerals which always did and continued to vest in the State. The mining lease embodied the conferment of a right by the State which owned the land and the mineral deposits to enjoy that property, to extract minerals on terms and conditions specified in the lease. The position of the lessee under the provisions of the **Coal Mines (Special Provisions) Act, 2015** essentially remains the same with the ownership of the land and the mineral deposit vesting in the appropriate government and a right to obtain a lease for excavation of mineral alone being conferred and parted with. On a consideration of the procedure for allotment of coal blocks and their allotment, it is manifest that the allocation of a coal block cannot *stricto sensu* be construed either as property or conferment of a right in property. It becomes pertinent to note that the expression property is defined by Section 2(1)(v) as property or assets of every description. The allocation at best represents a right conferred by the Union enabling the holder thereof to apply to the concerned State Government for grant of a mining lease. The allocation cannot *per se* be recognised as representing proceeds of crime. It would be the subsequent and consequential utilisation of

that allocation, the working of the lease that may be granted, the generation of revenues from such operations and the investment of those wrongfully obtained monetary gains that can possibly give rise to an allegation of money laundering. It is the financial gains that may be derived and obtained or proceeds generated from such allocation which could be considered as falling within the net of Section 2(1)(u).

97. It is therefore evident that the Act essentially seeks to confiscate properties and assets that may be obtained from criminal activity and which may then be concealed and legitimised through processes which are described as placement, layering and integration. The Act is motivated by the aim to confiscate the monetary advantage that may be obtained or derived from criminal activity. When viewed in that light, it is evident that the allocation *per se* cannot possibly be viewed or understood as representing proceeds of crime in itself. It is the illegal gains obtained and derived by the utilisation of that allocation and the concealment or conversion of those gains into assets or properties which could possibly be understood as amounting to an act of money laundering.

J. IMPACT OF ALLOCATION NOT BEING PROCEEDS OF CRIME

98. The quintessential element of money laundering is the washing of criminal proceeds and its conversion into property as defined in Section 2(1)(v). For reasons set out hereinabove, the Court has come to the definite conclusion that the allocation would not constitute proceeds of crime. If therefore the scope of enquiry were to be restricted up to this point of the sequence of events alone [and as the Court is mandated to do in light of the scope of the second chargesheet], it is apparent that an allegation of money laundering would not be sustainable at all. This since the allocation of the coal block only represented a permission to obtain rights to extract minerals. Its utilisation thereafter, the extraction of coal, the generation of moneys, the investment of the same, the acquisition of properties are all actions which ensued thereafter and relate to the period post 04 September 2003. The chargesheet which forms the bedrock of the impugned proceedings restricts itself to activities leading up to the allocation of the coal block alone. The Court also bears in mind the undisputed fact that the allocation came to be made on 04 September 2003. Till that time and date, no allegation of proceeds of crime having been obtained or generated is laid against the petitioners.

99. In order to uphold the invocation of the Act resting on events leading upto the allocation of the coal block on 04 September 2003 and going no further, it was incumbent upon the respondents to establish that proceeds of crime came to be acquired or obtained on that date. This they have woefully failed to do. As noted hereinabove, the gamut of allegations with respect to the generation of proceeds of crime relate to activities and events which ensued after 04 September 2003. That for reasons which stand recorded cannot be taken cognizance of for the purposes of evaluating the validity of proceedings under the Act. within the ambit of Section 2(1)(u).

100. That leads the Court to the irrefutable conclusion that once it is found that the allocation of coal would not fall within the scope of the definition of proceeds of crime, proceedings initiated based on a contrary assumption under the Act would also necessarily crumble and disintegrate. The aforesaid conclusion flows as a necessary sequitur to the Court finding that the allocation would not constitute *"proceeds of crime"*."

75. Proceeding further to rule on the issue of Section 3 and the allocation of coal, the Court in **Prakash Industries-I** enunciated the legal position as under: -

"**L. SECTION 3 AND THE ALLOCATION OF COAL**

106. The legality of the proceedings initiated under the Act may then be tested in the backdrop of the language employed in Section 3. The offense under Section 3 is defined to mean indulging or assisting in any process or activity connected with the concealment, possession, acquisition or use of proceeds of crime and/or projecting it as untainted property. The activity or process in order to fall within the mischief of Section 3 must be one which is connected with proceeds of crime. The Court has already found that the allocation would not fall within the ambit of the expression "proceeds of crime" as set forth in Section 2(1)(u). The sine qua non for Section 3 coming into play is the existence of proceeds of crime. The activity or process of money laundering which constitutes an essential element of the offense under Section 3 has an enduring and ineffaceable link to proceeds of crime. Absent the commission of a criminal offense, the foundation of proceedings initiated under the Act would undoubtedly fall and self-destruct. Regard must be had to the fact that not every criminal activity falls within the ambit of Section 3. While criminal activity may

represent or evidence the commission of a predicate offense under the Penal Code, it is only activity relating to the laundering of proceeds of crime which can form subject matter of proceedings under the Act. However, once it is found that the allocation would not represent or fall within the scope of the expression proceeds of crime as defined under the Act, the question of money laundering would not arise at all. In view of the aforesaid, it cannot be said that Section 3 is attracted.

107. The Court further notes that it was the revenues generated from and pursuant to the allocation and the properties derived or acquired therefrom which may have fallen within the meaning of the expression "proceeds of crime". Those moneys generated or properties acquired when concealed, possessed or used and/or thereafter projected/claimed as untainted could be said to have fallen within the scope of Section 3. That activity or process as has been found above, does not form subject matter of the present chargesheet and in any case those allegations insofar as they stood comprised in the first chargesheet already stand quashed by this Court. The allocation of the coal block in any case on its own cannot be held to amount to money laundering"

76. It would be pertinent to pause here and note that in **Prakash Industries-I**, the PAO was based on allegations of misrepresentation made for the purposes of obtaining the allocation of the coal block. On lines identical to those obtaining here, it was the misrepresentations purportedly made for the purposes of obtaining the coal block allocation which had led to the passing of the PAOs. The coal block allocation had in that particular case also been utilized for the purposes of mining and extraction of minerals. The coal so extracted and the value thereof was treated as proceeds of crime. However, and subsequently, the chargesheet relating to the extraction of coal based on the allocation and the proceeds obtained from such activities came to be quashed. It was in that backdrop that the Court had been called upon to consider whether the proceedings under the

PMLA and the PAOs made could be sustained merely on the basis of an allocation letter having been obtained by misrepresentation or concealment of facts.

77. The Court in **Prakash Industries-I** found against the respondent and held that an allocation of coal, per se, cannot possibly constitute proceeds of crime. This is evident from the following conclusions which came to be recorded in Para 117: -

> "**W.** An allocation of coal cannot possibly be viewed as amounting to proceeds of crime per se. That document at best enabled the holder thereof to obtain a mining lease. Viewed in that backdrop it cannot be said that the allocation of coal is property as contemplated under the Act. It is pertinent to note that the Act essentially seeks to confiscate properties and assets that may be derived or obtained from criminal activity and which may then be concealed. It is thus evident that it is only gains that may have been obtained by the utilization of the allocation which could have possibly been viewed as proceeds of crime.
>
> **X.** It is the gains that may be obtained from criminal activity which are concealed or projected to be untainted that can form the subject matter of the offense under the Act. The allocation of a coal block in itself did not give rise to any monetary gains. It was only when the same was utilized that the question of illegal gains would have arisen.
>
> **Y.** The impugned proceedings rest on the second chargesheet which bids us to restrict scrutiny upto 04 September 2003 when the allocation came to be made. The proceedings under the Act thus cannot travel beyond the gamut of that chargesheet. The allegations of money laundering would thus have to be cabined and fenced in upto that date. This since the offense is stated to have been committed and completed on 04 September 2003. Thus, any event or offense that may have been allegedly committed post that date would clearly fall beyond the pale of scrutiny for the purposes of adjudging the validity of the impugned proceedings.
>
> **Z.** This aspect represents a critical pinion in this case since the criminal activity on which the allegation of money laundering is constructed and raised is the allocation of the coal block. As noted

above, there is no allegation that any illegal monetary gains were derived or obtained as on 04 September 2003. This coupled with the fact that the allocation itself would not represent proceeds of crime leads the Court to the unescapable conclusion that the impugned proceedings are rendered patently illegal.

AA. The Court has additionally taken into consideration the fact that the first chargesheet and which dealt with allegations of the allocation having been utilized for the purposes of extracting coal, the diversion of the mined mineral for unlawful gain, the acquisition of properties from the profits so earned and other related allegations already stands quashed. As long as that judicial declaration holds the field, the Court would have to necessarily acknowledge that no criminal activity was indulged in.

BB. The show cause notice and the provisional orders of attachment proceed on the basis that the profits derived from criminal activities post 04 September 2003 and the properties acquired directly as a result thereof are liable to be attached under the Act. However, and as this Court has found activities post 04 September 2003, cannot form the foundation for the initiation of proceedings under the Act since the chargesheet itself stands restricted to events which occurred up to the date of allocation only. Since for reasons recorded in the body of the judgment, it has already found that the allocation would not constitute proceeds of crime and that in light of the decision of the Court of 05 September 2014, it cannot be said that the petitioner indulged in any criminal activity, the attachment is rendered unsustainable."

78. **Prakash Industries-I** thus too was a case which was based on the allegation of a coal block allocation having been obtained by misrepresentation and active concealment of facts. While in the said decision it was found that the coal block had actually been worked and utilized, the chargesheet pertaining to the proceeds which came to be generated from such activities came to be quashed. The predicate offence which thus existed on the date when the POAs came to be made was merely the coal block allocation. It was in the aforesaid backdrop that this Court had come to conclude that the ED could not

have proceeded to provisionally attach properties based on allegations and incidents anterior to the allocation of the coal block.

79. It would be pertinent to recall that in the present case, it was admitted to parties that the coal block had not been utilized. It was conceded on behalf of the respondents that no coal had been extracted on the strength of the allotment made in favour of the petitioner. It was in the aforesaid backdrop that Mr. Chawla had heavily relied upon the judgment rendered by the Court in **Himachal EMTA**. The decision in **Himachal EMTA** assumes significance for more than one reason. Firstly, the attachment order therein also emanated from an allocation of a coal block in favour of the petitioner with it being alleged that it had been secured by misrepresentation of facts. In terms of the PAO, the ED had proceeded to identify the investments made by the petitioner in the Special Purpose Vehicle which had been constituted by it along with M/s JSW Steel Limited for carrying on mining activities. The Court had taken note of the principal allegations contained in the PAO and which were to the effect that the coal block had been obtained by way of misrepresentation and that the investments made in the Special Purpose Vehicle would be liable to be viewed as proceeds of crime. For our purposes, it would be relevant to note that one of the grounds on which the PAO came to be assailed was that since no mining activity had been undertaken, it could not be said that any benefit had been derived from the allocation of the coal block. It was consequently argued that it could not possibly be said that any proceeds of crime had come to be generated. While

holding in favour of the petitioner, the Court in **Himachal EMTA** held thus: -

> "17. It is clear from the language of Section 2(u) of the PML Act that the expression "proceeds of crime" refers to a property, which is "derived or obtained" by any person as a result of criminal activity. Therefore, in order to pass an order of provisional attachment, it was necessary for the ED to have reasons to believe that the property sought to be attached was "derived or obtained" from any scheduled crime.
>
> 18. A plain reading of the impugned order indicates that there is no material whatsoever on the basis of which the ED could have possibly concluded that the investments made by HEPL were 'derived or obtained' as a result of any criminal activity relating to a scheduled offence. In the impugned order, the ED has elaborately discussed the allegation made against HEPL. It is also recorded that at the time of filing of the application for allocation of coal block, the capital of HEPL was Rs. 5 lakhs which had swelled upto Rs. 7.91 crores after filing application for a coal block. The investment made by joint venture constituents of HEPL, namely, Himachal Pradesh Power Corporation Ltd. and EMTA, were further invested by HEPL; including in subscribing to the shares of CGL. The same cannot by any stretch be held to be proceeds of crime. The ED has, essentially sought to attach the investments made in HEPL on the allegation that the same have been used in commission of a scheduled offence. This is apparent from paragraphs 7 and 16 of the impugned order which are set out below:
>
> > "7. AND WHEREAS, the investment of Rs. 7.91,00,000/- was made after filing for allocation of Coal Block, and the same has been used in commission of scheduled offence. i.e. the allocation of coal block by fraudulent means and to further obtain mining lease on the basis of said allocation. Further, there is a balance of Rs. 1,33,700/- lying in the bank accounts as mentioned at Para 5(xiv) and the fixed deposit No. 015340100288/8 dated 4.7.2017 amounting to Rs. 11,86,710/-.
> >
> > ***
> >
> > 16. AND WHEREAS, the following amounts have been used in the commission of scheduled offence and are

proceeds crime in terms of Section 2 (u) and 2 (v) of PMLA, 2002:—

S. No.	Amount in Rs.	Remarks
1.	2,45,00,000	Investment in M/s GCL By M/s HEPL and lying in Corporation Bank, Bhowanipur Branch, Kolkata A/c No. 510101003473693 of M/s GCL.
2.	11,86,710	Lying as fixed deposits No. 015340100288/8 dated 04.07.2017
3.	1,26,540	Lying in A/c No. 0153201100424
4.	7,160	Lying in A/c No. 0153201002578
Total	2,58,20,410"	

19. The said assumption that any amount used in commission of a scheduled offence would fall within the expression "proceeds of crime" as defined under Section 2(1)(u) of the PML Act is fundamentally flawed. In the present case, the allegation against HEPL is that it had obtained allocation of coal block on the basis of misrepresentation. However, it is not disputed that mining of the coal from the block had not commenced, therefore, HEPL did not derive or obtain any benefit from the coal block. The ED has also not indicated any reason, which could lead one to believe that HEPL had derived any other benefit from the allocation of the coal block in question."

80. It would be pertinent to note that the aforesaid judgment rendered by a learned Judge of the Court forms subject matter of a Letters Patent Appeal being L.P.A. No. 588/2018 in which on 12 December 2018, the Division Bench had provided that while the Adjudicating Authority may proceed in the matter, final orders shall

not be passed without the leave of the Court. The aforesaid order passed by the Division Bench was assailed by **Himachal EMTA** by way of S.L.P. (C) Nos. 33919-33920/2018 in which on 11 January 2019, the order passed by the Division Bench noticed hereinabove was placed in abeyance. The matter presently rests at that stage. Suffice it to note that notwithstanding the aforesaid orders passed on the Letters Patent Appeal as well as the Special Leave Petition, the principal judgment rendered has neither been stayed nor placed in abeyance.

81. While closing the chapter relating to **Himachal Emta**, it may be observed that the allegation there related to the investments made by the applicant for the coal block in the Special Purpose Vehicle. In the facts of that case, the Court came to the conclusion that since no mining activity had been undertaken, it could not be said that any proceeds of crime had been derived or obtained. Suffice it to note that in the said decision the conclusion of the Court appears to have been based on the fact that since no mining activity was undertaken, the investments made by the applicant itself could not possibly be viewed as property derived or obtained from criminal activity. However, insofar as the present case is concerned, the PAO is based not merely on the allocation of the coal block but also that on the basis of the said allocation, the petitioner lured investors to seek allotment of preferential shares and that the moneys so obtained amounted to proceeds of crime. To the said extent, it is apparent that the present case is distinct from **Himachal Emta.**

G. POWERS ENTRUSTED WITH THE E.D.

82. Turning then to the essence of the PMLA and the nature of the function that the ED is obliged to discharge, this Court comes to the irresistible conclusion that the Act is essentially concerned with the trial of offences of money laundering. That offence created in terms of Section 3 of the Act is inextricably linked to the commission of a scheduled offence. This since, Section 2(1)(u) defines *"proceeds of crime"* to mean property derived or obtained as a result of criminal activity relating to an offence set forth and embodied in the Schedule. The principles enunciated in **Vijay Madanlal** as well as **Prakash Industries-I** would lead to the inevitable conclusion that an allegation of money laundering is premised on the commission of a criminal offence. As was observed by the Court in **Prakash Industries-I**, absent the commission of a criminal offence, the foundation of proceedings that may be initiated under the PMLA would *"undoubtedly fall and self-destruct"*.

83. The Court had deemed it apposite to extensively reproduce the allegations which stood leveled in the original FIR, the supplementary chargesheet as well as the ECIR in order to examine and appreciate the width of the allegations which form the bedrock for the initiation of action under the PMLA. Those would clearly evidence that they stand restricted to the alleged acts of misrepresentation and submission of incorrect facts by the petitioner in order to obtain an allocation in respect of Fatehpur Coal Block. Significantly, the allegation with respect to manipulation of share price and the proceeds

that may have been obtained by the petitioner from the allotment of those preferential shares neither forms part of the FIR, the supplementary chargesheet nor the ECIR. The position which thus emerges is that as on date the offences that could be said to have been allegedly committed by the petitioner by virtue of allotment of preferential shares does not form subject matter of the proceedings drawn in respect of the predicate offence.

84. It becomes pertinent to observe that the ED stands empowered under the PMLA to try offences relating to money laundering. It neither stands conferred the authority nor the jurisdiction to investigate or to enquire into an offence other than that which stands comprised in Section 3. It is in that context that the observations made by the Supreme Court in **Vi**jay **Madanlal**, namely, that the authorities under the PMLA cannot resort to action against a person for money laundering on an assumption that a scheduled offence had been committed assumes significance. It would be pertinent to recall that in **Vijay Madanlal**, the Supreme Court in Para 253 of the report had pertinently observed that authorities under the PMLA cannot resort to action thereunder on an assumption that property constitutes proceeds of crime or that a scheduled offense had been committed. Apart from the above, it was further observed that a report with respect to the commission of a scheduled offence must already be registered with the jurisdictional police or pending enquiry by way of a complaint before the competent forum. The Supreme Court had pertinently observed that the expression *"derived or obtained"* must be understood as being indicative of criminal activity relating to a

scheduled offence *"already accomplished"*. It was further held that for initiation of action under the PMLA for offences under Section 3, the registration of a scheduled offence is a prerequisite. It had gone on to further observe that even if emergent action were warranted in terms of the Second Proviso to Section 5, it would be incorrect to assume that the provisional attachment of property could exist absent even a link with the scheduled offence. The Supreme Court had pertinently observed that even if the ED in the course of its investigation and enquiry into an offence of money laundering were to come across material which would otherwise constitute a scheduled offence, it could furnish the requisite information to the authorities otherwise authorized by law to investigate those allegations and consider whether they would constitute the commission of a predicate offence.

85. What needs to be emphasised is that the PMLA empowers the ED to investigate Section 3 offenses only. Its power to investigate and enquire stands confined to the offense of money laundering as defined in that Section. However, the same cannot be read as enabling it to assume from the material that it may gather in the course of that investigation that a predicate offense stands committed. The predicate offense has to be necessarily investigated and tried by the authorities empowered by law in that regard. As would be evident from a perusal of the Schedule, it enlists offenses defined and created under various statutes which independently contemplate investigation and trial. The primary function to investigate and try such offenses remains and vests in authorities constituted under those independent statutes. ED

cannot possibly arrogate unto itself the power to investigate or enquire into the alleged commission of those offenses. In any case, it cannot and on its own motion proceed on the surmise that a particular set of facts evidence the commission of a scheduled offense and based on that opinion initiate action under the PMLA.

86. Regard must be had to the fact that initiation of action under Section 5 of the Act is premised on the competent authority having reason to believe that a person is in possession of proceeds of crime. The formation of opinion under the said provision is not related to the commission of a scheduled offense. Property, in order to be recognised even prima facie as being proceeds of crime must necessarily be preceded by "criminal activity relating to a scheduled offense". This is also evident from the use of the expressions "as a result of" and "derived or obtained" in Section 2(1)(u) of the Act. The evidence of criminal activity would be either a First Information Report, a complaint or a chargesheet as envisaged under various statutes. However, in absence thereof it would be wholly impermissible for the ED to itself become the arbiter of whether a scheduled offense stands committed.

H. SECTION 66(2) AND ITS RAMIFICATIONS

87. The Court further finds that while the Second Proviso to Section 5 empowers the ED to proceed to provisionally attach properties even in the absence of a report under Section 173 of the Criminal Procedure Code or a complaint lodged, the same cannot be read de hors the limited purpose of that proviso. The Second Proviso is in a sense an

emergency power which stands conferred upon the ED to proceed against property involved in money laundering if it be of the opinion that if immediate action is not taken, the proceedings under the Act would be frustrated. The conferral of that power, to be exercised in exigencies contemplated thereunder, cannot possibly be recognised as being the source of a power inhering in the ED to presume the commission of a scheduled offense. The acceptance of a contrary position would be directly contrary to the enunciation of the legal position by the Supreme Court in **Vijay Madanlal**.

88. The Court notes that the legislation strikes an important balance while dealing with such a contingency by empowering the ED to take emergent steps under Section 5 on the basis of the material that it may have gathered in the course of its investigation and at the same time placing it under an obligation to transmit the requisite information to the concerned agency for necessary action in terms of Section 66(2). This was described by the Supreme Court in **Vijay Madanlal** to be the contemporaneous obligation liable to be discharged by the ED. The aforesaid position sustains when one bears in mind the pertinent observations made in **Vijay Madanlal** while dealing with Sections 3 and 5 of the Act and the issue of a standalone offense. Section 66(2) read with Section 5 of the Act thus accounts for a situation where even though a report under Section 173 of the Cr.P.C. or a complaint may not have come to be registered, the ED would yet be empowered to proceed against tainted property if it be of the opinion that in the absence of emergency measures being adopted, the objective of the Act to attach and confiscate proceeds of crime would be frustrated.

However, the Act also places the ED under an important obligation of apprising the concerned agency of what it may view or consider as amounting to the commission of a scheduled offense. What needs to be emphasised is that while the adoption of peremptory measures by the ED may be justified and are so sanctioned by the Act, it would be incorrect to construe those powers as the ED alone being entitled to adjudge or declare that a predicate offense stands committed. The Court finds itself unable to countenance such a power being conferred upon the ED under the provisions of the Act.

89. Turning then to the facts of the present case the Court finds that till date the ED has failed to take any steps as are envisaged under Section 66(2) of the PMLA. As would be manifest from a reading of sub-section (2) of Section 66 if the Director or other authority on the basis of material in its possession comes to form the opinion that the provisions of any other law in force are contravened, it is obliged to share that information with the concerned agency for necessary action. Section 66(2) thus fortifies the conclusion of the Court that ED does not stand conferred with any independent power to try offences that may be evidenced or may stand chronicled as offences under any other law. What the Court seeks to highlight is that the jurisdiction and authority of the ED stands confined to considering whether an offence of money laundering stands evidenced. If in the course of its enquiry and investigation, it were to come to the conclusion that the material in its possession evidences the commission of an offence created under any other enactment, it would be obliged to furnish requisite information in respect thereof to the concerned agency for

necessary action. In any case and independent of Section 66(2), the Court finds itself unable to recognize ED as being statutorily empowered to either try or examine whether an offence under any other statue stands committed nor can it and more importantly pass a PAO on a mere assumption that an offence independently created under any other statute is established to have been committed.

90. The allocation of the preferential shares and the proceeds garnered therefrom is what constitutes the substratum of the PAO. However, no report or complaint in relation thereto stands registered. In fact, the allegation of an offense having been committed by the petitioner in the course of allotment of preferential shares was also not shown to have been ever investigated by the concerned agency. It is thus established beyond an iota of doubt that the PAO rests on a mere presumption of the ED that a scheduled offense was committed by the petitioner while allotting preferential shares.

91. In the facts of the present case, the Court further notes that CBI had registered the FIR on 30 April 2014. It thereafter proceeded to submit a Closure Report on 30 August 2014. Upon a protest petition coming to be filed, proceedings continued to linger before the Special Judge till ultimately on 17 November 2021, CBI submitted a chargesheet. As noted hereinabove, neither the FIR nor the chargesheet comprises allegations relating to the allotment of preferential shares and the benefits derived therefrom. Similarly, the ECIR came to be registered on 29 December 2014. Even this does not encompass the allegations relating to the allotment of preferential

shares. In the ECIR proceedings, and as the order sheet would reflect, the matter has been continually adjourned right from December 2014 pending further investigation being undertaken by the ED.

92. The Court is constrained to observe that despite both those proceedings being pending since 2014, ED did not deem it fit, appropriate or imperative to furnish any information to the CBI in order to enable it to examine whether the allotment of preferential shares would evidence the commission of an offence under the IPC or any other Statute. Regard must also be had to the fact that the PAO itself came to be made on 29 November 2018 and thus almost four years after the registration of the FIR by the CBI and the filing of the ECIR. In fact, and undisputedly, the ED was not shown to have furnished information with respect to allotment of preferential shares even when the present petitions were closed for rendering judgment.

93. The Court is further constrained to observe that the preferential allotment of shares was made on 03 January 2008. The respondent alleges that the coal block allocation and disclosures in respect thereof were made before the BSE and other regulatory authorities around that time. It was the increase in the share price of the petitioner between 02 January 2007 and 01 January 2008 which formed subject matter of its scrutiny. The premium amount of Rs.118.75 crores was also received during this period. The Court is thus faced with a situation where the PAO was based on events which had occurred six years prior to the submission of the ECIR. The PAO came to be drawn ten years after the allocation of preferential shares. The chargesheet

submitted by the CBI does not take cognizance of allegations pertaining to the preferential allotment of shares as amounting to the commission of an offence under IPC. In fact, and till date even though more than fourteen years have elapsed, ED has failed to furnish any information to the competent agency to try, investigate or examine aspects pertaining to the preferential allotment of shares in order to ascertain whether they evidence the commission of a scheduled offence. Thus, in the considered opinion of the Court, the aforesaid facts render the impugned PAO's not only violative of the statutory provisions but also patently arbitrary and illegal.

I. PERIPHERAL ISSUES

94. Mr. Hossain then contended that the PAO is based on a series of events and transactions, interlinked and intertwined, which led to the generation of proceeds of crime. Learned counsel contended that the acts of misrepresentation commenced from the time when the petitioner made an application for allocation of the coal block and continued upto the allotment of preferential shares. It was contended that the intent to misrepresent and generate proceeds of crime was part of a conspiracy which commenced from the time of the making of the application for allocation and continued upto the allotment of preferential shares. It was thus submitted that unlike the facts which obtained in **Prakash Industries-I** where the allegations stood terminated at the point of allocation of the coal block, in the present case the PAO rests on additional facts and events which occurred post

the allocation of the coal block and thus empowering the ED to initiate action for provisional attachment.

95. Even if the Court were to proceed on the assumption that the aforesaid submission was correct, it would have to necessarily view the PAO as resting on two fundamental pillars: (a) the allocation of the coal block and (b) the allurement of investors to subscribe to preferential shares. Insofar as the first facet is concerned, undoubtedly it would have to be answered against the respondent in light of the conclusions recorded by the Court in **Prakash Industries-I**. As would be evident from the extracts of the aforesaid decision noticed hereinabove, this Court had come to the definitive conclusion that an allocation of a coal block on its own would not constitute proceeds of crime. The question which thus survives for consideration is whether the PAO can be sustained on the assertion of the respondent that the allotment of preferential shares was also a fact which could have been taken cognizance of for the purposes of exercising the power to provisionally attach properties.

96. Insofar this aspect is concerned, this Court has come to conclude that in the absence of those allegations having been taken cognizance of as constituting a scheduled offence, the ED could not have based its order of provisional attachment on the above. The Court has in the preceding parts of this decision, noticed the extent to which the power of the ED under the Act could be recognized to be available to be exercised. The Court has, for reasons aforenoted, clearly come to conclude that the Act does not empower the ED to

either proceed on the assumption that a scheduled offense stands committed nor does it extend to it being empowered by law to investigate or charge a person upon it forming an opinion that the commission of a predicate offence stands evidenced. As was emphasised in the earlier parts of this decision, the power of investigation and inquiry as conferred on the ED stands restricted to an offence of money laundering. The indelible connect between the scheduled offence and that of money laundering cannot possibly be construed as empowering the ED to independently investigate or try a predicate or scheduled offence. In view of the aforesaid and in the absence of the alleged allurement of investors to apply for allotment of preferential shares forming part of the chargesheet relating to the predicate offence, the Court finds itself unable to accept the submission of Mr. Hossain.

97. The Court finds itself unable to hold in favour of the respondent on this score additionally on account of a failure on the part of the ED to have called upon the competent agency to consider, examine or investigate whether the allotment of preferential shares did in fact constitute a scheduled offense. The impugned PAO cannot be countenanced as falling within the meaning of an emergency attachment order bearing in mind that the allotment had itself occurred more than 11 years prior to the action initiated by the ED. In fact, even after the passing of 14 years, that aspect has neither been investigated by the competent agency nor has any report in that respect been lodged. While it may be urged that it would still be open to the ED to provide information under Section 66(2) of the Act, that too does not

convince the Court to hold in favour of the respondent in the facts of the present case. It must be stated that an action to attach properties provisionally under Section 5 must necessarily be tested based upon the facts and the material that exists on the day when it comes to be made. A PAO cannot possibly be sustained based upon what the ED may prospectively choose to do. In any case, it would be wholly unfair to accept any measure that the ED may choose to adopt 15 years after the allotment of the preferential shares as either lending legitimacy to a provisional attachment that was affected in 2018 or validating the impugned PAO's.

98. It was additionally contended by Mr. Hossain that the Act empowers the ED to investigate all relevant facts material to prove an offence of money laundering irrespective of whether they amount to an additional scheduled offence. It was contended in this respect that if in the course of its investigation, the ED comes across a string of minor schedule offences, nothing prevents it from placing those crucial facts before the court trying the offence of money laundering. The Court finds itself unable to sustain this contention for the following reasons.

99. At the outset, it must be noted that courts constituted under the Act are charged with trying the offence of money laundering as distinct from a scheduled offence. By way of an exemplar, it may be noted that if in the course of its investigation or inquiry the ED comes to conclude that a set of facts evidences the commission of offences under Sections 406 or 415 of the IPC, clearly those offences cannot

possibly be tried by the courts constituted under the Act. Those offences in terms of the scheme of the Act would have to be necessarily investigated by the competent agencies recognized under the IPC and tried by courts constituted under that statute. Holding to the contrary would amount to recognizing an authority inhering in the ED to not only try offences of money laundering but scheduled offences itself.

100. The Court finds that the aforesaid conclusion also finds sustenance from the observations made by the Supreme Court in **Vijay Madanlal**. While dealing with the imperatives underlying the introduction of the Second Proviso to Section 5 of the Act, the Supreme Court had noted that prior to Section 5 being amended in terms of Finance Act, 2015, the First Proviso to Section 5 clearly impeded the ED from affecting *"emergency attachment orders"*. The Second Proviso now empowers the ED to take emergent steps to provisionally attach proceeds of crime whilst contemporaneously sending information to the jurisdictional authority in light of Section 66(2) of the Act. The aforesaid observations as appearing in paragraphs 289 and 290 of the report thus clearly lend support to the conclusions arrived at by this Court when it holds that while it may be open for the ED to take emergent steps by virtue of the Second Proviso to Section 5 of the Act, it does not detract from its obligation to transmit the requisite information which according to it would evidence the commission of a scheduled offence for investigation and trial by the competent agency in accordance with law.

101. It was additionally submitted by Mr. Hossain that the mere fact that further investigation is being undertaken by the CBI in respect of the predicate offence as well as by it in relation to the ECIR and the Section 45 complaint, the same cannot lead to any adverse inference being drawn in light of what was held by the Supreme Court in **Vipul Shital Prasad Agarwal vs. State of Gujarat**[20]: Referring to the observations made by Justice Chelameshwar while penning a concurring opinion in that decision, Mr. Hossain submitted that merely because further investigation was being undertaken, it would not mean that the original chargesheet submitted under Section 173(2) stood rejected. Reliance in this regard was placed on the following observations as appearing in paragraph 21 of the report:-

> "21. In my opinion, the mere undertaking of a further investigation either by the investigating officer on his own or upon the directions of the superior police officer or pursuant to a direction by the Magistrate concerned to whom the report is forwarded does not mean that the report submitted under Section 173(2) is abandoned or rejected. It is only that either the investigating agency or the court concerned is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of the offence indicated in the report."

102. This Court deems it apposite to observe that the present decision is not based on the fact that the CBI, despite having submitted a chargesheet way back in 2021, has been accorded the liberty to undertake further investigation. This Court has also not based its conclusions on any adverse inference that is liable to be

[20] (2013) 1 SCC 197

drawn from the aforesaid fact. All that needs to be observed in this respect is that while it may be open for the CBI and the ED to continue to investigate in terms of the liberty granted by the competent courts, the mere pendency of that investigation would not sustain a PAO based on allegations which do not form part of those proceedings. This since the PAO and its validity would have to be evaluated based on the material on which the competent authority had proceeded to form its opinion that the properties constituted proceeds of crime.

103. This Court in the facts of the present case has found that the PAO essentially rests on allegations which neither form part of the chargesheet submitted by the CBI nor the ECIR. The validity of the PAO is thus liable to be examined on the basis of the material which comprises and constitutes the predicate offence. Similarly, the argument of Mr. Hossain that it would always be open to the investigating agency to submit additional and supplementary chargesheets cannot possibly sustain the Provisional Attachment Orders. Quite apart from the above submission being wholly conjectural, it may only be additionally noted that the PAO or its validity cannot be adjudged based on what the investigating agency may do in the unforeseeable future.

104. Mr. Hossain had then submitted that the PAO impugned in these petitions is based on more than one allegation and thus even if the Court were to come to the conclusion that one of those would not constitute proceeds of crime, that would not be sufficient to set aside

or quash the same. Reliance in this respect was placed on the following observations made by the Supreme Court in **Srikrishna (P) Ltd. vs. ITO**[21]:-

> "14. In ITO v. Mewalal Dwarka Prasad [(1989) 2 SCC 279 : 1989 SCC (Tax) 266 : (1989) 176 ITR 529] this Court held that if the notice issued under Section 148 is good in respect of one item, it cannot be quashed under Article 226 on the ground that it may not be valid in respect of some other items. We need not, however, dilate on this aspect for the reason that no argument has been urged before us to the effect that since the notice under Section 148 is found to be justifiable in respect of some loans disclosed and not with respect to other loans, it is invalid."

105. Suffice it to note and as was found hereinabove, the PAO rests on the pedestal of the allocation of the coal block and the proceeds obtained by the petitioner from allotment of preferential shares. Insofar as the former is concerned, the provisional attachment would clearly not sustain in light of the legal position as enunciated by the Court in **Prakash Industries-I**. Insofar as proceeds obtained from the allotment of preferential shares is concerned, for reasons recorded by the Court in paragraphs 89 to 93 above would also not be sustainable in law. The Court has thus essentially found that neither of those two pillars would withstand judicial scrutiny bearing in mind the scope and extent of the power conferred by Sections 3 and 5 of the Act.

J. THE SECTION 8(3)(a) ARGUMENT

106. That leaves the Court to deal with the argument of Mr. Chawla that the complaint under Section 45 of the Act is liable to be quashed on the ground of it being an evident attempt of the respondent to

[21] (1996) 9 SCC 534

overreach the bar placed by Section 8(3)(a). The argument proceeded on the following premise. Mr. Chawla drew the attention of the Court to the timelines prescribed in Section 8(3)(a) and the validity period of a Provisional Attachment Order. According to learned counsel, as the provision stood prior to its amendment in 2019, an attachment order could not have operated for more than 270 days and thus the impugned PAO dated 29 November 2018 would have lapsed on 26 August 2019. Viewed in light of the provision as it stood post amendment in 2019, Mr. Chawla contended that the PAO could not have operated beyond 27 May 2022. It was the submission of Mr. Chawla that since the PAO impugned here had come to be issued prior to the amendments introduced in 2019, Section 8(3)(a) in its unamended form alone would apply.

107. The submission essentially was that the complaint was filed on 17 July 2018 only to overcome the statutory lapse which would have ensued. Mr. Chawla vehemently contended that the complaint was lodged only to take advantage of the extended validity that Section 8(3)(a) extends in situations where proceedings relating to an offense under the Act may be pending. It was submitted that the order of 17 July 2018 would itself indicate that the complaint was a mere farce and designed solely to ensure that the impugned PAO does not lapse. Mr. Chawla contended that a bare reading of the contentions addressed before the Special Judge by ED would clearly establish that the complaint was hurriedly filed only to overcome the amendments introduced in Section 8(3)(a). It was argued that the filing of the

complaint was not only an ingenious attempt to overreach the spirit underlying Section 8(3)(a), but also mala fide and arbitrary.

108. While the order of 17 July 2018 may lend some credence to the factual assertions made in this respect, the Court is of the opinion that no finding should be rendered in this regard since neither the order of 17 July 2018 nor the proceedings relating to the complaint in question are impugned in these writ petitions. It would therefore be incorrect to enter or record any observation or conclusion in this respect. The Court thus leaves it open to the petitioner, if so chosen and advised, to assail the complaint in appropriate proceedings and if permissible in law. All contentions of respective parties in this respect are kept open to be addressed in such proceedings.

K. CONCLUSION

109. Accordingly and for the aforesaid reasons, the writ petitions shall stand allowed. The impugned PAO dated 29 November 2018 passed in ECIR/03/CDZO/2014 shall stand quashed. The original Complaint No.1068 of 2018 instituted in terms of Section 5(5) of the Act shall also and in consequence stand quashed.

YASHWANT VARMA, J.

JANUARY 24, 2023
SU/neha/bh/rsk