

**APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI**

**1. FPA-PMLA-1039/DLI/2015**

J. B. Subramaniam ... Appellant

**2. FPA-PMLA-1067/DLI/2015**

Bhanu Nanda ... Appellant

**3. MP-PMLA-1937/DLI/2015 U/S 35  
FPA-PMLA-1033/DLI/2015**

Media Exim Pvt. Ltd. ... Appellant

Versus

The Deputy Director  
Directorate of Enforcement, Delhi ... Respondent

**Advocates/Authorized Representatives who appeared**

For the Appellants : Ms. Deeksha Gupta, Adv.

For the Respondent : Ms. Anubha Bhardwaj, Adv.  
Mr. Mayank Bawa, Adv.

**CORAM**

**SHRI V. ANANDARAJAN : MEMBER**

**FINAL ORDER**

**19 .03.2026**

These appeals are directed against the order dated 24.07.2015 passed by the Adjudicating Authority (AA) established under the Prevention of Money Laundering Act, 2002 (PMLA), in Original Complaint (OC) No. 438/2015 whereby the Ld. AA has confirmed the Provisional Attachment Order (PAO) No. 04/2015 dated 19.03.2015, attaching the properties of the appellants herein.

**Facts in Brief**

2. The relevant facts briefly are that based on a written complaint dated 12.02.2013 received from the Ministry of Defence, the Central Bureau of Investigation (CBI) registered an FIR (RC-217/2013/A0003 dated 12.03.2014) against one Mr. Christian Michel James (hereafter referred to as Christian Michel), owner of M/s Global Trade & Commerce Ltd., having registered office in London, and Consultant of M/s AgustaWestland, S.P.A.,

and other unknown persons, for investigation of alleged illegal dealings of M/s Finmeccanica, Italy in the matter of procurement of 12 VVIP Helicopters from M/s AgustaWestland U.K., a subsidiary of Finmeccanica, Italy. The offences under sections 120-B read with 420 of IPC and sections 7,8,9,12,13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act) were cited in the FIR.

3. As the FIR disclosed offences which constitute scheduled offences under the PMLA, the Enforcement Directorate (ED), on 03.07.2014, registered an Enforcement Case Information Report (ECIR) numbered as DLZO/15/2014/AD(VM), against the suspects/accused persons and undertook investigations under the PMLA.

4. During the course of investigations under the PMLA, the ED perused copies of the various documents which the Ministry of Defence, Govt. of India, had received from Consulate General of India in Italy in connection with the kickbacks paid by M/s AgustaWestland to various persons/entities, which revealed that:

- There were two post-contract Services Agreements (dated 01.03.2010 and 26.05.2010, respectively) between AgustaWestland Holdings Ltd. and Mr. Christian Michel, owner of Global Service FZE, with registered office in Dubai, Mr. Christian Michel was a long-time agent for the sale of Agusta Westland Ltd. spare parts in India with regard to advising and assisting the group company in all aspects of performing the contract in the territory;
- Consequent upon these two contracts, Mr. Christian Michel, was supposed to be paid € 42 million by M/s AgustaWestland Ltd. for the services rendered by him in acquiring the aforesaid contract for supply of 12 VVIP Helicopters from Ministry of Defence, Govt. of India, However, the term of payment was subsequently revised by reducing the amount from € 42 million to € 30 million;
- Payments were made to Mr Christian Michel against consultancy contract between AgustaWestland Ltd. and him. The first contract was for a total of € 6.05 million and second was for € 18.2 million; As per documents available, against these contracts, payments of € 6.05 million was made from May, 2010 to December, 2011, and another payment of € 5.75 million was made to M/s Global Service, FZE, Dubai. It was further revealed that payments have been made by Agusta Westland from its Account No. 52773044, to Global Services FZE, Dubai Airport Free Zone, PO Box -54629 through swift in its bank in Lloyds TSB Bank PLC Al Wasl RD opp. Dubai, UAE Account No. 60601358922302;

- Mr Christian Michel, while visiting India, used to stay in various hotels in Delhi including Claridges Hotel, New Delhi. On enquiry made at the said hotel, it was revealed that Mr Christian Michel had contacted one Mr Javed Yunus, resident of Sainik Farm, New Delhi from the hotel's phone. On enquiry from Javed Yunus, he confirmed the same and gave the contact numbers of Maj Gen S.C.N. Jatar (Retd) whom Mr Christian Michel had contacted regularly;
- Statement of Maj Gen S.C.N. Jatar (Retd.) was recorded under PMLA, 2002, from which it was revealed that Mr. Christian Michel had told him that he had purchased a farm house in South Delhi, beyond IIT. He has given Delhi address of Mr Christian Michel as A-2/75, Safdarjung Enclave and Mr Christian Michel is having a driver in Delhi, namely Mr Narayan whose phone No. is 09643555494;
- Statement of Shri Narayan was recorded under PMLA, 2002 wherein he has stated that property bearing A-2/75, Safdarjung Enclave was purchased in the name of M/s Media Exim Pvt. Ltd. which is in the name of Mr R.K. Nanda;
- Statement of Shri R.K. Nanda was recorded under. PMLA, wherein he has stated that M/s Media Exim Pvt. Ltd. was incorporated by him, on the instructions of Mr Christian Michel, in which funds were received from Mr Christian Michel, and the funds so received were utilized in the purchase of various immovable/movable properties in the name of M/s Media Exim Pvt. Ltd.;
- Statements under Section 50 of the PMLA were also recorded of other persons, including J.B. Subramaniyan and Amrit Pal Singh. Account statement of bank account with HDFC Bank, Janpath was also obtained.

**5.** Based on the information gathered, a Provisional Attachment Order (PAO No. 04/2015 dated 19.03.2015) was passed, attaching the following properties standing in the name of M/s Media Exim Pvt. Ltd.:

1. Fixed Deposit with HDFC bank, Janpath for an amount of Rs.49.74 lakh
2. Account No. 16602560000352 with HDFC Bank, Janpath having an amount of Rs. 3,89,181.35
3. A Honda Civic car bearing registration no. DL CAK 9057 standing in the name of the company
4. Flat no. A-2/75 (2<sup>nd</sup> Floor, Safdarjung Enclave, New Delhi) valued at 54.25 lakh.

6. An Original Complaint (OC No. 438/2015) having been filed as per the requirement of Section 5(5) of the PMLA, the Ld. Adjudicating Authority (AA) initiated adjudication proceedings under Section 8(1) which culminated in confirmation of the attachment made under Section 5(1).

7. Aggrieved by the said order of the AA dated 24.07.2015, the appellants have filed the present appeals challenging the same on various grounds.

### **The Appellants' Case**

8. Common arguments have been presented on behalf of the appellants herein and it has also been submitted that the issues involved in the three appeals are common. It is also submitted that Appeal No. 1033/DLI/2015 filed by M/s Media Exim Pvt. Ltd. may be treated as the leading matter and the submissions in the said appeal may be read mutatis mutandis for the connected appeals.

9. At the outset, it is contended that the impugned proceedings are a classic example of jurisdictional overreach, wherein properties of persons neither accused nor beneficiaries of any scheduled offence have been subjected to attachment, solely on the basis of conjectures, assumptions, and a complete disregard of the statutory requirement of "proceeds of crime" under the PMLA.

10. It is pointed out that the contract between the Indian Air Force (IAF) and M/s Agusta-Westland, from which the alleged proceeds of crime are stated to have originated, was executed only in 2010, whereas the remittances received by the appellant company pertain to the period 2005-2007, clearly establishing the absence of any nexus or connecting link and, thereby negating, the very basis of attachment and PMLA proceedings. It is pointed out that the Respondent, in its written reply to the appeal, has stated that the IAF intended to procure VVIP helicopters, pursuant to which M/s AgustaWestland had submitted a bid, but was initially disqualified. It is the admitted position of the Respondent that the contract was ultimately awarded to M/s AgustaWestland only in the year 2010, and that alleged kickbacks amounting to € 30 million were to be paid under two post-contract Services Agreements dated 01.03.2010 and 26.05.2010, to Mr. Christian Michel through his company, M/s Global Services FZE, Dubai, UAE.

Reference is made in this regard to paragraphs 7 and 8 of the Respondent's Reply.

**11.** It is contended that in stark and irreconcilable contrast to the above, the remittances received by the Appellant company, M/s Media Exim Pvt. Ltd., were during the period 26.10.2005 to 26.04.2007, i.e., nearly five years prior to the alleged scheduled offence and the so-called post-contract agreements. The chronology of events is undisputed, admitted and the same completely demolishes the Respondent's case. It is submitted that proceeds of crime cannot exist prior in time to the commission of the scheduled offence, and any attempt to artificially link pre-existing legitimate receipts with a much later alleged offence is legally impermissible.

**12.** It is argued that despite this admitted factual position, the Respondent has alleged that remittances aggregating to Rs. 6.33 crore received by the Appellant Company constitute proceeds of crime, while deliberately suppressing material facts, including the dates of receipt of the amounts (26.10.2005 to 26.04.2007); the nature and purpose of the transactions (media CD rights purchase order); and the admitted fact that the predicate offence itself arose only in 2010. It is submitted that the impugned order passed by the Ld. AA, as well as the PAO are, therefore, ex facie illegal, arbitrary, and without jurisdiction, as the Appellant is neither an accused nor a beneficiary of any alleged proceeds of crime, and no factual, temporal, or legal nexus exists between the Appellant and the alleged scheduled offence.

**13.** It is next contended that FIR No. RC-217/2013/A0003 dated 12.03.2014 was registered by the CBI, New Delhi, against three foreign nationals, including Mr. Christian Michel. Significantly, none of the three appellants in the present appeals were named, arrayed, or even remotely referred to in the said FIR.

**14.** As regards the appellant in Appeal No.1067/2015, i.e., Mr. Bhanu Nanda, it is submitted that he was not associated with the appellant company at all during the period when the alleged proceeds of crime were received. He was appointed as a director only with effect from 22.10.2013, as is clearly stated in his reply filed before the AA. Continuation of attachment proceedings against such appellants, who were neither involved

in, nor connected with the alleged offence, demonstrates complete non-application of mind and renders the impugned orders unsustainable.

**15.** It is next contended that there was complete absence of any connecting link/nexus between alleged proceeds of crime and appellant company. It is submitted that the appellant company and M/s Global Services FZE, Dubai, UAE, entered into an agreement for Music Rights CDs, pursuant to which the remittances were made in the ordinary course of business. The monies utilised for the purchase of the attached properties do not constitute "proceeds of crime" within the meaning of Section 2(1)(u) PMLA, as the remittances aggregating to Rs. 6,33,56,871/- were received between 2005 and 2007, whereas the alleged criminal activity is stated to have arisen only in 2010. Further, the remittances were made pursuant to valid Purchase Orders dated 19.10.2005, 11.11.2005 and 24.01.2006, issued for media CD rights. Reference is made in this regard to pages 250-252 of the appeal paper book. It is claimed that the business transaction ultimately did not materialise due to escalation in prices, and the amounts received were refunded after obtaining due approval from the Reserve Bank of India, vide approval dated 16.08.2012, permitting remittance of Rs. 6,09,73,984/- to M/s Global Services FZE, Dubai, UAE, with the balance having already been refunded earlier. To make such refund, the properties purchased from money kept idle were sold and the proceeds thereof were utilised.

**16.** The judgement of the Hon'ble Supreme Court *in Aslam Mohammad Merchant v. Competent Authority, (2008) 14 SCC 186* is relied upon to argue that existence of a link or nexus between the property sought to be proceeded against and the alleged illegal activity is essential. In the said case, it was held as follows:

*"18. It is, therefore, evident that the property which is sought to be forfeited must be the one which has a direct nexus with the income etc. derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. What is meant by identification of such property having regard to the definition of 'identifying' is, that the property was derived from or used in the illicit traffic. 19. The property having regard to the said definition would include any of the properties described therein and deeds of instruments evidencing interest therein derived from or used in the illicit traffic."*

\* \* \*

*"24. .... Analysis of the aforementioned provisions clearly establish that a link must be found between the property sought to be forfeited*

*and the income or assets or properties which were illegally acquired by the person concerned.”*

**17.** It is submitted that in the present case, the respondent directorate seeks to draw an artificial link between post-contract agreements of 2010 and legitimate receipts of 2005-2007, without producing even a single agreement despite a Section 35 PMLA application. Such an approach strikes at the very root of due process.

**18.** It is next contended that the ED lacked jurisdiction to attach or prosecute the appellant. Section 5(1) of the PMLA permits provisional attachment only if the authority has reason to believe, on the basis of material in its possession, that: (i) a person is in possession of proceeds of crime; and (ii) such proceeds are likely to be concealed, transferred or dealt with so as to frustrate confiscation. The expression "proceeds of crime" under Section 2(1)(u) is the jurisdictional foundation of the PMLA. In the absence of proceeds of crime, the entire edifice of attachment and prosecution necessarily collapses.

**20.** Reliance is placed by the appellant on the judgment of the Hon'ble Supreme Court, in *Pavana Dibbur v. Enforcement Directorate*, (2023) 15 SCC 91, wherein it was held that where the scheduled offence is alleged to have been committed after the acquisition of property, such property cannot qualify as proceeds of crime. The relevant paragraphs are reproduced below:

*“19..... Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition....”*

\* \* \*

*“31.3. The first property cannot be said to have any connection with the proceeds of crime as the acts constituting scheduled offence were committed after the property was acquired;”*

**21.** The landmark judgment of the Hon'ble Supreme Court in *Vijay Madanlal Choudhary and Others v. Union of India and Others*, (2023) 12 SCC 1, is also cited, wherein, the Hon'ble Supreme Court has held that the authority to prosecute under the PMLA, 2002 is triggered only upon the existence of proceeds of crime. In the absence of proceeds of crime, the

very jurisdiction to prosecute is not attracted. The following para from the judgment is cited:

*“150. 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 exist 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 scheduled offence.”*

**22.** It is argued that in the present case, there is no material whatsoever to demonstrate that the Appellant is in possession of proceeds of crime. Mere receipt of money through legitimate commercial transactions cannot be equated with possession of tainted property. The existence of proceeds of crime is a jurisdictional pre-condition, which remains wholly absent in the present case.

**23.** Based on the above averments, it is submitted that the impugned order passed by the AA as well as the PAO are wholly unsustainable in law. The foundational requirement under the PMLA, namely the existence of "proceeds of crime" within the meaning of Section 2(1)(u), is conspicuously absent in the present case. The undisputed chronology of events demonstrates that the amounts received by the Appellant company during the period 2005-2007 were pursuant to legitimate commercial transactions and much prior to the alleged scheduled offence and the purported post-contract Services Agreements of the year 2010. In the absence of any temporal, factual, or legal nexus between the alleged proceeds of crime and the Appellant or the attached properties, the jurisdiction to attach or prosecute under the PMLA is not attracted.

**24.** It is reiterated that the Appellants are neither accused in the predicate offence nor beneficiaries of any alleged proceeds of crime, and no material has been placed on record by the Respondent to establish the mandatory connecting link required in law. The continuation of proceedings against the Appellants is, therefore, arbitrary and amounts to an abuse of process.

**25.** Accordingly, the appellants have prayed that the appeals may be allowed and the impugned order and the PAO be set aside, along with all consequential proceedings, in the interest of justice

### **Submissions on Behalf of the Directorate**

**26.** The submissions made on behalf of the appellants are strongly opposed by the Ld. Counsel for the Respondent. Referring to the background facts first, it is stated that in 1999, Indian Air Force had initiated a proposal for procurement of VVIP helicopters by issuing Request for Proposal (RFP) to 11 global vendors with service ceiling of 6000 mt., of which 4 vendors responded. As M/s. Agusta Westland failed to upgrade its EH 101 Helicopter to meet the requirement of 6000 flight service ceiling, and their bid was disqualified in 2002. The company made repeated representations, but again in April 2004, their claim was rejected as "not negotiable". But, during the tenure of Retd. Air Chief Marshal (ACM) S.P. Tyagi as the Chief of Air Staff and with his approval, the Indian Air Force conceded to reduce the service ceiling for proposed VVIP Helicopters to be procured by Ministry of Defence (MoD), Government of India from 6000 mt. to 4500 mt. as mandatory Operational Requirements (OR), to which it earlier opposed vehemently on the grounds of security constraints and other related reasons. Finally, the contract was awarded to M/s. Agusta Westland in the year 2010.

**27.** It was revealed that in order to get this contract, 30 million Euros were paid to Mr. Christian Michel through his company, M/s Global Services FZE Dubai, UAE. The kickbacks were paid in guise of two post Contract Services Agreements dated 01.03.2010 and 26 05 2010 between Agusta Westland and Global Services FZE Dubai. The funds remitted from M/s Global Services FZE, Dubai to M/s Media Exim Pvt. Ltd. are a part of the aforesaid proceeds of crime in terms of Section 2(1)(u) of PMLA,2002. In total, Rs. 6.33 crores have been remitted from M/s Global Services FZE, Dubai to M/s Media Exim Pvt. Ltd. Therefore, immovable/movable properties acquired by M/s Media Exim Pvt. Ltd, through the funds generated out of the funds received by M/s Media Exim Pvt. Ltd. from M/s Global Services, FZE, Dubai are also a part of the proceeds of crime. Therefore, the competent Authority has rightly provisionally attached the properties mentioned in the PAO, in terms of Section 2(1)(u) which provides that any property derived or obtained, directly or indirectly, by any person as result of criminal activity relating to a scheduled offence or the value of any such property. Therefore, the Ld. AA has rightly confirmed the PAO.

**28.** It is pointed out that Sh. R.K. Nanda, Director of the Appellant company, in his statement recorded on 09.02 2015 and 02.03.02015 u/s 50 of PMLA, has inter-alia stated that whatever amount he spent in the purchase of properties in the name of M/s Media Exim Pvt. Ltd., was out of the funds he received from M/s Global Services FZE, Dubai, the company of Mr Christian Michel. The company had not conducted any business activities, but had gained sums through purchase and sale of properties, jewelleryes and the rent the company gained from the properties so purchased. Therefore, the sums so received by M/s Media Exim Pvt Ltd and the earning made therefrom were proceeds of crime. The contention that M/s Media Exim Pvt. Ltd. was not a shell company is his afterthought, because, on 09.02.2015, while recording his statement u/s 50 of PMLA, he himself clarified that basically M/s Media Exim Pvt Ltd is a shell company as no business activity were conducted in this company. In this connection, it is further submitted by the respondent that the averment that Sh. Nanda was forced by any of the authorities to sign his statement is baseless and an afterthought. He did not approach any senior authorities or lodge any complaint or FIR making such a claim. It is further pointed out that the statements of were recorded on various dates, in his own handwriting, which clearly establishes that there was no force or coercion.

**29.** It is next contended that under section 24(a) of PMLA, the burden of proof is on appellants to prove that the property in question are not proceeds of crime. As such the appellants have to produce the reasonable evidence to prove their claim, which the appellants failed to do.

**30.** It is asserted that the respondent had valid reasons to believe that the Appellant has committed an act of money-laundering and/or are in possession of crime involved in money-laundering, and/or are in possession of records relating to money-laundering, and/ or are in possession of properties related to crime. Based on the reasons to believe, action under section 17 of PMLA 2002 was taken against the Appellant. The provision of section 26 of the Indian Penal Code, 1960 (IPC) is cited as per which, a person is said to have reason to believe a thing if he has sufficient cause to believe that thing but not otherwise. It is submitted that the respondent had sufficient material in hand and tangible information for the formation of the belief. Based on the tangible materials, evidences and reasons believe, the provisional attachment order was issued.

**31.** As for the reason to believe under section 8(1), it is submitted that the 'reason to believe' of the Adjudicating Authority under Section 8(1), was based on material in possession submitted by the respondent in PAO OC No 438/2015.

**32.** Based on the above arguments and contentions, it is argued by the respondent Directorate that the impugned order does not call for any interference and, therefore, the appeal may be dismissed being devoid of merit.

### **Analysis & Findings**

**33.** I have given careful consideration to the material on record and the rival contentions of the parties. The first contention of the appellant is that the contract between the IAF and M/s Agusta-Westland, from which the proceeds of crime are alleged to have originated, was executed only in 2010 and that alleged kickbacks amounting to € 30 million were to be paid under two post-contract Services Agreements dated 01.03.2010 and 26.05.2010, to Mr. Christian Michel through his company, M/s Global Services FZE, Dubai, UAE., whereas the remittances received by the appellant company pertain to the period 2005-2007, nearly five years prior to the alleged scheduled offence and the so-called post-contract agreements. It is submitted that this chronology of events is not disputed, but is rather expressly admitted by the respondent directorate. Thus, there was clearly no nexus or connecting link between the two in the absence of which there was no basis for the attachment for the PMLA proceedings.

**34.** With regard to the above contentions of the appellant, the underlying factual context of the case has been explained in considerable detail in para-2 of this order. The findings against the appellants have also been explained by the respondents in their reply to the appeal which have been summarised in para 26-27 above. Evidence revealed that Mr. Christian Michel and his associates managed to make inroads so as to get IAF to dilute its earlier stand regarding the operational ceiling of 6000 metres for the helicopters to be procured, and to reduce the same to 4,500 metres. To obtain the aforesaid contract, the CEO of Agusta Westland started paying kickbacks to Mr. Michel and others under the guise of consultancy contracts between Agusta Westland and M/s Global Services FZE, Dubai (owned by Michel)

and also other companies associated with Mr. Guido Haschke and Carlos Gerosa, with which we are not concerned in the present appeals.

Christian Michel was to be paid € 42 million by Agusta Westland for his services. Accordingly, two payments of € 6.05 million and 5.75 million were made by the company to M/s Global Services FZE, Dubai in its account no. 60601358922302 in the Lloyd's TSB Bank PLC, Dubai against two consultancy contracts between Agusta Westland and Christian Michel.

**35.** To facilitate transfer of the kickbacks from M/s Global Services FZE, Dubai, Christian Michel in collusion with two Indian citizens, R.K Nanda and Sh. J.B Subramaniyam had incorporated the appellant company, M/s Media Exim Pvt. Ltd. in 2005 with both as directors. Thereafter, he started transferring funds to the said company. In all, INR 6,33,56,871/- were transferred to the said companies account between 26.10.2005 and 26.04.2007. Investigations further revealed that on the instructions of Mr Christian Michel, Shri R K Nanda invested the funds so received in M/s Media Exim Pvt Ltd from M/s Global Services, FZE, Dubai in the purchase of five immovable properties, jewellery, painting, car, etc in the name of M/s Media Exim Pvt Ltd and sold four immovable properties, out of five purchased by him and jewellery, from which a net gain of Rs. 775.38 Lakh was made. These gains from the Rs. 633.00 lakh remittances by the company (Media Exim) from M/s Global Services, FZE, Dubai, was used for acquisition of movable and immovable properties and were subsequently disposed at a profit.

**36.** It is emphasised by the respondent in their reply that the process of procurement of VVIP Helicopters was initiated as early as in 1999 by issuing a Request for Proposal (RFP) to 11 global vendors with service ceiling of 6000 mt. Therefore, although the contract for procurement of the helicopters was signed only in 2010, the same was in the works for over ten years. As such, there is no merit in the contention that there was no nexus or connecting link between the remittances received by the appellant company and the contract for the procurement of the helicopters.

**37.** For the same reason as above, it is argued that the properties in question could not have been attached as they were acquired prior to the period of the alleged offence. Reliance is placed on the judgment of the Hon'ble Supreme Court, in *Pavana Dibbur v. Enforcement Directorate*,

(2023) 15 SCC 91, wherein it was held that where the scheduled offence is alleged to have been committed after the acquisition of property, such property cannot qualify as proceeds of crime. Proceeds of crime cannot exist prior in time to the commission of the scheduled offence. Further, the appellant has also relied on the judgement of the Hon'ble Supreme Court in *Aslam Mohammad Merchant v. Competent Authority*, (2008) 14 SCC 186 to contend that existence of a direct link on nexus between the property sought to be attached and the alleged offence.

**38.** Having considered the contentions raised on behalf of the appellants, I do not find any merit in the same. I find that in the present case, both the PAO as well as the impugned order make it amply clear that the property has been attached as "proceeds of crime or value thereof". The value of proceeds of crime is as much a part of a definition of proceeds of crime under section 2 (1) (u) as the proceeds of crime directly derived from a scheduled offence. Where the property is attached as value of the proceeds of crime, the date of acquisition thereof, i.e., whether the same has been acquired prior to or after the date of the alleged offence is immaterial. As regards the judgment of the Hon'ble Supreme Court in the case of *Pavana Dibbur* (supra), this Appellate Tribunal in its detailed judgment in the case of *Sadananda Nayak v Deputy Director, FPA-PMLA-5612/BBS/2023* (order dated 14.10.2024), has held as follows:

"12. The reference of the judgment of the Apex Court in the case of **Pavana Dibbur** (supra) and also of Kerala High Court in the case of **Satish Motilal Bidri** (supra) has been given. To analyze the issue, we may quote the definition of 'proceeds of crime' given under Section 2(1) (u) of the Act of 2002, which is quoted thus:

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

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

13. The perusal of the definition aforesaid shows three limbs. In between every limb word “or” has been used to divide the definition into three parts. The first part refers to the property acquired or derived directly or indirectly out of the criminal activities relating to the scheduled offence. In the first part, all those properties which are acquired directly or indirectly out of criminal activities would be termed to be the proceeds of crime. The properties can be acquired directly or indirectly with the use of proceeds of crime. The use of proceeds directly or indirectly would be relevant part to fall in first part of the definition of ‘proceeds of crime’. To clarify the definition, it may be illustrated. Assuming in a case of dacoit, the accused secured the money and it has been used for the purchase of property, then such a property would fall in the definition of ‘proceeds of crime’ having been obtained out of proceeds of crime. In other case where the property was not acquired or derived by the accused himself but he passed on money out of the crime to another person and he acquired the property, then also it would be considered to be the proceeds of crime to acquire the property. In any case, there should be an element for use of the proceeds directly or indirectly obtained out of the crime and thereby the property would have nexus with the crime.

14. In second part “the value of any such property” the definition aforesaid starts with “or” after the first part referred and discussed in the para above. The second part of the definition is commonly considered to be attachment of property of equivalent value. The second part applies when the property obtained or derived directly or indirectly out of the criminal activities is not available or vanished and, therefore, to secure the proceeds of equivalent value till completion of trial, it would fall under “the value of any such property” which is commonly taken to be the property of equivalent value. The case in hand falls in the second category of the definition of “proceeds of crime” because proceeds are not available and, therefore, the property of equivalent value is attached.

15. The argument has been made in reference to the judgment of Kerala High Court in the case of **Satish Motilal Bidri** (supra) and the judgment of Apex Court in **Pavana Dibbur** (supra) to hold that the

*properties acquired prior to commission of crime would not fall in the definition of “proceeds of crime”. We are unable to accept the arguments which may otherwise make second part of the definition of “proceeds of crime” to be redundant. It would be for the reason that if the definition is taken only in two parts leaving the middle part, then it would be difficult for the enforcement agencies to protect the property till completion of the crime to save the victim from crime committed by the accused. It would be for the reason that if the property acquired prior to commission of crime would not fall in the definition of “proceeds of crime”, then the accused would commit the crime and immediately proceeds would be siphoned off or vanished so that it may not remain available for attachment. In fact, the word “the value of any such property” was inserted by the legislature to attach the property of equivalent value, if the proceeds out of commission of crime is not available or vanished. If the second limb of the definition is made dependent on the first limb, it would be literally re-writing the provision or making it redundant to a great extent and for this, jurisdiction does not lie with any court of law which includes even the Constitutional Court. They can declare any provision to be unconstitutional but till then there remains presumption of constitutional validity.*

16. At this stage, we may refer to Para 68 of the judgment in the case of **Vijay Madanlal Choudhary** (supra) which is quoted hereunder:

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

*The perusal of the para quoted above shows that the argument of the appellant that “the value of any such property” would be only when the proceeds have been taken out of India. The argument aforesaid was not accepted and it simplifies that the definition of “proceeds of crime” has three limbs and elaborate judgment to define the “proceeds of crime” was given by the Delhi High Court in the case of **Axis Bank** (supra). The relevant paras are quoted herein:*

*“106. Among the three kinds of attachable properties mentioned above, the first may be referred to, for sake of convenience, as “tainted property” in as much as there would assumable be evidence to prima facie show that the source of (or consideration for) its acquisition is the product of specified crime, the essence of “money laundering” being its projection as “untainted property” (Section 3). This would include such property as may have been obtained or acquired by using the tainted property as the consideration (directly or indirectly). To illustrate, bribe or illegal gratification received by a public servant in form of money (cash) being undue advantage and dishonestly gained, is tainted property acquired “directly” by a scheduled offence and consequently “proceeds of crime”. Any other property acquired using such bribe as consideration is also “proceeds of crime”, it having been obtained “indirectly” from a prohibited criminal activity within the meaning of first limb of the definition.*

*107. In contrast, the second and third kinds of properties mentioned above would ordinarily be “untainted property” that may have been acquired by the suspect legitimately without any connection with criminal activity or its result. The same, however, are intended to fall in the net because their owner is involved in the proscribed criminality and the tainted assets held by him are not traceable, or cannot be reached, or those found are not sufficient to fully account for the pecuniary advantage thereby gained. This is why for such untainted properties (held in India or abroad) to be taken away, the rider put by law insists on equivalence in value. From this perspective, it is essential that, before the order of attachment is confirmed, there must be some assessment (even if tentative one) as to the value of wrongful gain made by the specified criminal activity unless it be not possible to do so by such stage, given the peculiar features or complexities of the case. The confiscation to be eventually ordered, however, must be*

restricted to the value of illicit gains from the crime. For the sake of convenience, the properties covered by the second and third categories may be referred to as “the alternative attachable property” or “deemed tainted property”.

17. The judgment of the Delhi High Court makes it clear that the definition of “proceeds of crime” has three limbs and in the second limb the properties of equivalent value to the proceeds obtained out of crime can be attached which may have been acquired prior to the commission of crime but it would be when proceeds of crime has been vanished and is not available. It is sought to achieve the object of the Act of 2002.

18. In the light of judgment of the Apex Court in **Vijay Madanlal Choudhary** (supra), we are unable to apply the judgment of Kerala High Court in the case of **Satish Motilal Bidri** (supra). The Ld. counsel did not refer the relevant para of the judgment in the case (supra), rather he referred Para 66 of the judgment of the Apex Court in **Vijay Madanlal Choudhary** (supra) which permits attachment only of the proceeds of crime. There cannot be any dispute that attachment can be only of the proceeds of crime but what would fall in the definition of “proceeds of crime” and clarified in Para 68 of the same judgment has not been taken into consideration whereas judgement of the Apex Court on the issue is binding on the High Court.

19. The reference to the judgment in the case of **Pavana Dibbur** (supra) has been given where the Ld. Counsel for the parties did not refer Para 68 of the judgment in the case of **Vijay Madanlal Choudhary** (supra) decided by three judges of the Apex Court. In fact, elaborate arguments to define “proceeds of crime” on the issue were not raised by the parties after referring to the object of the Act of 2002 which was enacted out of the international convention. The Delhi High Court has discussed the issue elaborately and otherwise if we apply the judgement of Kerala High Court in the case of **Satish Motilal Bidri** (supra,) it would be making the second limb of the definition of “proceeds of crime” to be redundant. The counsel who appeared before the Kerala High Court did not argue that the definition of “proceeds of crime” has three limbs and unfortunately the

view expressed by Delhi High Court in **Axis Bank** (supra) was not discussed elaborately while it was cited by the counsel.

20. The Ld. Single judge of Kerala High Court did not subscribe the judgment aforesaid, rather applied the judgment of Punjab and Haryana High Court in the case of **Seema Garg Vs. Deputy Director, Directorate of Enforcement**, reported in 2020 SCC OnLine Punjab & Haryana 738. With due respect, we are unable to apply the judgment of Kerala High Court going against Para 68 of the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra). The judgment of **Seema Garg** (Supra) has been dealt with by the Delhi High Court in the case of **Prakash Industries Ltd. v. Directorate of Enforcement** reported in 2022 SCC OnLine Del 2087. The relevant paras are quoted hereunder:

“76. Seema Garg principally holds that the phrase value of any such property and property equivalent in value held within the country or abroad cannot be ascribed the same meaning and effect. The learned Judges comprising the Division Bench then proceeded to hold that even if the intent of the legislature was to include any property in the hands of a person within the ambit of the expression proceeds of crime, there would be no need to create three limbs of definition of proceeds of crime.

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79. Regard must also be had to the fact that the legislation itself is dealing with contingencies where proceeds of crime are layered and their origins camouflaged and masked enabling the accused to project or claim it to be untainted property. The Act clearly as does Axis Bank take into consideration a situation where a person who has obtained proceeds of crime by commission of a scheduled offence has managed to ensure that a property directly or indirectly connected to criminal activity is rendered untraceable. It is to confer authority upon the Directorate to proceed further in such a situation that Section 2(1)(u) uses the expression or the value of any such property. The safeguard which stands constructed in Section 2(1)(u) in such a contingency is that in case the Directorate does proceed against any other property, it must be equivalent in value to the illegal pecuniary benefit or gain that may have been obtained as a result of criminal activity.

80. In the considered opinion of this Court to tie the Directorate's power to move forward in this direction only in cases where property is taken or held outside the country would not only do

*violence to the plain language of Section 2(1)(u), it would clearly whittle down the scope and intent of the definition itself. It would essentially amount to erasing the expression value of any such property as appearing in Section 2(1)(u) altogether. The Court further notes that in Seema Garg the learned Judges themselves observed that the phrase value of any such property would not mean and include any property which has no link, direct or indirect, with property derived or obtained from commission of a scheduled offence. The Court observes that Section 2(1)(u) clearly and in unambiguous terms includes not only property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence but also the value of any such property. Seema Garg thus seems to gloss over the statutory imperatives underlying the deployment of the phrase —or the value of any such property and the concept of deemed tainted properties enunciated in Axis Bank. On a plain textual interpretation of Section 2(1)(u) as well as in the backdrop of the amendatory history of that provision, this Court finds itself unable to agree with the line of reasoning adopted in Seema Garg. As held hereinbefore, affirmation of Seema Garg would amount to virtually deleting the phrase —or the value of any such property from Section 2(1)(u). That would not only violate the well settled tenets of statutory construction but would clearly amount to the Court rewriting the provision itself in a manner that it stands deprived of vital and purposive content. The Court further notes that Axis Bank had enunciated important safeguards which would apply in respect of third-party interests in deemed tainted property. Those caveats duly secure and protect bona fide third-party interests created for valid consideration. This Court, thus, reaffirms those defences as were culled out in Axis Bank. The Court thus reiterates the interpretation accorded to Section 2(1)(u) by this Court in the aforesaid decision. Consequently, and for all the aforesaid reasons this Court finds itself unable to agree with the principles as laid down in Seema Garg as well as the subsequent decisions rendered by the Andhra Pradesh High Court in Kumar Pappu Singh Vs. Union of India and the Patna High Court in HDFC Bank Limited Vs Government of India, Ministry of Finance.*

*81. The Court also takes note of the position that although SLP (Crl) No. 28906/2019 is pending before the Supreme Court against the decision rendered in Axis Bank, the judgement of this Court has not been stayed or placed in abeyance. The interim order of 30 August 2019 passed in the aforesaid Special Leave Petition only requires parties to maintain status quo. Insofar as the judgement of the Punjab and Haryana High Court in Seema Garg is concerned, although SLP (C) No.14713-14715/2020 preferred*

against the same came to be dismissed, while doing so the Supreme Court recorded that the petition was being rejected in the peculiar facts and circumstances of the case. The dismissal of the aforesaid Special Leave Petition cannot in any case be interpreted or understood as being an affirmation of the view as expressed by the Punjab and Haryana High Court.

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105. It would be pertinent to recall that properties which were acquired prior to the enforcement of the Act may not be completely immune from action under the Act in light of what this Court had held in *Axis Bank*. As was explained by the Court in *Axis Bank*, the expression proceeds of crime envisage both —tainted property as well as —untainted property with it being permissible to proceed against the latter provided it is being attached as equal to the “value of any such property” or “property equivalent in value held within the country or abroad”. However, both the italicised categories would be liable to be invoked in cases where the actual tainted property cannot be traced or found out. It is only where the respondents are unable to discover the tainted property that they can take the statutory recourse to move against properties which may fall within the ambit of —value of any such property or —property equivalent in value held within the country or abroad. To the aforesaid limited extent, properties purchased prior to 01 July 2005 may also become vulnerable and subject to action under the Act. However, enforcement action against such properties would have to satisfy the tests and safeguards as propounded in *Axis Bank* with the learned Judge observing that in such a situation it would have to be established that the person accused of money laundering had an interest in such property at least till the time that he indulged in the proscribed criminal activity. The learned Judge further observed that bona fide rights acquired by third parties prior to the commission of the predicate offense would stand saved.”

21. The issue aforesaid was not raised in the case of **Pavana Dibbur** (supra). The counsel appeared therein did not elaborately argue the issue by referring to the definition of “proceeds of crime” having three limbs to give meaning to each limb for the interpretation of the definition of the “proceeds of crime”. The reference of Para 68 of the judgment of three judges Bench of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra) was not cited and thus counsel for the respondent submitted that the judgment in the case of **Pavana Dibbur** (supra) does not propound ratio on definition of “proceeds of

crime” and, therefore, direction for the property acquired prior to commission crime is to be taken on facts of that case.

22. It has already been clarified by us that if the definition of “proceeds of crime” is given interpretation by dividing it into two parts or by taking only two limbs, then it would be easy for the accused to siphon off or vanish the proceeds immediately after the commission of scheduled offence and in that case none of his properties could be attached to secure the interest of the victim till conclusion of the trial. This would not only frustrate the object of the Act of 2002, but would advance the cause of the accused to promote the crime of money laundering. The Judgment in the case of Vijay Madanlal Chaudhary (supra) is of three judges bench while the judgment in the case of Pavana Dibbur (supra) is of two judges bench. The issue has otherwise been dealt with by this Tribunal in the case of FPA-PMLA-2909/CHD/2019 M/s. Besco International FZE vs. The Deputy Director Directorate of Enforcement, Chandigarh dated 31.07.2024. The relevant para of the said judgment is quoted hereunder:

*“It is not that only those properties which have been were derived or obtained directly or indirectly out of the crime can be attached rather in case of non-availability of the property derived or obtained directly or indirectly rather when it is vanished or siphoned off, the attachment can be of any property of equivalent value.*

*It is necessary to clarify that the proceeds of crime would not only include the property derived or obtained directly or indirectly out of the criminal activity relating to the scheduled offence but any other property of equivalent value. The word “or” has been placed before “the value of any such property” and is of great significance. Any property of equivalent value can be attached when the proceeds directly or indirectly obtained out of the crime has been vanished or siphoned off. Here, the significance would be to the property acquired even prior to commission of crime. It is for the reason that any*

*property acquired subsequent to the commission of crime would be directly or indirectly proceeds of crime and then, it would fall in the first limb of the definition of proceeds of crime. In the second limb, which refers to “the value of any such property” would indicate any other property which was acquired prior to the commission of crime and it would be attached only when the proceeds directly or indirectly obtained or derived out of the criminal activity is not available. It may be on account of siphoning off or vanished by the accused. In those circumstances the property of equivalent value can be attached. The word “the value of any such property” signifies without any embargo that it should be the property purchased after the commission of crime or prior to it rather it would apply in both the eventuality in the given circumstance. Thus, we are not in agreement with the counsel for the appellant who has questioned the attachment in reference to the property acquired prior to commission of crime. We are not going even further that the properties have nexus with the proceeds out of the crime but even in given circumstances and scenario that the property was acquired prior to commission of crime then, also under certain circumstances, it can be attached for “the value of any such property.”*

23. *At this stage, it is reiterated that any other interpretation other than the one taken by Delhi High Court in the cases of **Axis Bank** (supra) and **Prakash Industries** (supra) for the definition of “proceeds of crime” would defeat the object of the Act of 2002. It is more especially when the arguments raised by the appellant that the property acquired prior to the commission of crime would not fall in the definition of “proceeds of crime”. In that case, the task of the accused would become very easy to first commit the scheduled offence and after obtaining or deriving the property out of the criminal activities, immediately siphon off or vanish so that it may not remain available for attachment and otherwise the contingency aforesaid would satisfy only the first limb of definition of “proceeds of crime” leaving the*

*second. We are thus unable to accept the argument raised by the appellant so as to make the middle part of the definition of “proceeds of crime” to be redundant.*

*24. In view of the above, we are unable to accept the only argument raised by the appellant and for that appeal fails and is dismissed.”*

**39.** Thus, following the ratio of the Appellate Tribunal's own judgment in the above-mentioned case of *Sadananda Nayak*, the contention put forward on behalf of the appellants that the subject properties could not have been attached as they were acquired prior to the alleged period of crime is hereby rejected.

**40.** It is next contended that the amounts received by the appellant company M/s Global Services FZE, Dubai, UAE was towards an agreement entered into for music CD rights, pursuant to which the remittances were made in the ordinary course of business pursuant to valid purchase orders dated 19.10.2005, 11.11.2005 and 24.01.2006, issued for media CD rights. It is further claimed that the business transaction ultimately did not materialise due to escalation in prices, and the amounts received were refunded after obtaining due approval from the Reserve Bank of India, vide approval dated 16.08.2012, permitting remittance of Rs. 6,09,73,984/- to M/s Global Services FZE, Dubai, UAE, with the balance having already been refunded earlier. To make such refund, the properties purchased from money kept idle were sold and the proceeds thereof were utilised.

**41.** The evidence on record does not support the contentions raised on behalf of the appellants. As has been pointed out by the respondent Directorate, Sh. R.K. Nanda, Director of the Appellant company, in his statement recorded on 09.02 2015 and 02.03.02015 u/s 50 of PMLA, has inter-alia stated that the amount he had spent for the purchase of properties in the name of the appellant company, M/s Media Exim Pvt Ltd, was out of the funds he received from M/s Global Services FZE, Dubai, the company of Mr Christian Michel. He further stated that the company had not conducted any business activities, but had gained sums through purchase and sale of properties, jewellery and the rent the company gained from the properties so purchased. Therefore, the sums so received by M/s Media Exim Pvt. Ltd

and the earning made therefrom were clearly proceeds of crime. The fact on record support the contention of the respondent that M/s Media Exim Pvt Ltd was a shell company. No business activities were conducted in this company as admitted by Sh. Nanda in his statement. There is also nothing to support the submission that the statement of Sh. Nanda was not voluntary. Among other things, it is pointed out that the statements were recorded on various dates, in his own handwriting.

**42.** It is next contended that the appellants herein are not named, arrayed, or even referred to in the said FIR. As regards Mr. Bhanu Nanda, the appellant in Appeal No.1067/2015, it is further contended that he was appointed as a director only with effect from 22.10.2013 and was not associated with the appellant company during the period when the proceeds of crime were allegedly received.

**43.** The legal position on the above issue is by now very clear that the sweep of Section 5(1) is not limited to the accused named in the 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. It has been so held by the Hon'ble Supreme Court in its landmark judgment in the case of *Vijay Madanlal Choudhary, Special Leave Petition (Criminal) No. 4634 of 2014*). In the said case, it was further held by the Apex Court that the objective of enacting the Act was the attachment and confiscation of proceeds of crime which is the quintessence, so as to combat the evil of money-laundering, by reaching the proceeds of crime in whosoever's name they are kept or by whosoever they are held.

**44.** The above position has since been reiterated and followed in numerous cases decided by the by various High Courts and the Hon'ble Supreme Court. For instance, in *Union of India v. J.P. Singh Criminal Appeal No.1102 of 2025 (Order dtd. 05.03.2025)* the Hon'ble Supreme Court has held as for attracting clause (a) of Section 8, it is enough if a complaint alleging commission of offence under Section 3 of the PMLA is pending. It is not necessary for the applicability of clause (a) that the person affected by the order under Section 8(3) must be shown as an accused in the complaint. The complaint under Section 44 will always relate to the offence under

Section 3, punishable under Section 4 of the PMLA. The order of cognizance is of the offence and not of the accused or the offender.

**45.** For the detailed reasons discussed above, there is ample material to establish that the Appellant was in possession of proceeds of crime and that the receipt of money by the appellant company was not towards any legitimate commercial transactions and constituted 'proceeds of crime' within the meaning of Act.

**ORDER:**

**46.** In light of the detailed discussions above, I do not find any reason to interfere with the order of the Ld. Adjudicating Authority confirming the PAO whereby, various properties of the appellants herein were attached. Accordingly, the appeals fail and are hereby **dismissed**.

**47.** Pending applications, if any, shall also stand disposed of.

**48.** No order as to costs.

**(V. Anandarajan)**  
**Member**

**New Delhi**  
**19<sup>th</sup> March, 2026**  
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