

## **APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI**

**(1) MP-PMLA-11301/DLI/2023 (Stay)**  
**MP-PMLA-11302/DLI/2023 (Exem.)**  
**FPA-PMLA-5679/DLI/2023**

Avinash Bhosale ... Appellant

**(2) MP-PMLA-11355/DLI/2023 (Stay)**  
**MP-PMLA-11356/DLI/2023 (Exem.)**  
**FPA-PMLA-5722/DLI/2023**

M/s. Samit Realty Pvt. Ltd. ... Appellant

**(3) MP-PMLA-11357/DLI/2023 (Stay)**  
**MP-PMLA-11358/DLI/2023 (Exem.)**  
**FPA-PMLA-5723/DLI/2023**

Mrs. Gauri Avinash Bhosale ... Appellant

**(4) MP-PMLA-11359/DLI/2023 (Stay)**  
**MP-PMLA-11360/DLI/2023 (Exem.)**  
**FPA-PMLA-5724/DLI/2023**

Abbey Realcon LLP ... Appellant

Versus

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

### **Advocates/Authorized Representatives who appeared**

For the Appellants : Mr. Siddharth Agarwal, Sr. Advocate  
Mr. Madhav Khurana, Sr. Advocate  
Mr. Chiranjivi Sharma, Adv.  
Mr. Abhinash Pradhan, Adv.  
Ms. Garima Agarwal, Adv.  
Mr. Teeksh Singhal, Adv.  
Ms. Vismita, Adv.

For the Respondent : Counsel appeared

### **CORAM**

**JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN**  
**SHRI G.C. MISHRA : MEMBER**

**FINAL ORDER**  
**01.04.2026**

By batch of four appeals under Section 26 of the Prevention of Money Laundering Act, 2002 (in short 'the Act of 2002'), a challenge has been made to the order dated 27.01.2023 passed by the Adjudicating Authority confirming the Provisional Attachment Order dated 02.08.2022.

2. It is a case where CBI, Economic Offence-I, New Delhi registered an FIR on 07.03.2020. The allegation was that during the month of April to June, 2018, M/s Yes Bank Ltd. had invested Rs.3700 Crores in short term debentures of M/s DHFL. Mr. Kapil Wadhawan of M/s DHFL paid a kickback of Rs.600 Crores to Mr. Rana Kapoor's family members. It was shown to be loan of Rs.600 Crores by M/s DHFL to M/s DOIT Urban Ventures (India) Pvt. Ltd. (Rana Kapoor's Group Company). Shri Rana Kapoor was otherwise controlling the affairs of M/s Yes Bank.

3. The further allegation was in reference to the deeds of Rana Kapoor and his family members who were holding 100% shares of M/s DOIT Urban Ventures (India) Pvt. Ltd. through M/s Morgan Credits Pvt. Ltd. The loan of Rs.600 Crores was sanctioned by M/s DHFL on the basis of mortgage of sub-standard properties having minimal value and by considering its future conversion from agricultural land to the residential.

4. The further allegation was in regard to the sanction of loan of Rs.750 Crores to one R.K.W Developers, the Group companies beneficially owned by Kapil Wadhawan and Dheeraj Wadhawan, apart from their family members. The aforesaid loan was also

sanctioned by M/s Yes Bank controlled by Rana Kapoor. The further allegation was against Rana Kapoor for misuse of his official position and got involved in many transactions to receive kickback directly or indirectly through the entities controlled by him and his family members. He abused his official position to cause pecuniary advantage to M/s DHFL Group of companies and wrongful loss to the Yes Bank.

5. The respondents recorded ECIR subsequent to registration of the FIR and conducted the investigation. The statements of witnesses were recorded under Section 50(2) and 50(3) of the Act of 2002. However, these appeals do not refer to the deeds of M/s Yes Bank, Mr. Rana Kapoor or M/s DHFL, rather allegation in the present matter is regarding layering of the proceeds of crime by M/s DHFL with the involvement of Mr. Sanjay Chhabria and thus provisional attachment of the properties belonging to the appellants was caused. It is with the allegation that Mr. Kapil Wadhawan of M/s DHFL diverted Rs.2317 Crores to the entities of Mr. Sanjay Chhabria in the name of development of one of his projects, namely, "Avenue-54" at Santacruz but Mr. Sanjay Chhabria instead of using the fund for the development of the said project, diverted huge part of it for other purposes. He conspired with appellant Mr. Avinash Bhosale and diverted Rs.267 Crores and Rs.25 Crores out of the funds to beneficially owned entities by Mr. Avinash Bhosale, namely, M/s Nibodh Realty LLP and M/s Abil Dairy LLP respectively. It is also that on the directions of Mr. Kapil Wadhawan, Mr. Sanjay Chhabria diverted a fund of Rs.115 Crores to M/s Mentor Capital Ltd. though

present matter is not concerned with the aforesaid thus we would concentrate on the allegations against the appellants only to find out whether the provisional attachment of the properties is legally sustainable or not.

6. The allegation against the appellants is that they had illegally obtained a fund of Approx. Rs.431 Crores from Mr. Sanjay Chhabria in favour of the beneficially owned entity, namely, M/s Nibodh Realty LLP. Out of Rs.431 Crores, a considerable amount to the tune of Rs.267 Crores was transferred by Mr. Sanjay Chhabria in April 2018 and onwards. It was the period when the Yes Bank invested Rs.3700 Crores in the debentures of M/s DHFL and thereupon money was transferred by M/s DHFL to Mr. Sanjay Chhabria in the name of development of "Avenue-54" Project.

7. The respondents analyzed the issue to determine the proceeds of crime and accordingly out of Rs.431.33 Crores, they found payment of a sum of Rs.363.48 Crores to be the actual cost to M/s Nibodh Realty LLP on so called loan of Rs.237.50 Crores. Remaining amount of Rs.67.85 Crores was taken to be the proceeds of crime parked with Avinash Bhosale and accordingly the Provisional Attachment Order was caused to secure the amount aforesaid.

8. The respondents further took note of the alleged diversion of funds by Kapil Wadhawan in favour of Avinash Bhosale in the name of the agreement with beneficially owned entities by Shri Bhosale. The amount is of Rs.71.82 Crores. The amount aforesaid was given to Avniash Bhosale and his entities in several trenches in the name of consultancy charges and fee, etc. It was for providing service to

them related to various projects of M/s DHFL while, according to the respondents, no such service was ever provided by Avinash Bhosale and these entities. It was thus taken to be nothing but an effort to siphon off the fund of Rs.71.82 Crores out of which a sum of Rs.40.50 Crores was paid/diverted by M/s DHFL prior to disbursement of the amount by M/s Yes Bank to M/s DHFL and balance amount was paid/transferred subsequent to disbursement. However, entire amount of Rs.71.82 Crores was taken to be layering of proceeds of crime.

9. Another amount taken to be proceeds of crime is a sum of Rs.25 Crores transferred by Sanjay Chhabria in the account of M/s Abil Dairy LLP for purchase of the Dairy for a sum of Rs.75 Crores. The agreement for it was executed in 2016 and in lieu thereof, a sum of Rs.25 Crores was paid immediately with the execution of the agreement. It is not taken to be proceeds of crime but a sum of Rs.25 Crores subsequently paid in the year 2019 is taken to be the proceeds of crime. Accordingly, total proceeds of crime in the hands of the appellants is taken to be Rs.164.67 Crores. The Provisional Attachment Order has been confirmed by the Adjudicating Authority and aggrieved by the order, these appeals have been preferred.

**Arguments of counsel for the appellants:**

10. The learned counsel for the appellants submitted that the provisional attachment of the properties of the appellants has been caused in ignorance of the material available on record and confirmed by recording perverse finding by the Adjudicating Authority. It is even going beyond the allegations in the ECIR and thus altogether a

new case was made out for provisional attachment of the properties of the appellants. It was nothing but to cause harassment, otherwise the genuine business transactions between the entities could not have been considered to be layering of the proceeds of crime on imaginary grounds. It is for the reason that for an agreement entered between the entities of appellant Avinash Bhosale and Sanjay Chhabria during the year 2014-15 could not have been taken to be part of conspiracy for the loan amount disbursed in favour of M/s DHFL on 12.04.2018 i.e. almost four years subsequent to the agreement. There was no allegation in the ECIR that execution of the agreement between the appellant Avinash Bhosale and Sanjay Chhabria in the year 2014 was out of the conspiracy of a scam took place four years subsequent to the agreement between the two. No foundational fact exists for it.

11. It is a case where M/s Nibodh Realty LLP of Avinash Bhosale entered into an agreement with an entity of Sanjay Chhabria in the year 2014 to obtain loan of Rs.237.50 Crores with the arrangement of the payment with interest @18%. It was between the entities involved in real estate and, therefore, commercial rate of interest was agreed. The agreement was not only for receipt of the interest but further benefits such as the receipt of warrants and accordingly the appellants company was to receive a sum of Rs.766.65 Crores out of the agreement executed between the two independent parties in the year 2014-15. In terms of the agreement, an amount of Rs.267 Crores was paid to the appellant and his entities prior to April, 2018 and remaining amount of Rs.122.61 plus Rs.3.37 Crores was paid

subsequently. It thus received total sum of Rs.431.33 Crores out of which Rs.363.48 Crores was taken to be actual cost and thereby Rs.67.85 Crores to be the proceeds of crime.

12. The determination of the proceeds in the hands of the appellants was based on imagination of the IO travelling beyond the allegations in the ECIR. To determine genuineness of the payment, the element of payment of interest by M/s Nibodh Realty LLP and processing fee for obtaining loan from M/s India Bulls was taken to be actual cost ignoring that if a company is lending money, it would be with the margin of adequate profit and for which mutual agreement between the entities of Avinash Bhosale and Sanjay Chhabria was entered almost four years prior to the commission of crime thus erroneous figure of the proceeds of crime in the hands of the appellants for a sum of Rs.67.85 Crores was taken.

13. It is alleged that agreement entered in the year 2014 i.e. almost four years prior to the commission of crime was not workable. The return of the amount to the extent of 300% was nothing but a conspiracy to layer the proceeds of crime. Such an erroneous ground was taken by the respondent in ignorance of the period of the transaction entered in the year 2014 which cannot be with the dream that after four years, Yes Bank would invest Rs.3700 Crores in M/s DHFL and thereafter there would be further transfer of money to the entities of Mr. Sanjay Chhabria, therefore, to criticize the agreement entered between the entities of Avinash Bhosale and Sanjay Chhabria in the year 2014 and that too when the FIR and ECIR were not containing any allegation of the nature taken by the respondents to

make basis for provisional attachment of the properties. It is even in ignorance of the fact that Avinash Bhosale and his entities invested the amount of Rs.237.50 Crores under an agreement entered on 18.12.2014 which contained the terms to the effect that redemption of the debentures would be within three to four years with further arrangement that NCD would carry interest @18% per annum. It is with further agreement that each NCD would contain a detachable warrant which would entitle M/s Nibodh Realty LLP to certain areas in the project and would be liquidated by the said entities. This was in addition to the interest component. The payments as a consequence of the agreement were paid through the banking channel and disclosed not only in the books of accounts but in the income-tax returns. The calculation of the proceeds of crime of Rs.67.85 Crores at the first trench is unsustainable based on the imagination of IO travelling beyond the allegations of ECIR where two parties entered into agreement did not make a complaint for commission of offence against each other. Thus, first trench of the proceeds of crime calculated by the respondents is wholly erroneous.

14. The learned counsel for the appellants thereupon referred to second trench of the determination of the proceeds of crime in the hands of the appellants. It is in reference to an agreement entered between the entity of Avniash Bhosale i.e. M/s Abil Dairy LLP and the entity of Sanjay Chhabria whereby M/s Abil Dairy LLP was agreed to be purchased by the entity of Sanjay Chhabria for a sum of Rs.75 Crores. The agreement aforesaid was entered in the year 2016 after a public notice and advertisement caused by M/s Abil Dairy LLP for

the sale of Dairy. It was published on 26.05.2015. In pursuance to the agreement, Sanjay Chhabria's entity paid a sum of Rs.25 Crores on 15.01.2016 and was reflected as an advance received in the audited balance sheet of M/s Abil Dairy LLP and was continued to be shown in subsequent balance sheet also. The further payment could not be made immediately and accordingly M/s Abil Dairy LLP did not transfer the Dairy to Sanjay Chhabria, however, on 28.02.2019, second trench of payment of Rs.25 Crores was made and has been taken to be the proceeds of crime in ignorance of the fact that it was in terms of the agreement but taken to be the proceeds of crime only for the reason that Sanjay Chhabria received the amount from M/s DHFL after investment by Yes Bank in the year 2018 and accordingly Rs.25 Crores has been taken to be parking of the proceeds of crime in ignorance of the fact that entities of Avinash Bhosale and Sanjay Chhabria were having not only two agreements or transactions involved in the present matter but many other transactions and accordingly it was agreed that the amount of Rs.50 Crores would be adjusted towards the other transactions but ignored by the respondents despite documents placed on record. The amount of Rs.25 Crores paid to M/s Abil Dairy LLP on 28.02.2019 is erroneously taken to be the proceeds of crime.

15. Coming to the third trench of the proceeds of crime, the learned counsel for the appellants submitted that a sum of Rs.71.82 Crores has been taken to be the proceeds of crime in the hands of the appellants in ignorance of the agreement entered between the appellant's entity and M/s DHFL for consultancy and other services.

In pursuance to the agreement, an amount of Rs.71.82 Crores was received by the entities of Avinash Bhosale, however, taken to be the proceeds of crime on the ground that those entities did not render any services to M/s DHFL and for which statement of Shri Srinivasan Govindan, Executive Assistant to CMD of M/s DHFL was taken into consideration who denied about extension of any service by the entities of Avinash Bhosale. The statement was accepted in ignorance of the material produced by the appellant to show that the entities of Avinash Bhosale had taken large scale work to extend the services pursuant to the agreement and accordingly payment was made.

16. The agreements were taken to be the part of conspiracy in ignorance of the fact that it was entered much prior to the commission of crime and disbursement of the amount by Yes Bank to M/s DHFL. The IO dreamed that the entities would enter into conspiracy in future because execution of the agreement for consultancy apart from many other services was much prior to the disbursement of amount by the Yes Bank to M/s DHFL and thereupon its onwards transfer to Sanjay Chhabria. The entities belonging to Avinash Bhosale were involved and had extended consultancy services not only to M/s DHFL but to many other companies but ignored by the respondents. It is with the further statement that out of Rs.71.82 Crores, Rs.47.50 Crores was received by the appellant's company prior to the disbursement of loan by Yes Bank i.e. 12.04.2018 and it was a mere co-incidence that remaining amount of Rs.24.3 Crores was paid a month after 12.04.2018 though

the work was executed coupled with the issuance of the invoices prior to disbursement of the loan. The actual payment was delayed by few days and co-incidentally it was made after 12.04.2018 but could not have been taken to be the proceeds of crime. In this regard, the statement of Avinash Bhosale recorded under Section 50(2) of the Act of 2002 was ignored coupled with the statement of Santosh Maheshwari disclosing all details regarding the work and the material to prove their case. Thus, the Adjudicating Authority has recorded a perverse finding while confirming the provisional attachment of the properties belonging to the appellants. The prayer was accordingly made to cause interference in the impugned orders.

17. The counsel for the appellants did not raise any other argument than referred to above despite an opportunity, rather shown its satisfaction and accordingly even written argument was given to that effect only.

**Arguments of counsel for the respondents:**

18. The learned counsel for the respondents has made elaborate arguments to contest the appeals. The arguments would be referred while dealing with the issues raised by the appellants to avoid repetition of facts and for the sake of brevity. It is, however, with the clarity that not only detailed oral arguments were made but written arguments have been submitted by the respondents which would be referred while recording our finding.

**Finding of the Tribunal:**

19. We have considered the rival submissions raised by the counsel for the parties and scanned the material carefully.

20. The brief facts pertaining to the registration of the FIR and the allegations contained therein have been referred in the opening paras of this order. It relates to the investment of Rs.3700 Crores by M/s Yes Bank in the debentures of M/s DHFL out of which Rs.600 Crores were given to M/s DOIT Urban Ventures (India) Ltd. (Rana Kapoor's Group Company) as a kickback. It was also found that out of the remaining amount, a sum of Rs.2317 Crores was given to the entities belonging to Sanjay Chhabria for the development of the project "Avenue-54" at Santacruz but huge part of the amount was diverted and in the sequence of the aforesaid allegations, it was thereupon found that the appellant Avinash Bhosale and his entities, apart from relatives also remained the beneficiary of the funds diverted by Sanjay Chhabria.

21. We need to analyze the issues raised by the counsel for the appellants and seriously contested by the counsel for the respondents and accordingly we would take up the issue in reference to the allegations made by the respondents to show layering of the proceeds of crime by Sanjay Chhabria and his entities and has been taken by the respondents in regard to the three different transactions thus for the clarity, we would take up each transaction separately for recording our finding after considering rival submissions made by the parties.

**First Item: Rs.431 Crores received by M/s Nibodh Realty LLP:**

22. The issue of diversion of Rs.431 Crores by the entities of Sanjay Chhabria to M/s Nibodh Realty LLP, an entity of Avinash Bhosale, was subject matter of scrutiny by the respondents for causing

provisional attachment. Out of the aforesaid sum of Rs.431 Crores, respondents found Rs.67.85 Crores to be the proceeds of crime and accordingly caused provisional attachment in reference to it. The detailed arguments were made by both the counsels to support their case and for the purpose of clarity, it would be relevant to give brief facts pertaining to the first trench of the transaction involving Rs.431 Crores.

23. The material on record shows that an agreement was entered between the entity belonging to Sanjay Chhabria with M/s Nibodh Realty LLP, an entity of Avinash Bhosale in the year 2014-15 where appellant Avinash Bhosale agreed to extend loan of Rs.237.50 Crores. It was disbursed in terms of the agreement. As per the agreement, M/s Nibodh Realty LLP was to earn interest @18%, apart from the warrants with total return in a period of the agreement to a sum of Rs.766.75 Crores. In terms of the agreement and with the advancement of the loan of Rs.237.50 Crores, the appellant Avinash Bhosale's entities received Rs.431 Crores. It has not been taken to be the proceeds of crime as a whole but to the extent of Rs.67.85 Crores. The respondents have given detailed reasons for it and justification to determine Rs.67.85 Crores to be the proceeds of crime which was seriously contested by the counsel for the appellants.

24. The counsel for the respondents submitted that agreement was resulting in 300% return to M/s Nibodh Realty LLP which was commercially irrational and was designed to create a future mechanism for layering illicit fund. According to the counsel for the respondents, no credible explanation has been offered by the

appellants as to why a genuine lender would receive a return @ 300% on unsecured commercial loan. The further argument of counsel for the respondents was about the crucial link in the timing and the source of repayment. It was submitted that Sanjay Chhabria received a massive fund of Rs.2317 Crores from M/s DHFL in the year 2018 and it was from the aforesaid tainted fund, he made repayment to the appellants. A significant amount of Rs.267 Crores was paid from April, 2018 onwards when Sanjay Chhabria had received direct proceeds of crime. It is with the allegation that the appellant could not explain as to why the genuine loan extended in the year 2014 was re-paid in the year 2018 because the creditor would not wait for years for repayment. It is with disclosure of the basis for determining the proceeds of crime of Rs.67.85 Crores out of Rs.431.33 Crores.

25. It was submitted that principal amount landed by the entity of Avinash Bhosale was Rs.237.50 Crores for which the entity paid an interest of Rs.120.61 Crores to India Bulls HFL. The processing fee paid to India Bulls was Rs.3.37 Crores and thereby the actual cost receivable by the appellants was Rs.363.48 Crores leaving Rs.67.85 Crores. It is with the further statement that the ED had determined the proceeds of crime meticulously and not in an arbitrary manner.

26. The argument of the counsel for the respondents was seriously contested by the appellants of which we have made reference in the initial paras of this order and would record our finding after taking note of those arguments. It is not disputed by both the parties that an agreement was entered between the entity of Avinash Bhosale with

the entity of Sanjay Chhabria in the month of December, 2014 where the appellant had agreed to extend principal loan amount of Rs.237.50 Crores. It was with the arrangement of interest @18%, apart from the benefit of warrant in reference to the real estate project on which work was to be undertaken by the entity of Sanjay Chhabria. It was to result in receipt of Rs.767.75 Crores by the entity of the appellants. The agreement was executed almost four years prior to commission of crime by making investment of Rs.3700 Crores by M/s Yes Bank in the debentures of M/s DHFL in the year 2018 with kickback of Rs.600 Crores to Shri Rana Kapoor and diversion of funds by onward transfer to the entity of Sanjay Chhabria.

27. The learned counsel for the respondents was asked to show any material which may perceive for the agreement to be entered in the year 2014, that after more than four years, there would be transaction between M/s Yes Bank and M/s DHFL and thereupon between M/s DHFL and the entity of Sanjay Chhabria so as to enter into agreement with the company in advance to layer the proceeds. It is coupled with the fact as to whether any allegation exists in the FIR or in the ECIR about the transaction entered between the two parties in the year 2014. The contracting party has not made a complaint against the appellants for agreement to receive excessive return which may be upto 300%. The counsel for the respondents was further asked about the jurisdiction of the IO to question a transaction between the two parties which was not subject matter of the FIR or ECIR and accordingly no predicate offence exists for it to

be taken up in the investigation. The counsel for the respondents was unable to answer any of the questions. No material could be shown to indicate that the contracting parties entered into agreement in the year 2014 were having knowledge that after four years, there would be an investment by M/s Yes Bank in the debentures of M/s DHFL and thereupon between M/s DHFL and Sanjay Chhabria.

28. The second issue co-related with it is about the power of the IO to question the commercial transaction entered between the two parties four years prior to commission of crime. The counsel for the respondents could not clarify the power of the IO to examine an agreement to be commercially irrational when no allegation by any of the party was made for it. The respondents have not taken agreement to be illegal or void but held to be commercially irrational without showing their authority to draw inference for it when there was no allegation in the FIR or ECIR.

29. The third part to co-relate the transaction is with the timeline of repayment. It is not that the appellants' company did not extend loan, rather according to the respondents it has taken loan from India Bulls and accordingly the investment of Rs.237.50 Crores was made. The repayment as a consequence of the agreement has not been taken to be the proceeds of crime despite the fact that the major repayment or the benefit out of the agreement was extended or repaid subsequent to the commission of offence by M/s Yes Bank and M/s DHFL. It could not be made clear that despite payment of substantial amount of Rs.267 Crores after April, 2018 i.e. after commission of crime, why only part of it has been taken to be the proceeds of crime

i.e. Rs.67.85 Crores. The learned counsel for the respondents has referred to the account statement showing justification to determine Rs.67.85 Crores to be the proceeds. It was after making calculation of the amount invested by the appellants and for the aforesaid what amount of interest and processing fee was paid making the total cost of investment to be of Rs.363.48 Crores which according to the respondents themselves is the actual cost ignoring that the investments are made to earn profit and in the instant case, the agreement was placed on record to indicate the rate of interest to be @18%. It is apart from the receipt of the warrants by the appellants out of the agreement. How the profit and other benefits can be ignored by the respondents could not be clarified along with its jurisdiction.

30. In any case, we have taken note of the arguments raised by the counsel for the appellants to record our finding, otherwise we hold exercise of the respondents to cause provisional attachment in reference to an agreement entered in the year 2014 to take benefit of the proceeds of crime out of crime to happen after four years is wholly irrational and without jurisdiction and accordingly we are unable to accept the arguments of the respondents for the aforesaid, rather we asked the counsel to show the jurisdiction of the IO to question a commercial transaction for which no allegation for commission of offence has been made and is not subject matter of FIR i.e. predicate offence or the ECIR. We find the exercise of respondents for causing provisional attachment in reference to first trench of transaction to be wholly irrational and without jurisdiction and if the timeline for it

was to be taken, why the entire amount paid by the entity of Sanjay Chhabria after commission of crime and disbursement of the amount as a consequence in April, 2018 by M/s Yes Bank was not considered to be the proceeds of crime. The issue in regard to the first trench of transaction is decided accordingly.

**Second Item: Bogus Consultancy Fee from M/s DHFL to the appellant's entity amounting to Rs.71.82 Crores:**

31. The respondents caused provisional attachment of the property for the value of Rs.71.82 Crores finding it to have been received by the appellant out of the proceeds of crime. It was on the pretext that the amount aforesaid was diverted in the name of consultancy fee or the service rendered for the projects of M/s DHFL. It was pursuant to the agreement entered much prior to the commission of crime. It was "one Mahalaxmi" and "Avenue-54".

32. Out of the total sum of Rs.71.82 Crores towards the consultancy service pursuant to the agreement, Rs.47.50 Crores was paid to the appellant prior to the commission of crime in the year 2018 and remaining amount of Rs.24.32 Crores was paid in May, 2018 just after investment of the amount by M/s Yes Bank in M/s DHFL. The counsel for the respondents made a reference of the statement of Shri Srinivasan Govindan, Executive Assistant to CMD of M/s DHFL, who stated that two agreements were entered on 04.07.2017 between M/s DHFL and Avinash Bhosale's Group of Companies, when M/s DHFL had shown interest in Avinash Bhosale's Group to provide service for the project "one Mahalaxmi". According to the witness, no service was provided by Avinash

Bhosale's Group or Arindan Developers LLP in respect of the said project. It was a bogus agreement and the funds were transferred without service. A specific statement in regard to the payment of Rs.50 Crores and Rs.25 Crores was given for which invoices were raised by Avinash Bosale for rendering project evaluation and extending loan proposals. However, according to the witness, no project had been identified at the time of making those payments. In fact, the payment was to be adjusted for the project to be identified in future. The aforesaid was taken to be the basis for layering of the funds even before commission of the crime because out of Rs.71.82 Crores, an amount of Rs.47.50 Crores was paid to the entity of Avinash Bosale prior to the commission of crime and was in reference to the agreements entered prior to the year 2018. It could not be clarified as to how the said amount can be said to be layering of the proceeds of crime when it was not even reached to the accused to layer it. A transaction prior to the commission of crime has been taken into consideration for layering without any material and jurisdiction.

33. Much emphasis has been made in regard to the statement of Srinivasan Govindan to show execution of the agreement for bogus payment. The argument was seriously contested by the counsel for the appellants and for that he made the reference of the statement of Avinash Bhosale and apart from the material to show that entity of Avinash Bhosale was involved in consultancy service not only for entity of Sanjay Chhabria but many other entities because appellants were having a professional team for it. It is apart from the ignorance

of the fact that the entire amount was not towards the consultancy service but an amount towards brokerage for the financial intermediary for the loan transaction by M/s DHFL to one Skylark Buildcon Pvt. Ltd. The transaction was entered prior to the commission of crime and accordingly brokerage was paid pursuant to the invoice dated 06.04.2018 which was also prior to the alleged commission of crime by M/s Yes Bank and M/s DHFL. It was with the statement that Avinash Bhosale's Group and Abil Hospitality Pvt. Ltd. were appointed by M/s DHFL for joint venture between Sanjay Chhabria and Avinash Bhosale for the project, namely, "Avenue-54". It was apart from "one Mahalaxmi". The appellant Avinash Bhosale made further statement that the projects aforesaid were involving multiple complexities and M/s DHFL wanted to be sure once the monies are paid by them for which prior advance consultancy services were provided. The statement further revealed that the detailed discussion and negotiations were made for the consultancy charges. It is coupled with the details of the service and the manner it was provided. The witness further specified as to what service was to be provided. It was answered to question No. 3 by Avinash Bhosale and is as under:

"Q.3 Please provide details of the scope of services which you had agreed to provide to DHFL.

Ans. The scope of services which were to be provided by us to DHFL are as under:

- a. Architectural & Engineering Design Advisory Services
- b. Construction Master Program Advisory Services
- c. Project Cost Estimate Advisory Services
- d. Project Contracts and Agreements Advisory Services

e. Financial Evaluation and Structuring Services”

Avinash Bhosale thereupon asked a specific question about the service to “one Mahalaxmi” and “Avenue-54”. It was further stated that service for another project “360 West” was also provided. The statement of Mr. Avinash Bhosale has been referred in the impugned order with alteration. The counsel for the respondents could not clarify as to why the statement has been altered and changed in the impugned order by the Adjudicating Authority.

34. The other statement relevant to the case is of Santosh Maheshwari which would demonstrate that the part payment was made towards the consultancy service in terms of the agreement entered much prior to the commission of crime. The reference of the statement of the witness has been given to analyze the issue. However, it is not in dispute that agreement for consultancy and other services were entered in the year 2017 while the investment by M/s Yes Bank in M/s DHFL was in the month of April, 2018 and onwards with actual disbursement of amount. The initial amount was Rs.1000 Crores on 12.04.2018 and remaining 2700 Crores thereupon. The respondents have treated consultancy and other service agreement to be bogus in reference to the statement of Srinivasan Govindan. However, it could not be clarified as to how the agreements entered prior to the commission of crime could have been taken to be bogus. It can be only when it was designed with the knowledge that after few months or a year,

there would be investment by M/s Yes Bank in the debentures of M/s DHFL and M/s DHFL would thereupon transfer huge amount to the entity of Sanjay Chhabria towards the development of "Avenue-54" and such development work would not be undertaken by Sanjay Chhabria and the amount would be further transferred to the appellant. The argument of the respondents could have been accepted if the material would have been shown to question the service and consultancy coupled with brokerage agreement with the knowledge of commission of crime in future. However, no such material has been placed on record. Therefore, even if the part payment was made even subsequent to the commission of crime, the respondents were required to show the material that the consultancy service and agreement were bogus to co-relate with the event of crime to take place in future and accordingly to layer the amount in anticipation, that too when none of the contracting parties have made allegations for it and it is not otherwise allegation in the FIR to show a predicate offence or even in the ECIR. The respondents have relied on the statement of Srinivasan Govindan ignoring other statements disclosing the material to prove consultancy services provided to the contracting parties and otherwise the respondents failed to clarify as to how a payment made much prior to the commission of crime can be said to be layering of the proceeds of crime. No material for it has been submitted to anticipate a payment to be the proceeds of crime tomorrow thus to layer it in advance.

Such a framework of the respondents is not tenable. If the practice adopted by the respondents is allowed, then they would start causing attachment of the properties in relation to the crime yet to take place. If we assume that the statement of Srinivasan Govindan was sufficient to narrate that no work of consultancy services was undertaken, the respondents were still under an obligation to lay foundational fact that amount paid few months back or year was to layer the proceeds for which crime had not even taken place at the time of payment. It is also in ignorance of the fact that the appellants have not been named in the predicate offence. It is between M/s Yes Bank and M/s DHFL through its Directors, etc. when Yes Bank advanced an amount of Rs.3700 Crores for purchase of debentures of M/s DHFL. It could not have been conceived that subsequent to the commission of crime, one of the accused M/s DHFL would transfer the money to the appellant company. It is nothing but stretching the transaction beyond permissible limit or the jurisdiction. The counsel for the appellants had categorically referred to the invoices coupled with the performance work. The invoices were raised prior to the commission of crime and it was co-incident that a small amount was disbursed just after receipt of the amount by M/s DHFL. The amount taken to be proceeds of crime could not have been determined based on assumptions when there is no material on record to make out a foundational fact about commission of crime to connect it with an agreement entered much prior to

crime and the transaction prior to the commission of crime was intended to layer the proceeds yet to be received by the accused. Accordingly, even the reason for provisional attachment of second trench of the amount cannot be accepted.

**Third Item: Sale of M/s Abil Dairy LLP involving Rs.75 Crores:**

35. In the third trench, the appellant through his company M/s Abil Dairy LLP received an amount of Rs.25 Crores on 28.02.2019. The background of the transaction for the aforesaid was given by the counsel for the parties. The facts and material on record shows that a MOU was entered by M/s Abil Dairy LLP with Sanjay Chhabria for sale of the dairy and in pursuance to the MOU entered in 2016, an amount of Rs.25 Crores was paid in the same year. The sale of the dairy was otherwise for a consideration of Rs.75 Crores. After an initial payment of Rs.25 Cores, the remaining payment of Rs.50 Crores was not paid for a considerable period, rather another amount of Rs.25 Crores was paid after a lapse of three years which is taken to be part of the proceeds of crime after transfer of Rs.25 Crores initially. The transaction could not be completed with transfer of dairy, rather it is admitted that dairy remained with the entity of Avinash Bhosale. The respondents accordingly treated the amount of Rs.25 Crores paid in the year 2019 to be nothing but transfer of proceeds of crime.

36. The argument was contested by the counsel for the appellants to indicate that the initial amount of Rs.25 Crores

was paid in the year 2016 and subsequent amount of Rs.25 Crores was paid in the year 2019 was agreed to be adjusted against many other transactions because the entities of Avinash Bhosle and Sanjay Chhabria were having many other transactions. The documents were executed to adjust the payable amount against other commercial transactions and accordingly contest for the provisional attachment of the property for equivalent value has been raised.

37. We do not find substance in the argument of the counsel for the appellants for the reason that if there was an agreement for the sale of dairy with initial payment of Rs.25 Crores in the year 2016, then follow up payment could have resulted in sale of dairy and should have been within reasonable period. The next payment of Rs.25 Crores was made in the year 2019 i.e. after three years could not be justified and it cannot be taken for adjustment towards the other transactions. If the parties were to arrange payment in reference to other transactions, it should not have been in the name of the purchase of Dairy and accordingly we find substance in the argument of the learned counsel for the respondents justifying attachment of the property for the equivalent value to Rs.25 Crores.

38. At this stage, we may further deal with the argument of the counsel for the parties and more specifically even the counsel for the respondents in reference to Section 23 of the Act of 2002. It is to emphasize that if there are inter-connected transactions, Section 23 of the Act of 2002 would come into play. The

argument has been raised without realizing that all the transactions were between the two independent parties. The parties were not named for the predicate offence. They were not inter-connected as a consequence thereof. Section 23 of the Act of 2002 comes into play when inter-connected transactions is for commission of crime or layering the proceeds or not otherwise. We have already recorded the finding that agreement in the year 2014 could not have been taken for layering proceeds out of commission of crime took place in the year 2018. The transaction of 2014 was not subject matter of FIR and ECIR. The IO exceeded to his jurisdiction to inter-connect those transactions and accordingly the counsel for the respondents could not show and refer the ECIR to contend allegation regarding a commercial transaction which took place almost four years prior to the commission of crime to be a subject matter of scrutiny by the respondents. The provision for inter-connected transaction would come in reference to the transaction which was the framework of causing offence or layering the proceeds. It cannot be to any other transaction.

39. In the light of the discussion made above, we find reason to cause interference in the impugned order for provisional attachment of the properties other than the properties worth of Rs.25 Crores for which we do not find a case to cause interference in the impugned order. To continue the provisional attachment to the extent of Rs.25 Crores, the following

properties are wholly/partially continued under provisional attachment leaving others:

- (1) Land Parcel admeasuring 6143.71 Sq. Meters in Pune attached for the value of Rs.14.65 Crores under the title of Samit Realty wholly; and
- (2) Remaining part to make good of Rs.25 Crores, land admeasuring 20,200 Sq. Meters in Nagpur valued for Rs.15,52,87,000/- in the name of Gauri Bhosale.

The appeals are partly allowed by causing interference in the impugned order for provisional attachment of the properties other than the two properties referred to above to be continued under provisional attachment as a whole and in part.

**(Justice Munishwar Nath Bhandari)**  
**Chairman**

**(G.C. Mishra)**  
**Member**

**New Delhi**  
**01.04.2026.**  
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