APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-PMLA-3427/MUM/2025 (Stay)
MP-PMLA-1126/MUM/2025 (Modification)
FPA-PMLA-946/MUM/2025

M/s. Sahana Builders and Developers
Private Limited (Director) ... Appellant

Versus

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

Advocates/Authorized Representatives who appeared

For the Appellant	:	Mr. Arun Kumar Agarwal Mr. Shubham Agarwal Mr. Amir Hussain; Ms. Nehal Gupta, Mr. Chiranjivi Sharma, Advocates
For the Respondent	:	Mr. N. K. Matta, S.P.P Mr. Aaditya R. Sharma Mr. Kartik Malhotra Mr. Harshit Gupta, Advocates

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JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN

FINAL ORDER
06.07.2026

By this appeal 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 27.03.2025 passed by the Adjudicating Authority confirming the Provisional Attachment Order dated 15.10.2024.

Facts of the case:

2. The brief facts giving rise to the case pertain to registration of various FIRs by CBI and Economic Offences Wing from time

to time during the period 2015 to 2023. Initially, 24 FIRs were registered followed by 50 FIRs against the promoters of M/s Unitech Ltd. It was alleged that M/s Unitech Ltd. had collected Rs.14270 Crores from more than 29800 home buyers promising them assured return on their investment. It was found that around 5063.50 Crores i.e. 40% of the funds was diverted for non-mandated purposes and thereby M/s Unitech Ltd. failed to provide flats to the home buyers thus the allegation of commission of crime was made and thereby the case was registered for the offence under Section 34,406,409,120-B and 420 IPC, apart from the offences under the Prevention of Corruption Act, 1988.

3. Since the money involved was more than Rs.5000 Crores and many buyers/investors were cheated, a Civil Appeal No. 10856/2016 (Bhupinder Singh Vs. M/s Unitech Ltd.) was filed by the investor and came up for consideration before the Hon'ble Apex Court. The Hon'ble Apex Court stepped to ensure justice to home buyers and thereby M/s Grant Thorton India LLP was appointed for forensic audit of 74 residential projects of M/s Unitech Group. The audit completed in July, 2022. It revealed that approx. Rs.5063.05 Crores was laundered by the accused out of Rs.14270 Crores collected from the home buyers. As per the directions of the Apex Court, the matter was taken up by the respondent ED also and it caused Provisional Attachment Orders from time to time against different entities/companies, apart from the individuals.

4. The learned counsel for the appellant touched upon the basic allegation levelled against M/s Unitech Ltd. In the audit report by M/s Grant Thorton India LLP, the period of laundering of home buyers' money was found to be between the year 2006-07 and 2014-15. It was the period when M/s Unitech Ltd. received huge investment from the home buyers and was diverted for non-mandated purpose. So far as the appellant company is concerned, allegation does not exist for commission of crime but it is said to be the recipient of the proceeds of crime and, therefore, provisional attachment of the FD for a sum of Rs.16,13,63,913/- was caused. It was finding that the appellant company had received a sum of Rs.10 Crores from M/s Unitech Ltd. on 04.10.2004 and 29.10.2004 in two trenches of Rs.5 Crores each. It was against the sale of 11 shops to be developed by the appellant company. The payment of the aforesaid sum was made through the cheques, however, it is a fact that those shops were never transferred to M/s Unitech Ltd. and at the same time, the amount of Rs.10 Crores remain with the appellant company. It has been taken to be the proceeds of crime and accordingly with the addition of the interest, provisional attachment of the FD for a sum of Rs.16,13,63,913/- was made. The provisional attachment of the FD has been confirmed by the Adjudicating Authority and aggrieved by the aforesaid, the present appeal has been filed.

Arguments of counsel for the appellant:

5. The learned counsel for the appellant submitted that attachment of the FD for a sum of Rs.16,13,63,913/- is illegal on the face of it for the reason that the aforesaid sum was not diverted out of the investment made by the home buyers or others with M/s Unitech Ltd. Elaborating the facts of the case, it was submitted that the amount of Rs.10 Crores was received by the appellant company in two trenches of Rs.5 Crores each on 04.10.2004 and 29.10.2004 while generation of proceeds of crime by the accused M/s Unitech Ltd. was between the year 2006-07 and 2014-15. Any amount received by the appellant company prior to the crime period could not have been said to be the diversion of proceeds of crime.

6. The learned counsel for the appellant further submitted that the amount of FD could not have been taken to be for the value equivalent to the proceeds. The respondents can provisionally attach the property for equivalent value if the proceed is not found available with the accused or the person. However, for the aforesaid, element of diversion of proceeds of crime should remain. It may either by the accused or the person to whom such proceeds has been transferred or diverted. In the instant case, the appellant company was not recipient of the proceeds of crime at any time so as to attach FD for the value equivalent to the proceeds. The respondents failed to consider as to what can be attached is the "proceeds of crime", as defined under Section 2(1)(u) of the Act of 2002 which has three limbs but the present case does not fall in

either of the limbs. Therefoe, on the aforesaid ground also, the impugned order deserves to be set aside.

7. The learned counsel for the appellant submitted that the amount of Rs.10 Crores was received by the appellant company towards the sale of 11 shops. However, the sale could not materialize and accordingly the amount aforesaid was credited as capital contribution of M/s Unitech Ltd. for the joint ventures project. It was on the request of M/s Unitech Ltd. itself. The appellant company had shown the amount accordingly and left as a credit balance. It has even deducted the TDS on the interest provided in the ledger thus the amount received was in the ordinary course of business but not out of the proceeds of crime. The management of M/s Unitech Ltd. has been taken over now by a committee constituted by the Supreme Court which initiated proceedings for recovery of the amount of Rs.10 Crores. The due correspondence in pursuance to which has been made by the new Management of M/s Unitech Ltd. Ignoring the aforesaid, the respondent ED has acted as a recovery officer of M/s Unitech Ltd. for an amount invested by it much prior to the crime period and, therefore, not only the principal but after adding the interest, FD of equivalent amount has been provisionally attached. It is nothing but devise to recover the amount beyond the competence of the respondent ED. Therefore, on the aforesaid ground also, the impugned order deserves to be set aside.

8. The learned counsel for the appellant did not raise any other argument than referred to above. It is despite an opportunity to raise any other legal or factual issue.

Arguments of counsel for the respondents:

9. The learned counsel for the respondents contested the appeal on all the grounds raised by the appellant. It was submitted that initiation of the proceedings under the Act of 2002 by the respondents was in pursuance to the direction of the Apex Court in the petition preferred by Bhupinder Singh. The Hon'ble Apex Court initially appointed M/s Grant Thorton India LLP for a forensic audit and when report was submitted, parted with the ED for further action. The respondents accordingly recorded the ECIR and caused investigation to trace out the proceeds of crime to protect the money of the home buyers and accordingly provisionally attach the property. In the process, it was found that a sum of Rs.10 Crores was transferred by M/s Unitech Ltd. with the appellant company in the year 2004 by making payment in two trenches. The amount aforesaid was towards sale of 11 shops but transaction never materialized. Therefore, the aforesaid amount became due to M/s Unitech Ltd. which was never paid back by the appellant company. In the light of the aforesaid, the principal amount with interest was calculated and accordingly FD of equivalent amount of Rs.16,13,63,913/- was provisionally attached.

10. The ED has not acted as a recovery officer, rather to protect the home buyers' money, the provisional attachment has been caused. It may be that the amount of Rs.10 Crores was paid to the appellant company in the year 2004 i.e. prior to the crime period. However, M/s Unitech Ltd. had received money from the investors and diverted it. It is during the year 2006-07 to 2014-15. In any case, any amount paid by M/s Unitech Ltd. prior to the crime period has rightly been taken to be proceeds of crime for causing provisional attachment. The prayer was made to dismiss the appeal.

Finding of the Tribunal:

11. I have considered the rival submissions of the parties and perused the record.

12. In the opening paras, I have given brief facts pertaining the registration of 74 FIRs against M/s Unitech Ltd. for commission of offence under Section 34,406,409,120-B and 420 IPC, apart from the offences under the Prevention of Corruption Act, 1988. It was found that M/s Unitech Ltd. had collected Rs.14270 Crores from the home buyers and out of which Rs.5063.05 Crores was diverted for other purposes.

13. The matter came up before the Apex Court on a petition preferred by Bhupinder Singh. The Apex Court appointed M/s Grant Thorton India LLP for forensic audit for 74 projects of M/s Unitech Ltd. The forensic audit report was submitted before the Apex Court by M/s Grant Thorton India LLP. On the receipt of the forensic audit report, the Apex Court directed

various agencies, including the respondent ED to take up the matter as per the provisions of law.

14. The respondent ED recorded the ECIR and caused investigation under the Act of 2002. It was found that M/s Unitech Ltd. has collected huge amount from the home buyers between the year 2006-07 to 2014-15 and out of which 40% amount was diverted for non-mandated purpose and thereby the home buyers could not be given due return, as was promised by M/s Unitech Ltd. The period of commission of crime is significant in view of the argument of the learned counsel for the appellant. It is for the reason that the appellant company had received an amount of Rs.10 Crores in the year 2004 in two trenches of Rs.5 Crores each but was much prior to the crime period of the years 2006-07 to 2014-15. In view of the above, transfer of Rs.10 Crores to the appellant company for purchase of 11 shops by M/s Unitech Ltd. cannot be said to be out of the proceeds of crime. The outcome of the aforesaid is that the appellant is not in receipt of the proceeds of crime, rather transfer of Rs.10 Crores by M/s Unitech Ltd. was much prior to the crime period. It was in the course of business. It is, however, a fact that the appellant company failed to deliver 11 shops to M/s Unitech Ltd. and even did not return the amount, rather as per the understanding with M/s Unitech Ltd., it was taken to be credit balance with the appellant company. It was providing interest yearly with TDS certificate. It thus can be said to be a case for recovery of the amount by

M/s Unitech Ltd. and not that appellant company was recipient of the proceeds of crime. The receipt of proceeds of crime would have been if the transfer of Rs.10 Crores would have been made during or subsequent to the year 2006-07 and not prior to it. The first issue is accordingly decided in favour of the appellant.

15. The co-related issue raised by the respondent ED is that FD for Rs.16,13,63,913/- has been attached for the value thereof. The argument aforesaid is not tenable for the reason that appellant had not received proceeds of crime, rather it was not even diverted to provisionally attach the property of equivalent value in case of non-availability of the proceeds. It is a classic case where the respondents have failed to establish that appellant company had received any amount out of the proceeds of crime i.e. the invested money of home buyers started from the year 2006-07 to 2014-15. The provisional attachment of the property for equivalent value can be caused if the proceed is not found available with the accused or the person but receipt or diversion of the proceeds would be a pre-condition which is not fulfilled in the present matter.

16. The issue now remains that even if Rs.10 Crores is not proceeds of crime having been received by the appellant prior to the commission of crime. Whether the amount aforesaid is due for payment to M/s Unitech Ltd. The facts on record shows that not only the amount aforesaid is due but new management of M/s Unitech Ltd. have initiated proceedings to recover the amount to which the appellant company has made

correspondence. In the background aforesaid, the issue would now remain between the appellant company and M/s Unitech Ltd. which is now looked after by the new management appointed by the Apex Court. The respondent ED could not have acted as a recovery officer of M/s Unitech Ltd. in the garb of a sum transferred prior to the crime period. The comment aforesaid has been made for the reason that a sum of Rs.10 Crores was paid to the appellant company much prior to the commission of crime. It may be recoverable but could not have been taken to be "proceeds of crime", as defined under Section 2(1)(u) of the Act of 2002 and otherwise respondents have acted as recovery agent of M/s Unitech Ltd. and thereby even collected the interest thereupon. In the background aforesaid, I do not find impugned order to be tenable in the eyes of law and accordingly interfered. The appeal is allowed with the aforesaid. It is, however, with the clarity that this order would not create embargo on new management of M/s Unitech Ltd. to make recovery of sum of Rs.10 Crores, as per the provisions of law.

(Justice Munishwar Nath Bhandari)
Chairman

New Delhi,
06.07.2026
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