



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16.11.2023
Pronounced on: 31.01.2024

+ W.P.(C) 10993/2023 & CM APPL. 42616/2023

MR MAHENDER KUMAR KHANDELWAL Petitioner
Through: Mr.D.P. Singh, Mr.Archit
Singh & Ms.Shreya Dutt, Advs.
versus

DIRECTORATE OF ENFORCEMENT & ANR.

..... Respondents
Through: Mr.Zoheb Hossain, Mr.Vivek
Gurnani, Mr.Kavish Garach &
Mr.Vivek Gaurav, Advs. for
ED

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed by the petitioner praying for the following reliefs:

- “i. Issue a writ of mandamus or any other appropriate writ/direction/ order declaring that the order dated 10.02.2021 passed by the Ld. Adjudicating Authority allowing Original Application bearing O.A. No. 404/2020 filed u/s 17(4) of PMLA, 2002 has ceased to have effect from date 11/02/2022 due to non-filing of prosecution complainant within 365 days as contemplated u/s 8(3)(a) of PMLA.*
- ii. Issue a writ of mandamus or any other appropriate writ/direction/ order to the Respondent/ED to release/ return all the*



documents, records, digital devices, and gold & diamond jewelry as mentioned in the Panchanama / seizure memo dated 19/08/2020 and 20/08/2020.”

Factual matrix

2. It is the case of the petitioner that, vide order dated 26.07.2017, passed by the learned National Company Law Tribunal, Principal Bench, New Delhi (in short, ‘NCLT’) in CA No.(IB)-202(PB)/2017, the petitioner was appointed as the Interim Resolution Professional (in short, ‘IRP’) for the Corporate Insolvency Resolution Process of M/s Bhushan Power and Steel Ltd. (hereinafter referred to as ‘BPSL’).
3. On 01.09.2017, the Committee of Creditors (in short, ‘CoC’) for BPSL confirmed the appointment of the petitioner as the Resolution Professional (in short, ‘RP’) for BPSL.
4. On 16.10.2018, the CoC also approved the resolution plan for BPSL, which was submitted by M/s JSW Steel Limited. The said plan was approved by the learned NCLT vide order dated 05.09.2019.
5. The petitioner claims that in the course of his functioning as the IRP and as the RP of BPSL, the petitioner unearthed fraud committed by the ex-promoters and directors of BPSL, for which he even filed a criminal complaint dated 07.02.2020 with the SHO, Thelkoloi Police Station, District- Sambalpur, Odisha, under Sections 419,420,465,467,468,469,471 read with Section 120-B of the Indian Penal Code, 1860 (in short, ‘IPC’). The petitioner also filed an application under Section 66 of the Insolvency and Bankruptcy Code, 2015 (in short, ‘IBC’) for the fraudulent and wrongful trading, before the learned NCLT.



6. It is alleged that the Central Bureau of Investigation, New Delhi (in short, 'CBI') registered an FIR/RC No.RCBD1/2019/E/0002 dated 05.04.2019 against BPSL, its Directors, and the other Key Managerial Persons, on allegations of offences committed under Sections 120-B read with Sections 420, 468, 471 & 477A of the IPC, and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. The petitioner was neither named as an accused in the FIR nor was investigated by the CBI. He was neither summoned nor asked to join the investigation by the CBI in the said FIR.

7. Based on the said FIR, the respondent registered an Enforcement Case Information Report (in short, 'ECIR') bearing no.ECIR/DLZ0-1/02/2019 dated 25.04.2019 under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'Act').

8. The petitioner claims that he has duly co-operated with the investigations conducted by the respondent and his statement has also been recorded under Section 50 of the Act, on 13.09.2019, 30.09.2019 and 04.10.2019. He claims to have furnished information and documents from the records of BPSL which were in his custody while performing his duty as an RP of BPSL.

9. The petitioner states that a Provisional Attachment Order, bearing PAO no.11/2019 dated 10.10.2019 was passed attaching the properties of the BPSL and its promoters and other Key Managerial Personnel. Thereafter, the respondent filed an Original Complaint no. 1221/2019 under Section 5(5) of the Act before the Adjudicating Authority on 08.11.2019, seeking confirmation of the attached properties. The proceedings in the Original Complaint no. 1221/2019



expansive meaning so as to deprive the petitioner of his constitutional and legal rights. He submits that to invoke the provision of ‘pendency of proceedings’ under Section 8(3)(a) of the Act, the complaint must be against the petitioner or, at least seek the confiscation of the retained properties. In support, he places reliance on the judgement of Punjab & Haryana High Court in *Seema Garg & Ors. v. The Deputy Director, Directorate of Enforcement*, 2020 SCC OnLine P&H 738.

16. The learned counsel for the petitioner further submits that the reliance of the respondents on the Explanation to Section 8(3) of the Act also cannot be accepted inasmuch as there was no order passed by a Court staying the investigation. In fact, the respondent attached the properties of the petitioner post the order dated 28.08.2020 passed by this Court in Writ Petition (Crl.) no.1342/2020, titled as *Mahender Kumar Khandelwal v. Union of India & Ors.*, whereby the respondent was restrained from taking any coercive action against the petitioner. The respondents did not even apply for seeking the vacation of the said order before carrying out the search and seizure. He submits that the reliance of the respondents on the said order to seek extension of seizure is, therefore, *mala fide*.

Submissions of the learned counsel for the respondents

17. On the other hand, the learned counsel for the respondents submits that in the present case, based on the information obtained from open source regarding initiation of investigation against BPSL by the Director General of GST Intelligence, Bhubaneswar (hereinafter referred to as ‘DGGI’) involving fraudulent and



clandestine removal of finished goods by the previous as well as the current management of BPSL, the respondents collected incriminating evidence in the shape of statements recorded by DGGI. It was found that BPSL had engaged in clandestine clearance of the finished goods from its Odisha Plant to its plants at Kolkata and Chandigarh. A total of 58 of such consignments had been cleared in a clandestine manner. The total value of these consignments was Rs.705.39 Crore, out of which, three such consignments, valuing Rs.40.42 crores, were cleared after 26.07.2017. It was further gathered that the data has been deleted from the servers of BPSL, Odisha. It was further noted that one Sh.H.C.Verma, before the start of the resolution process on 26.07.2017, and the petitioner thereafter, were the two main persons responsible for the clandestine removal of the goods leading to the siphoning of funds from BPSL. Based on the above facts, searches were conducted under Section 17(1) of the Act, which resulted in the recovery of various incriminating documents/digital devices/phones/jewellery. Basis which, the petitioner was called for investigation. An Original Application, being OA no.404/2020, was filed before the Adjudicating Authority, on 17.09.2020, seeking retention of the seized items for purposes of investigation. The Adjudicating Authority was pleased to confirm the same vide order dated 10.02.2021. Further investigations were also carried out, which showed that the petitioner and one Sh.Rajiv Goel, by way of criminal activity related to the scheduled offences, had siphoned of an amount of Rs.1,73,63,488/- from BPSL. Accordingly, an amount equivalent to the above was attached provisionally by the Adjudicating Authority vide Provisional



23. He further submits that, in any case, Section 8(3)(a) does not provide for any consequence on the lapse of the period of 365 days inasmuch as it does not state that the order of seizure would thereafter lapse or that the documents and property seized must be returned to the person from whom it is seized. He submits that in absence of such a provision, the present petition is liable to be dismissed.

Analysis and finding

24. I have considered the submissions made by the learned counsels for the parties.

25. The issue in the present case is the meaning to be prescribed to the words '*the proceedings relating to any offence under this Act before a Court*' in Section 8(3)(a) of the Act. While the learned counsel for the petitioner submits that these words have to be read in a narrow manner so as to mean only the complaint which arrays the person from whom the documents or the property has been seized as an accused or mentions such documents or property as relied upon in such complaint, the learned counsel for the respondents submits that there is no reason to give a restricted meaning to these words and any proceedings relating to any offence under this Act shall be sufficient to extend the period by which the property seized or frozen can be retained.

26. For appreciating the above submissions, a few provisions of the Act may be important to be considered.

27. Section 3 of the Act defines the offence of money laundering. Section 5 of the Act provides for attachments of the property involved



in money laundering. Sub-Section 1 of Section 5 of the Act is relevant and is reproduced hereinunder:-

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

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

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

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for



such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act:

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

28. A reading of the above provision would show that the provisional attachment of the property can be ordered where there is a reason to believe that any person is in possession of any proceeds of crime and such proceeds of crime is likely to be concealed, transferred or dealt with in any manner which may result in frustrating ‘*any proceedings relating to confiscation of such proceeds of crime*’. The first proviso of Section 5(1) of the Act states that no such order of attachment shall be made unless *inter alia*, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the CrPC, or a complaint has been filed by a person authorized to investigate the offence mentioned in the schedule before a Magistrate or a Court for taking cognizance of the scheduled offence. Therefore, for ordering a provisional attachment of the property, proceedings in the form of a report under Section 173 of the CrPC or a complaint for taking cognizance of a scheduled offence is a pre-requisite. The second proviso to Section 5(1) of the Act states that the



above pre-requisite can be not insisted upon if the authority has reason to believe that if such property is not attached immediately under the Act, the non attachment of the property is likely to frustrate any 'proceedings under this Act'.

29. On the provisional attachment of the property, in terms of Section 5(5) of the Act, a complaint stating the facts of such attachment has to be filed before the Adjudicating Authority under the Act.

30. Section 17 of the Act empowers the competent officer to carry out a search and to *inter alia* seize any record or property found as a result of such search. Where the seizure of such record or property is not practicable, an order of freezing such property can be passed. In terms of sub-Section 4 of Section 17, where the property is seized or frozen, an application is to be filed before the Adjudicating Authority requesting for retention of such record or property seized under sub-Section 1 of Section 17 or for continuation of the order freezing such property under sub-Section 1-A of Section 17 of the Act. Section 17 of the Act is reproduced hereinunder:-

“17. Search and seizure.—(1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—
(i) has committed any act which constitutes money-laundering, or
(ii) is in possession of any proceeds of crime involved in money-laundering, or
(iii) is in possession of any records relating to money-laundering, or



possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence: Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”

31. Similarly power of search of a person is vested in the competent authority under Section 18 of the Act.

32. Sections 20 and 21 of the Act provide for the retention of property and/or records seized or frozen under Section 17 or Section 18 of the Act. They read as under:-

“20.Retention of property.—(1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication



under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, Special Court, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Special Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or



(6) Where an order releasing the records has been made by the Court Adjudicating Authority under sub-section (5) of section 21, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of receipt of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.”

33. Section 8 of the Act empowers the Adjudicating Authority to *inter alia* pass an order confiscating the properties on a complaint received under sub-Section 5 of Section 5 or application under Section 17(4) or 18(10) of the Act. Section 8 of the Act reads as under:-

“8. Adjudication.—(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly



by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after— (a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding ninety days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and]

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court



(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed: Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.]

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may



be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”

34. From the reading of the above Section, it would be apparent that in terms of sub-Section 1 of Section 8 of the Act, the Adjudicating Authority may pass an order declaring that the property attached under Section 5(1) or seized or frozen under Sections 17 or 18 of the Act is involved in money laundering and confirm the attachment of such property or the retention of the property or record so seized or frozen. Such an order becomes final after an order of confiscation is passed under sub-Section 5 or sub-Section 7 of Section 8 or Section 58B or sub-Section 2A of Section 60 by the Special Court. Sub-Section 5 of Section 8, in turn, provides that where the Special Court finds that the offence of money laundering has been committed, it shall order the property involved in money laundering or which has been used for the commission of the offence of money laundering, to stand confiscated to the Central Government. Sub-Section 7 of Section 8 states that the Special Court, if it is of the opinion that the trial under the Act cannot



be conducted by reason of death of the accused or the accused being declared proclaimed offender or for other reasons, may pass an appropriate order regarding confiscation or release of the property in respect of which an order has been passed sub-Section 3 of Section 8 of the Act. Similar, provisions under Section 58B and Section 60(2A) of the Act have been made with respect to a trial under the corresponding law of any other country.

35. From the combined reading of the above provisions of the Act, it is evident that the powers of attachment, seizure and freezing of the properties and records becomes final on the order passed by the Special Court in relation thereto. The words '*proceedings relating to any offence under this Act*' appearing in Section 8(3)(a) of the Act, therefore, has to be read in light of the above provisions to mean only a proceeding that is pending before a Special Court in relation to the property or records that are so attached or seized or frozen or with the respect to the person from whom such property was seized or recovered. The provisions of the Act have to be reasonably read and in a harmonious manner with other provisions. It is also to be remembered that the power of attachment, seizure, and freezing of the properties and records, is a draconian provision that has to be strictly construed. Reference in this regard is placed on ***Radha Krishnan Industries v. State of Himachal Pradesh & Ors.***, (2021) 6 SCC 771.

36. In the present case, the order dated 10.02.2021 passed by the Adjudicating Authority allows further retention of the documents and properties seized from the petitioner, by observing as under:-



“On perusal to facts of the case as brought out in the complaint, subsequent proceedings before the adjudicating Authority, and the discussions in the preceding paras, I find that the provisions of Section 17, 8(1), 20, 21 have been complied with.

1. What is required to be seen at this juncture is the interest of the investigation, where prima facie allegations exist regarding commission of the offence of money laundering. The background stated in the OA sufficiently indicates that the scheduled offences are committed and the proceeds of crime are involved. The investigation of money laundering is going on. Undoubtedly the Investigation about the proceeds of crime and money laundering is required to be continued. There is justification for permitting the retention of the document and digital devices. The interest of investigation is required to be borne in mind at this stage. Hence the Original Application for permitting retention of the documents and digital devices deserves to be allowed and is hereby allowed. The material in OA is sufficient to arrive at the satisfaction by this Authority that the documents and digital devices are required for the purpose of Adjudication under Section 8 of PMLA.

2. The proceedings at present are in the form of OA, wherein the documents and digital devices seized are prayed by the Enforcement Directorate to be retained for the purpose of continuing Investigation/and Adjudication. As of now there is nothing in this Application which affects any substantial right of the Defendants, like attachment and/ or confiscation of the properties of the Defendants. The Application is simply for retention of the documents, digital devices, so that the investigation for PMLA offence and Adjudication can be carried on without any obstruction.

3. In view of the aforesaid background, in the interest of justice the Application of the



Applicant, Enforcement Directorate is allowed and they are permitted to retain records/digital devices seized/recovered vide panchnama(s) dated 19.08.2020 from the residence and office premises of the respondents as mentioned at page no 4-8 of this order, in terms of section 17(4) of the PMLA.

4. Hence the Application as filed by the Enforcement Directorate is allowed.”

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7. Having taken into consideration the facts and circumstances of the case and request of the defendants first to give a suitable date for pronouncement and second to defer to any date after 08.02.2021, in view of the statutory limitation involved the pronouncement of order cannot be kept pending. Moreover this order which is merely for granting permission to retain the seized articles for the purpose of investigation in the backdrop of serious economic offences and no prejudice is caused to the Respondents at this stage, the order which is subject to the directions of the Hon'ble High Court in the writ petition, is pronounced today in the open court as per schedule for pronouncement vide cause list dated 09.02.2021.”

(Emphasis supplied)

37. From the above, it would be apparent that the retention of the documents and properties has been allowed for the purposes of investigation/adjudication. The same would, therefore, extend for a period of 365 days in terms of Section 8(3)(a) of the Act unless a proceeding relating to the offence under the Act has been filed prior thereto. As noted hereinabove, the proceeding relating to any offence under this Act has to mean proceeding filed before the Special Court in relation to the property or the record so attached, seized or frozen.



2011. The alleged offence of fraudulent availment of VAT refund was committed in February-March' 2013 and PMLA came into force w.e.f. 1.7.2005. As per FIR of scheduled offence, ECIR and different orders passed by Respondents, M/s. Jaldhara Exports, a proprietorship concerned of Raman Garg fraudulently obtained VAT refund from VAT authorities without actual export of goods. The properties in question are lying mortgaged with bank, since 2009. As per impugned order, the Respondent is empowered to attach any property, thus property even though purchased in 1991 could be attached. Concededly, the Appellants are neither arrayed as accused in scheduled offence nor criminal complaint filed before Special Court under PMLA. The Respondent has already filed criminal complaint under PMLA against Raman Garg and others before Special Court, however admittedly investigation is still pending. The respondent has not filed any criminal complaint under Section 3 of PMLA against Appellants and a period of even 365 days from the date of confirmation order passed by Ld. Adjudicating Authority has already expired.

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27. Q.(i). As per clause (a) of Sub-Section (3) of Section 8 of the PMLA, the provisional attachment shall continue during investigation for a period not exceeding 90 days. The aforesaid period of 90 days has been increased to 365 days w.e.f 01.08.2019 vide amendment Act 7 of 2019. The concept of 90 days period during investigation was Introduced w.e.f. 19.04.2018. In the case in hand, the Adjudicating Authority vide order dated 28.05.2018 (Annexure A-3) confirmed provisional attachment wherein it was ordered that attachment shall continue during investigation for a period not exceeding 90 days.

28. The Respondent has pleaded that amendment prescribing 90 days period during



herein, is ‘to be retained for the purpose of continuing investigation/ adjudicating’. The investigation has not culminated into any complaint nor has it culminated into a supplementary complaint to the original complaint filed against BPSL and others.

42. Explanation (ii) to Section 44 of the Act states that the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted “to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence” for which complaint has already been filed, whether named in the original complaint or not. From the said provision also, it is apparent that the investigation may lead to filing of a subsequent complaint to bring on record further evidence in form of seized documents and records, either against the accused named in the original complaint or subsequent thereto. However, till such Supplementary Complaint is filed, it has to be presumed that the investigation is still pending, and in such a scenario, the outer limit of 365 days to retain the property/documents seized, shall continue to operate.

43. In view of the above, it is held that the period of 365 from the passing of the order dated 10.02.2021 by the Adjudicating Authority having been passed, the documents/digital device/property seized from the petitioner in the search and seizure conducted on 19th and 20th August, 2020 from the premises of the petitioner are liable to be returned.

44. The other proceedings that are pending and on which the learned counsel for the respondent has placed reliance, that is, W.P.



the expression “pendency of the proceedings relating to any offence under this Act before a Court”.

47. As far as the W.P.(C) 11256/2022, titled as ***Mahendar Kumar Khandelwal v. Directorate of Enforcement***, is concerned, the petitioner, by the said writ petition, claims that due to passage of 180 days from the passing of the order of Provisional Attachment of the properties under Section 5 of the Act, the attachment has lapsed. In the said petition, an *interim* order dated 28.07.2022 has been passed, which read as under:

“3. Till the next date of listing, the respondent shall stand restrained from taking further steps as contemplated under Section 8 of Prevention of Money Laundering Act, 2002. The petitioner shall also stand restrained from disposing of or creating any third party rights or encumbering the property which forms subject matter of the provisional order of attachment.”

48. I am informed that the above order continues till date.

49. However, the fact remains that the above Writ Petition does not relate to the seizure of the documents and property. In case the above Writ Petition relates to any document or property seized pursuant to the action taken on 19-20.08.2020 and by the order dated 10.02.2021 passed by the Adjudicating Authority, the order presently passed shall be subject to the *interim* order as referred hereinabove. However, it is clarified that for the purposes of extending the seizure under the order dated 10.02.2021 passed by the Adjudicating Authority, the pendency of the above writ petition can come to no avail to the respondent inasmuch as the said writ petition is not a “proceedings pending in



competent court of criminal jurisdiction outside India, shall be confiscatory in nature, without authority of law and, therefore, violative of Article 300A of the Constitution of India. In this regard, reference may be made to *M.C.Mehta v. Union of India and Ors.*, 2020 SCC OnLine SC 648, wherein it has been held as under:

“107. Article 300A of the Constitution provides that nobody can be deprived of the property and right of residence otherwise in the manner prescribed by law. When the statute prescribes a mode, the property's deprivation cannot be done in other modes since this Court did not authorize the Committee to take action in the matter. An action could have been taken in no other manner except in accordance with the procedure prescribed by law as laid down in the decisions referred to at the Bar thus:

(a) *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77, wherein this Court observed:

“59.In absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution.”

(b) *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1 in which it was opined:

“168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a

