

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**  
**AND**  
**THE HON'BLE MR JUSTICE C.V.BHASKAR REDDY**

**I.A.Nos.1, 2 and 3 of 2021 in I.A.No.2 of 2019**  
**in**  
**C.M.S.A. No.15 OF 2019**

**COMMON ORDER:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. S.Niranjan Reddy, learned Senior Counsel for the applicant/respondent and Mr. T.Surya Karan Reddy, learned Additional Solicitor General of India for the opposite party/appellant.

2. The three interlocutory applications have been filed for modification and/or vacation of the interim order dated 18.11.2019 passed by this Court in I.A.No.2 of 2019 in C.M.S.A.No.15 of 2019.

3. In I.A.No.1 of 2021, the prayer made is to allow the applicant Smt. Y.S.Bharathi Reddy to substitute the amount sought to be attached and recovered from her with respect to the immovable property i.e., 2500.69 square yards of land in survey No.79/P and 80/2 at Raidurg Pan Maktha Village, Serilingampally Mandal in Ranga Reddy District by furnishing security in the form

of fixed deposit for the value of Rs.1,36,91,285.00 during pendency of the related appeal being C.M.S.A.No.15 of 2019.

4. I.A.No.2 of 2021 has been filed by the applicant Smt. Y.S.Bharathi Reddy to allow her to substitute the amount sought to be attached and recovered from her with respect to the movable property i.e., 61,38,937 equity shares of Rs.10 each of M/s.Sandur Power Company Private Limited by furnishing security in the form of fixed deposit for the value of Rs.6,13,89,370.00 pending disposal of C.M.S.A.No.15 of 2019.

5. The third interlocutory application being I.A.No.3 of 2021 has been filed by the applicant Smt. Y.S.Bharathi Reddy for vacating the interim order dated 18.11.2019 passed by this Court in I.A.No.2 of 2019 in C.M.S.A.No.15 of 2019 and for directing the respondent to remit back the amount of Rs.14.29 crores to the applicant along with interest.

6. Opposite party in the three interlocutory applications who is also the appellant in C.M.S.A.No.15 of 2019 i.e., Deputy Director, Directorate of Enforcement, Government of India, Hyderabad, has filed three separate but identical counter affidavits to the three interlocutory applications objecting to and seeking dismissal of the same.

7. We may mention that C.M.S.A.No.15 of 2019 has been filed by the opposite party as the appellant assailing the legality and validity of the judgment and order dated 26.07.2019 passed by the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS and PBPT Act (briefly, 'the Appellate Tribunal, hereinafter) at New Delhi in FPA-PMLA-1574/HYD/2016 filed by Smt. Y.S.Bharathi Reddy. By the aforesaid judgment and order dated 26.07.2019, Appellate Tribunal disposed of altogether fourteen appeals.

8. Joint Director of Enforcement Directorate passed provisional attachment Order No.2 of 2016 on 29.06.2016 under Section 5(1) of the Prevention of Money

Laundering Act, 2002 (briefly, 'PMLA' hereinafter) holding that he had *prima facie* reasons to believe that the properties identified in para 16 of the aforesaid order constituted properties involved in the offence of money laundering within the meaning of 'property' as defined under Section 2(1)(u) of PMLA. He further recorded that in respect of such properties - both immovable and movable, there was every likelihood of those being transferred or dealt with in any manner which would result in frustrating further proceedings relating to confiscation of such proceeds of crime under PMLA. Para 16 comprised of two categories of properties - immovable properties (para 16.1) and movable properties (16.2). The Joint Director further noted that he had reasons to believe that if the above mentioned properties were not attached immediately, the non-attachment would likely frustrate further proceedings under PMLA. That apart, he had reasons to believe that the properties mentioned in para 16 were likely to be further concealed, transferred or dealt with in such a manner that if no provisional attachment order was passed, it would result in

frustrating proceedings relating to confiscation under PMLA. Therefore, he ordered provisional attachment of such properties.

8.1. Amongst the immovable properties mentioned in para 16.1 was the property at Sl.No.15, the description of which is as under:

2500.69 square yards of land in survey No.79/P and 80/2 at Raidurg Pan Maktha Village, Serilingampally Mandal, Ranga Reddy District, registered vide document No.20521 of 2005 dated 22.12.2005 before District Revenue Officer, Ranga Reddy District (referred to hereinafter as 'the subject immovable property').

The value of the said property was estimated at Rs.1,36,91,285.00 with name of the party shown as Smt. Y.S.Bharathi Reddy.

8.2. Insofar the movable properties are concerned those were mentioned in para 16.2. At Sl.No.11, property of the applicant was described as 6897 shares of Rs.100.00 each of M/s.Cairn India Limited, the amount being Rs.5,10,11,403.00 with name of the party shown as Smt. Y.S.Bharathi Reddy. In addition, at Sl.Nos.23 to 30,

the following properties in the form of fixed deposits were shown:

23	FD No.8263031012745	50,00,000	Smt. Y.S.Bharathi Reddy (Maintained with Oriental Bank of Commerce, Yelhanka Branch, Bangalore)
24	FD No.8263031012752	50,00,000	
25	FD No.8263031012769	50,00,000	
26	FD No.8263031012875	60,00,000	
27	FD No.8263031012882	65,00,000	
28	FD No.11183811041168	82,45,000	Smt. Y.S.Bharathi Reddy (Maintained with Oriental Bank of Commerce, Koramangala Branch, Bangalore)
29	FD No.11183811032333	3,02,40,000	
30	FD No.11183811036874	9,25,00,000	

9. As per requirement of Section 5(5) of PMLA, Joint Director, Directorate of Enforcement, Hyderabad filed original complaint before the adjudicating authority being O.C.No.618 of 2016 in which applicant Smt. Y.S.Bharathi Reddy was arrayed as defendant No.2. Her above properties, both immovable and movable, which were provisionally attached, were subject matter of proceedings before the adjudicating authority. By the order dated 23.11.2016, adjudicating authority confirmed the order of provisional attachment.

10. It is against the above order dated 23.11.2016, that appeal bearing No.FPA-PMLA-1574/HYD/2016 came to be filed by the applicant Smt. Y.S.Bharathi Reddy before

the Appellate Tribunal under Section 26 of PMLA. As noticed above, the said appeal was heard along with other appeals, altogether there were fourteen appeals. Appellate Tribunal in its common judgment and order dated 26.07.2019 noted that total attachments affected in the entire O.C.No.618 of 2019 was to the tune of Rs.746.17 crores. It was noticed that insofar the applicant Smt. Y.S.Bharathi Reddy was concerned, attachment of immovable and movable properties was to the tune of Rs.22.31 crores. Appellate Tribunal noted that allegations against the applicant was that she had become the Director of Bharathi Cements Corporation Private Limited (BCCL) solely on behest of her husband Sri Y.S.Jagan Mohan Reddy and was drawing a high remuneration of Rs.3,90,00,000.00 per year from the year 2011 onwards. An amount of Rs.19.50 crores was categorised as proceeds of crime in respect of remuneration drawn for five years ending on 31.12.2015. She, as Director of M/s.Silicon Builders Private Limited, had facilitated a smooth transfer and investment by the said M/s.Silicon Builders Private Limited in the equity

capital of BCCL towards promoter's contribution from monies allegedly routed by Mr. Nimmagadda Prasad's group companies which was nothing but bribe money paid as *quid pro quo* for the benefits derived by said companies. Adverting to the amount of Rs.19.50 crores received as salaries by the applicant which was held to be proceeds of crime and therefore, provisionally attached which was subsequently confirmed, Appellate Tribunal held that applicant was appointed as Director of BCCL which is an incorporated company and is subject to regulations framed under the Companies Act, 1956. Allegation made by the Enforcement Directorate about the wrongful tacit relationship between Sri Y.S.Jagan Mohan Reddy and BCCL was without any substance as the appointment of the applicant as Director of BCCL was done in a legal manner and in accordance with the provisions of the Companies Act, 1956; so also her remunerations. Appellate Tribunal further held that no allegations of any such appointment and remuneration paid to the applicant being wrongful was raised either by the Central Bureau of Investigation (CBI) in their



investigation nor was it the subject matter of any enquiry or proceedings under the Income Tax Act, 1961. Holding that income derived by a person working in a post can never be termed as proceeds of crime, Appellate Tribunal noted that applicant was serving BCCL as its Director and Chairperson and BCCL was generating surplus and profits to the satisfaction of its shareholders. It was a professionally managed company, the balance sheets and financial results of BCCL being subjected to audit. Investments made into BCCL by foreign shareholders and the manner of functioning of BCCL has not been the subject of any enquiry. Majority shareholding in BCCL came to be by PARFICIM, SAS, France, a multi-national company. Sri Y.S.Jagan Mohan Reddy and his associates did not have a majority stake in BCCL. Therefore, the insinuation that salaries paid to the applicant were amounts from other sources was wholly untenable. That apart, flow of investments from M/s.Silicon Builders Private Limited into BCCL was in the regular course of business. Such transactions were completely legal and as per the test laid down in the Companies Act, 1956.

Noting that PMLA did not empower the Enforcement Directorate to attach legitimate earnings of the applicant, it was held that salary amount used by the applicant was not proceeds of crime. Appellate Tribunal found that out of the remunerations received by the applicant, she had paid income tax to the tune of Rs.6.37 crores. This amount was also not excluded by the Enforcement Directorate while computing the net amount of proceeds of crime for the purpose of attachment. Accordingly, appeal filed by the applicant was allowed.

10.1. Appellate Tribunal prepared a chart and pointed out therefrom the wrongful approach adopted by the Enforcement Directorate. Regarding attachment of the subject land at Sl.No.7 of the chart, it was mentioned that the attached value would be Rs.1.36 crores which was equivalent to the proceeds of crime. Accordingly, the attachments were released by modifying the order confirming provisional attachment. Regarding other amounts to the tune of Rs.192 crores attached, Appellate Tribunal directed the Enforcement Directorate to release

the said amount to the appellants subject to the condition that appellants furnished bank guarantee of a Nationalised Bank for a sum of Rs.192 crores. Subject to furnishing of said bank guarantee, Enforcement Directorate was directed to release the said amount; rest of all attachments were released by modifying or confirming provisional attachment.

11. Aggrieved by the aforesaid judgment and order of the Appellate Tribunal dated 26.07.2019, opposite party has filed the related appeal under Section 42 of PMLA.

12. This Court by order dated 18.11.2019 admitted the appeal for hearing on the substantial questions of law framed therein. Opposite party as the appellant had also filed interlocutory application for stay being I.A.No.2 of 2019. By a separate order dated 18.11.2019, *status quo* as on 18.11.2019 was directed to be maintained until further orders. Order dated 18.11.2019 passed by this Court in I.A.No.2 of 2019 reads as under:

It is also brought to our notice that this Court in similar matters had taken note of the fact that

the orders of attachment passed by the Deputy Director of Enforcement, which have been confirmed by the Appellate Authority have been in force since 2012 and that *status quo* with regard to the same is directed to continue until further orders.

In view of the same, *status quo* as on today shall be maintained until further orders.

13. It is for the modification/vacation of this order that the present interlocutory applications have been filed.

14. In the counter affidavits filed, opposite party/appellant has contended that relief sought for in the interlocutory applications cannot be granted as no such provision exists in PMLA. It is stated that after due investigation following registration of ECIR/09/HZO/2011, proceeds of crime were ascertained, whereafter provisional attachment order was passed attaching various movable and immovable properties including that of the applicant/respondent. Thereafter, adjudicating authority confirmed the order of provisional attachment. When this was challenged in appeal by the applicant/respondent, Appellate Tribunal allowed the appeal vide the judgment and order dated 26.07.2019.

Against the same, opposite party/appellant has preferred the related appeal under Section 42 of PMLA. Along with the same, I.A.No.2 of 2019 was filed for stay. This Court vide the order dated 18.11.2019 had stayed the operation of the order dated 26.07.2019. Therefore, order passed by the Appellate Tribunal has not attained finality as the same is subject matter of the related appeal.

14.1. Process of attachment leading to confiscation of proceeds of crime under PMLA is in the nature of civil action which runs parallel to investigation and criminal action vis-à-vis the offence of money-laundering. Enforcement officer is the competent authority under PMLA to attach not only 'tainted property' but also any other property of equivalent value.

14.2. It is the case of the Enforcement Directorate that applicant was receiving disproportionate remuneration as salary even though she did not have any expertise in the cement business and no person appointed by the foreign investor having 51% stake in BCCL was receiving even half of her remuneration. This was because of the

influence exerted by her husband Sri Y.S.Jagan Mohan Reddy by virtue of his holding 49% stake in BCCL which was nothing but fruits of proceeds of crime. As a matter of fact, all transactions including that of her husband had got intermingled. Her husband had acquired 61,38,937 equity shares of Rs.10.00 each of M/s.Sandur Power Company Private Limited from proceeds of crime and subsequently transferred those shares by way of gift to the applicant with *mala fide* intention to escape attachment under PMLA. Therefore, as equivalent value the subject property was attached. No injury would be caused to the applicant/respondent if the *status quo* order continues.

15. Mr. S.Niranjan Reddy, learned Senior Counsel for the applicant/respondent submits that attachment of properties of the applicant was on account of being equivalent to alleged proceeds of crime. According to the Enforcement Directorate itself these are not proceeds of crime but equivalent to proceeds of crime. He had made a distinction between 'proceeds of crime' and 'amounts

equivalent to proceeds of crime'. While in case of attachment of proceeds of crime, the Court may not accede to the request for substitution of the attached property but in case of attachment being on account of equivalent value of proceeds of crime, the Court can certainly allow substitution of such attached property. As a matter of fact, this is allowed by the Appellate Tribunal, he submits. He has also referred to Rule 5(5) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicating Authority) Rules, 2013.

16. On the other hand, Mr. T.Surya Karan Reddy, learned Additional Solicitor General while opposing such prayer submits that in stead of considering modification of the *status quo* order, the Court may finally decide the appeal one way or the other.

17. We have heard learned counsel for the parties and perused the materials on record.

18. Let us first deal with the case laws cited at the bar.

19. **Hetero Drugs Limited v. Deputy Director, Directorate of Enforcement, Delhi**<sup>1</sup> is a decision of the Appellate Tribunal. An application was filed by the appellant seeking a direction to the Enforcement Directorate to accept fixed deposit and in lieu thereof to release the immovable properties covered by the provisional attachment order. Appellate Tribunal held that there is no provision under the PMLA as well as the Rules framed thereunder which would entitle the appellant to seek replacement of immovable properties under attachment with fixed deposit.

20. While Appellate Tribunal may be right in saying that there is no provision under PMLA and the Rules made thereunder for replacement of attached immovable property for some other property, however, it must be noted that the said decision was in the context of an appeal pending before the Appellate Tribunal. The appeal was filed by the appellant against the order of the adjudicating authority confirming provisional attachment

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<sup>1</sup> MANU/ML/0032/2015



of the immovable properties relevant to the said case. In other words, in **Hetero Drugs Limited** (supra) provisional attachment order was confirmed by the adjudicating authority, the correctness of which was an issue before the Appellate Tribunal in the pending appeal. Appellate Tribunal was yet to decide whether such attachment was right or wrong. It was during the pendency of such appeal before the Appellate Tribunal that the appellant moved for replacement of the attached immovable properties. It was in that context that the Appellate Tribunal negated such prayer after holding that there is no provision in PMLA for replacement of immovable property under attachment.

21. However, in **India Cements Limited v. Adjudicating Authority** (W.P. (C) No.9361 of 2015, decided on 05.11.2015), Delhi High Court had remanded the matter to the Appellate Tribunal to consider the prayer of the writ petitioner for substitution of the property attached after giving due opportunity to the writ petitioner clarifying that in the event Appellate Tribunal permitted

the writ petitioner to substitute the property attached, it is the substituted property which shall be deemed to have been attached under the provisional order of attachment, which shall be deemed to have been confirmed by the adjudicating authority. In the appeal pending before the Appellate Tribunal, the property attached shall be read with reference to the substituted property though it was clarified that writ petitioner would not derive any advantage therefrom.

22. There is one more decision, again of the Appellate Tribunal, on which much reliance was placed by learned Senior Counsel for the applicant/respondent. This decision was rendered in **VGN Property Developers Private Limited v. Deputy Director, Directorate of Enforcement**<sup>2</sup>. In that decision, Appellate Tribunal referred to Section 35(1) of PMLA, which empowers the Appellate Tribunal to regulate its own procedure. Appellate Tribunal observed that though it is true that there is no specific provision under PMLA for substitution of property provisionally

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<sup>2</sup> 2018 SCC OnLine ATPMLA 23

attached by the Enforcement Directorate and thereafter confirmed by the adjudicating authority, there is also no provision that the said power cannot be exercised by the Appellate Tribunal under Section 35(1) of PMLA. In the facts of that case, prayer of the appellant for releasing the attached property was allowed by accepting the alternative property offered by the appellant. However, we may point out that even this decision was rendered by the Appellate Tribunal when appellate proceedings were pending before the Appellate Tribunal with the provisional attachment order and confirmation order still holding the field.

23. Before we advert to the order of the Appellate Tribunal insofar the related appeal is concerned, we may mention about Rule 5(5) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 which says that where the attached immovable property as confirmed by the adjudicating authority is in the form of land, building, house, flat etc

and is under joint ownership, the authorised officer may accept the equivalent value of fixed deposit to the extent of the value of the share of the concerned person in the property estimated by the authorised officer to be involved in money laundering. Therefore, it would not be correct to say that PMLA as well as the Rules framed thereunder does not have any provision for accepting alternative equivalent value of attached property.

24. That brings us to the related appeal and the order passed by the Appellate Tribunal. We have already seen that appeal filed by the applicant against the order of attachment as confirmed by the adjudicating authority was allowed by the Appellate Tribunal vide the judgment and order dated 26.07.2019. If we look at the judgment and order of the Appellate Tribunal, it is evident that Appellate Tribunal had allowed the appeal of the applicant by interfering with the order of provisional attachment as well as the confirmation order. Even in the provisional attachment order, it was clearly mentioned that value of the attached property was equivalent to

proceeds of crime. In other words, even as per the attaching authority property attached was not acquired by proceeds of crime. Since the proceeds of crime got intertwined with other transaction, property of equivalent value was attached. However, in so far the present case is concerned, even this position has now become academic in as much as Appellate Tribunal had interfered with the orders of attachment and confirmation.

25. This Court while admitting the appeal vide the order dated 18.11.2019 had directed maintenance of *status quo* as on 18.11.2019. There is no stay by this Court of the judgment and order passed by the Appellate Tribunal. Thus there is no stay of attachment. Therefore, strictly speaking, the decisions relied upon at the bar may not have any application to the facts of the present case. The *status quo* order was passed by this Court while entertaining the appeal filed by the opposite party under Section 42 of PMLA. This Court is well within its power to alter or modify the *status quo* order passed by it. From the judgment and order of the Appellate Tribunal, it

is abundantly clear that the interest of opposite party/appellant is protected by directing various parties to provide bank guarantee equivalent to Rs.192 crores. Rest of the attachments were directed to be released by the Appellate Tribunal. Even for the aforesaid attached property, applicant/respondent has come forward to offer alternative property. For the subject property, applicant/respondent has offered fixed deposit of Rs.1,36,91,285.00. Likewise, in I.A. No.2 of 2021 applicant/respondent has offered fixed deposit of Rs.6,13,89,370.00 in lieu of 61,38 937 equity shares of Rs.10.00 each belonging to M/s.Sandur Power Company Private Limited. The above prayer made in the context of the discussions made above appears to be just and reasonable.

26. Insofar I.A.No.3 of 2021 is concerned, at this stage when the appeal is pending for hearing, we may not like to issue any positive direction for return of Rs.14.29 crores along with interest which was appropriated by the

opposite party/respondent by encashing fixed deposits of Rs.14.29 crores.

27. In the light of the above, I.A. Nos.1 and 2 of 2021 are allowed while I.A.No.3 of 2021 is dismissed.

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**UJJAL BHUYAN, CJ**

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**C.V.BHASKAR REDDY, J**

28.11.2022  
Pln