IN THE COURT OF MOHD. FARRUKH
SPECIAL JUDGE (PMLA)
ROUSE AVENUE COURT COMPLEX, DELHI

CC No.: 139/2019
ECIR No. ECIR 292/DZ/2009

Complaint U/s 44 r/w Section 45 of the Prevention of Money Laundering Act, 2002 for the Offence U/s 3 and Punishable U/s 4 of the Prevention of Money Laundering Act, 2002 (As Amended)

CNR No.: DLCT11-000612-2019

Assistant Director (PMLA)
Directorate of Enforcement
Delhi Zonal Office
1st & 2nd Floor, MTNL Building
Opposite Ramlila Ground, J.L. Nehru Marg
New Delhi .....Complainant

Versus

1. Mukesh Jain
   Director, M/s Bahubali Marketing Pvt. Ltd.
   S/o Sh. Parveen Chand Jain
   R/o 5/13, Ground Floor, Sarvapriya Vihar
   New Delhi-16

2. Shiv Kumar Bhargava
   S/o Late Jyoti Prasad Bhargava
   R/o 121, Ground Floor, DDA Site No. 1
   New Rajinder Nagar
   New Delhi

   New Address as mentioned in his Statement U/s 313 Cr.P.C.:
   Flat No. 2501, Tower-20, Lotus Boulward, Sector-100, Noida, UP.

MOHD FARRUKH
Digitally signed by MOHD FARRUKH
Date: 2024.04.01 16:00:03 +0530

3. Smt. Benu Jain
W/o Mukesh Jain
Director, M/s Bahubali Marketing Pvt. Ltd.
R/o 5/13, Ground Floor, Sarvapriya Vihar
New Delhi-16

4. Nipun Bansal
S/o Late Sh. Prem Prakash Bansal
R/o C-58/24, G-402, Stellar Park Apartments
Sector-62, Noida (UP)

5. Mohd. Nauman (since deceased)
S/o Mohd. Suleman
852, 3rd Floor, Chandni Mahal
Darya Ganj, Delhi-2 .....Accused

Date of ECIR	:	14.12.2009
Date of filing of complaint	:	31.12.2018
Arguments concluded on	:	26.03.2024
Date of Judgment	:	30.03.2024

Appearance :

For Prosecution	: Sh. Naveen Kumar Matta, Ld. Special P.P. for Directorate of Enforcement
For accused persons	: Sh. Deepak Bhadana, Ld. Counsel for accused No. 1 & 3.
	: Md. Qamar Ali, Ld. Counsel for A-2 Shiv Kumar Bhargava.
	: Sh. R.P. Shukla, Advocate for A-4 Nipun Bansal.

JUDGMENT

1. Mukesh Jain (A-1), accused Shiv Kumar Bhargava (A-2), accused Smt. Benu Jain (A-3), accused Nipun Bansal (A-4) and accused Mohd. Nauman (A-5) were sent up for trial by the Directorate of Enforcement, New Delhi (hereinafter

referred to as 'DoE') in Enforcement Case Information Report (hereinafter referred to as 'ECIR') No. ECIR/292/DZ/2009 dated 14.12.2009 for commission of offence U/s 3 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') punishable U/s 4 of PMLA (as amended). Accused Mohd. Nauman died during the trial at the stage of arguments on the point of charge and hence proceedings against him were abated on 11.10.2021.

Background of Facts

2. The brief facts leading to the recording of the aforesaid ECIR are that the Central Bureau of Investigation (hereinafter referred to as 'the CBI'), EOU-II Unit, New Delhi registered FIR No. RC-071 2009(E)0003 dated 06.04.2009 against unknown Bank officials and others for commission of offences of defrauding Punjab National Bank, Lal Bagh Branch, Lucknow, UP (hereinafter referred to as 'PNB'). After completion of investigation into the aforesaid allegations, the CBI filed charge-sheet concluding that during October 2008 to March 2009, accused persons, namely, (A-1) Mukesh Jain, Shiv Kumar Bhargava (A-2), Smt. Benu Jain (A-3), Nipun Bansal (A-4) and accused Mohd. Nauman (A-5) (since deceased) herein with other co-accused Mohd. Nauman, Amit Agarwal, Ganesh Lal, Chandra Bhan Singh {public servant}, Jamir Ahmad and Raje @ Rajeev conspired among themselves for forging and fabricating eight cheques; three

cheques were encashed/cleared and amount of Rs. 1,46,71,000/- was credited to Bank Accounts operated by Mukesh Jain (A-1) and accused Nipun Bansal (A-4) causing wrongful loss to PNB and its account-holders and wrongful gain to themselves. It was also concluded in investigation that the aforesaid accused also attempted to encash remaining five forged and fabricated cheques to the tune of Rs. 2,72,38,000/-, however, their attempts could not fructify as the forgery of cheques were detected by Banks concerned. On these premise, the aforesaid accused persons were sent up to face trial for commission of offences punishable under Sections 120B/420/467/468/471/511 IPC and Section 13(2) read with Section 13(1)(d) of PC Act and substantive offences thereof.

Case under PMLA

3. On the strength of the aforesaid FIR registered by the CBI and the chargesheet filed thereto, the present ECIR No. ECIR/292/DZ/2009 **(Ex. PW 19/A)** was recorded on 14.12.2009 in Delhi Zonal Office of DoE by Sh. Sharad Choudhry **(PW-19)**, the then Assistant Director in DoE against the aforesaid accused persons Mukesh Jain (A-1), accused Shiv Kumar Bhargava (A-2), accused Smt. Benu Jain (A-3), accused Nipun Bansal (A-4) and accused Mohd. Nauman (A-5) (since deceased) alleging that since alleged offences in CBI case were part of Scheduled Offences

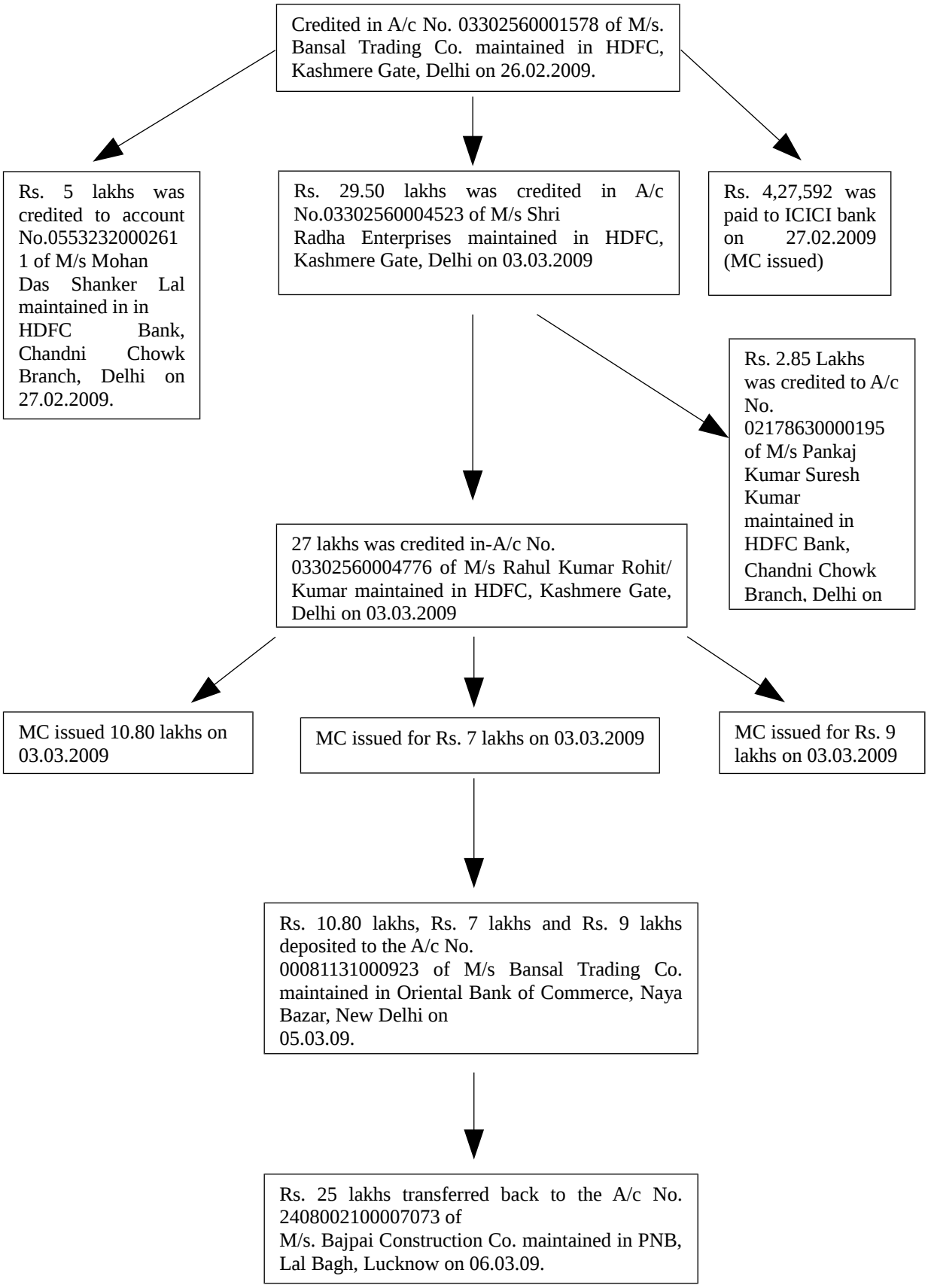
(hereinafter referred to as 'SO') under PMLA, prima-facie case is made out for investigation for commission of offence U/s 3 of PMLA punishable U/s 4 of PMLA against the aforementioned accused persons. The aforesaid ECIR was assigned to Sh. Pankaj Kumar, Assistant Director (PMLA). Thereafter, enquiries under PMLA were initiated and statements of various persons including accused persons were recorded U/s 50 of PMLA 2002; documents and Bank Account Statements were collected from different Agencies and Banks. After completion of investigation, Sh. Pankaj Kumar, Assistant Director filed the present complaint in the aforesaid ECIR before the Special Court under PMLA on 31.12.2008.

4. As per the said complaint, the aggregate 'PoC' was Rs. 1,46,71,000/- which was laundered by the accused persons in the present case. Out of the aforementioned amount, Nipun Bansal (A-4) and Mohd. Nauman (abated) were charged to launder an amount of Rs. 40,00,000/- by siphoning of / diverting the same. The said diversion of the aforesaid amount of Rs. 40,00,000/- was depicted pictorially by way of a chart as under :

CHART NO. 1

Diversion of Rs. 40 lakhs

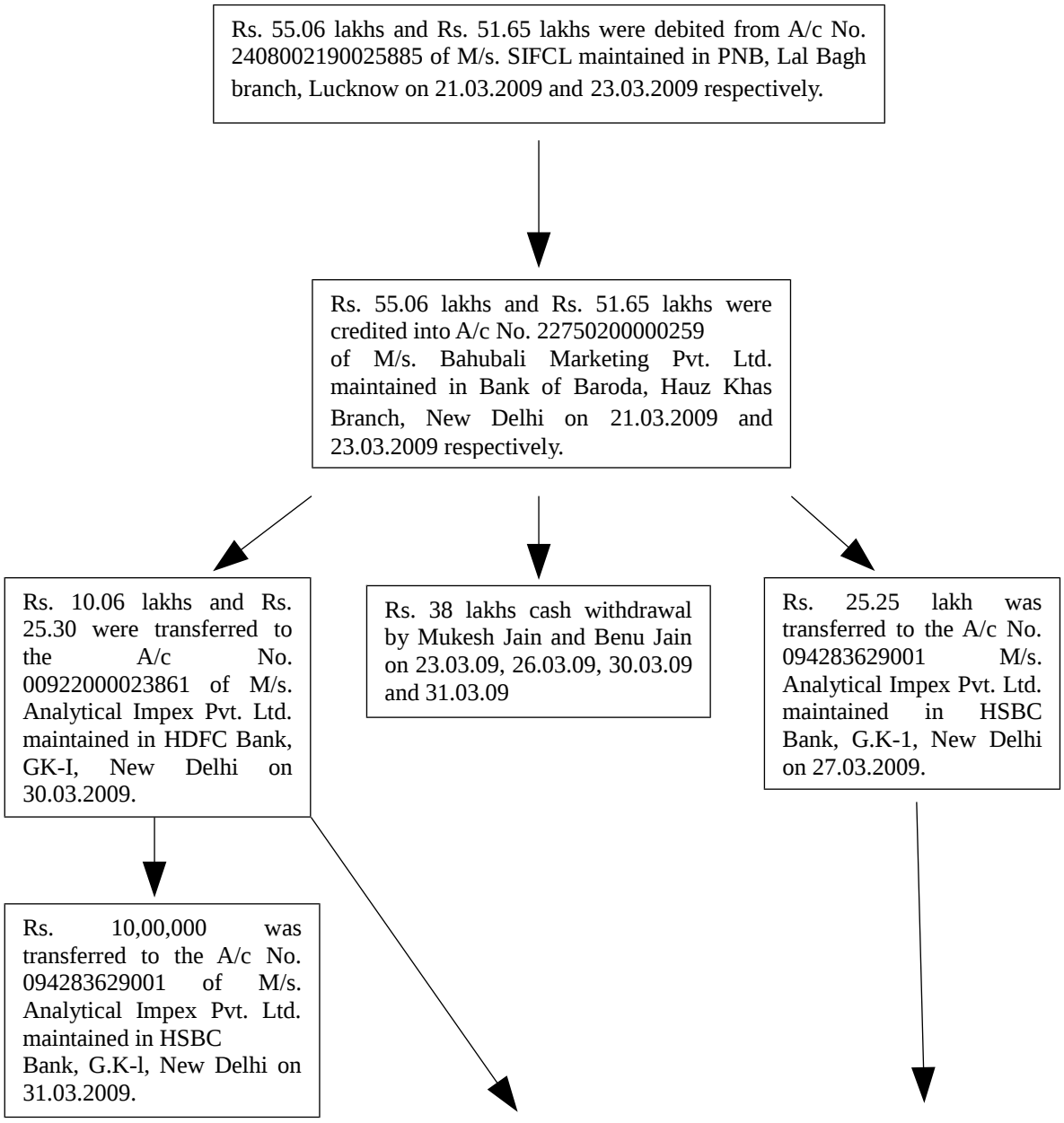
Rs. 40 lakhs was debited from A/c No. 2408002100007073 of M/s. Bajpai Construction Co. maintained In PNB, Lal Bagh, Lucknow on 26.02.2009.

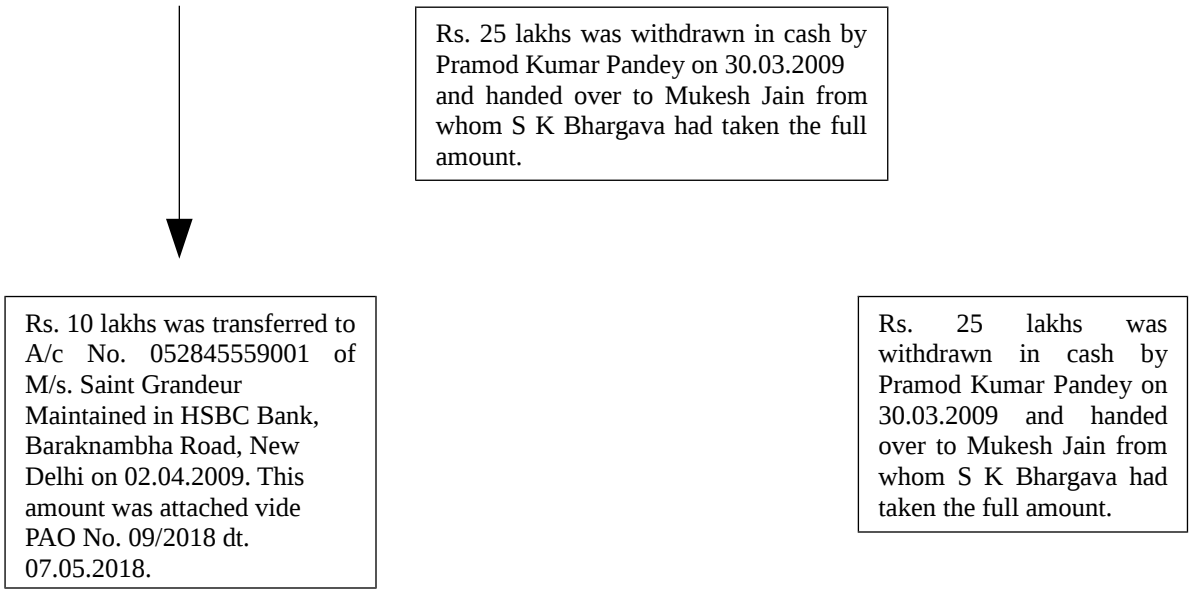


5. It has further been alleged in the aforesaid charge-sheet that amount of Rs. 1,06,71,000/- was laundered by Mukesh Jain (A-1), Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) and details of the said laundering was also depicted pictorially by way of a chart as under :

CHART NO. 2

Diversion of Rs. 106.71 lakhs





6. IO Pankaj Kumar in the said complaint stated that service of summons, PAO and OC were attempted to be effected on Adhiraj Kumar, however, he was not found traceable and his role in the offence of money-laundering was being further examined. Subsequently, a supplementary complaint was also filed before the Court on 23.12.2019, however, there is no whisper in the entire supplementary complaint about any further investigation in respect to the role of Adhiraj Kumar.

7. It is also revealed from the Complaint/ chargesheet that during the course of investigation of present ECIR, in separate proceedings, Rs. 10,00,000/- transferred to A/c No. 052845559001 of M/s SG maintained in HSBC Bank, Barakhamba Road, New Delhi on 02.04.2009 were provisionally attached by the Competent Authority vide PAO No. 09/2018 dated 07.05.2019 and 35% share to the extent of value of Rs. 46,10,000/- in Property No. 5/13, Ground Floor

Sarvapriya Vihar, New Delhi-110016 out of which, Mukesh Jain (A-1) gifted his share to his son Aakash Jain vide gift deed dated 23.01.2018 i.e. one day prior to his appearance in ED, was also attached by the competent authority.

8. It is not out of place to mention here that in FIR No. RC-071 2009(E)0003 dated 06.04.2009, accused persons, namely, Mukesh Jain, Nipun Bansal, Ganesh Lal and Chandra Bhan Singh have been convicted for offence punishable under Sections 420/471 IPC read with Section 120B IPC ; Mukesh Jain (A-1) and Nipun Bansal (A-4)have been convicted for substantive offence punishable under Section 420/471 IPC; accused Amit Aggarwal and Ganesh Lal have been convicted for offence punishable under Sections 420/471 read with Section 120B IPC and Section 511 IPC however Shiv Kumar Bhargava (A-2), Jamir Ahmad and Benu Jain have been acquitted of the charges framed against them. Accused persons namely, Mohd. Nauman and Raje @ Rajeev have already expired and proceedings against them have already been abated.

Alleged roles of accused persons

9. **Mukesh Jain (A-1)** was the Director of M/s Bahubali Marketing Pvt. Ltd (hereinafter referred to as 'M/s BMPL'). and he was responsible for all the financial dealings of M/s BMPL and thus responsible for all the acts of commission and omission on behalf of M/s BMPL. In the Bank account of M/s

BMPL, Mukesh Jain was one of the authorized signatories. An amount of Rs. 1,06,71,000/- was fraudulently credited in the Bank account of M/s BMPL and out of the same, Rs. 38,00,000/- was withdrawn in cash by Mukesh Jain alongwith his wife Benu Jain (A-3) on four occasions. Rs. 66,61,000/- were diverted to the Bank account of M/s Analytical Impex Pvt. Ltd. (hereinafter referred to as M/s AIPL) and an amount of Rs. 10,00,000/- was further diverted to the Bank account of M/s Saint Grandeur (hereinafter referred to as 'M/s SG') of which Adhiraj Kumar was the Proprietor at the instance of Mukesh Jain. Adhiraj Kumar was a relative of Mukesh Jain.

10. **Shiv Kumar Bhargava (A-2)** was a Chartered Accountant by profession. He mediated for encashment of two cheques for Rs. 55,06,000/- and Rs. 51,65,000/- in the Bank account of M/s BMPL. An amount of Rs. 25,00,000/- each was withdrawn from the accounts of M/s AIPL with HDFC Bank and HSBC Bank on 30.03.2009 and the total amount of Rs. 50,00,000/- was taken by him.
11. **Smt. Benu Jain (A-3)** is the wife of Mukesh Jain and was one of the Directors in M/s BMPL. She was one of the authorised signatories of the Bank account of M/s BMPL maintained with Bank of Baroda, Hauz Khas Branch, New Delhi (hereinafter referred to as 'BoB'). She withdrew Rs. 9,00,000/- in cash out of the amount of Rs. 1,06,71,000/- which was fraudulently credited in the Bank account of M/s BMPL.

12. **Nipun Bansal (A-4)** was the Proprietor of M/s Bansal Trading Company (hereinafter referred to as 'BTC') and was responsible for all the acts of commission and omission committed by M/s BTC. All the financial dealings of M/s BTC was done by Nipun Bansal. A fraudulent cheque for Rs. 40,00,000/- purportedly issued from the Bank account of M/s Bajpai Construction Co. (hereinafter referred to as 'M/s BCC') was credited into the Bank account of M/s BTC. The amount was further diverted to the Bank account of M/s Mohan Das Shanker Lal and M/s Shri Radha Enterprises. An amount of Rs. 4,27,592/- was used by accused Nipun Bansal (A-4) for repaying personal loan taken by him. Substantial amount was withdrawn by him in cash. The amount of Rs. 29,50,000/- diverted to M/s Shri Radha Enterprises was further diverted to M/s Rahul Kumar Rohit Kumar and M/s Pankaj Kumar Suresh Kumar before finally getting transferred to the Bank account of M/s BTC. When accused Nipun Bansal (A-4) came to know that the enquires were being conducted into the transfer of Rs. 40,00,000/- in Bank account of M/s BTC through forged cheque, he returned Rs. 25,00,000/- to the account of M/s BCC. He received a commission of Rs. 1,20,000/- in cash from Mohd. Nauman. Accused Nipun Bansal (A-4) with the help of Mohd. Nauman and Amit Aggarwal obtained forged cheques. Nipun Bansal (A-4) through his contacts provided the Bank account of M/s BMPL to Mohd. Nauman (A-5) (since deceased) for depositing fraudulent cheques. CBI had seized copies of self cheques of

M/s AIPL, details of the Bank account of M/s BMPL etc. from the office of Nipun Bansal (A-4) showing his complicity in providing details of the Bank account to Mohd. Nauman. He also attempted to encash some more cheques which could not be encashed.

13. **Mohd. Nauman (A-5)** alongwith Jamir Ahmed arranged Bank accounts in Delhi for credit of fraudulent cheques. The cheque of Rs. 40,00,000/- purportedly issued from the account of M/s BCC was got issued favouring M/s BTC in consultation with Mohd. Nauman. He prepared forged cheques TTT 512780 for Rs. 51,65,000/- and TTT 512799 for Rs. 55,06,000/- on his own by obtaining blank Multicity Cheque Book of the Bank account of M/s SGC which he got issued through Deepak Sharma, Proprietor of M/s SGC. Since the Bank account of M/s SGC was dormant and without sufficient balance, he gave Rs. 6,000/- to Deepak Sharma to get the account activated and to get the cheque book issued. He alongwith Amit Agarwal had got made the stamps/seal of M/s BCC and M/s SIFCL from a shop in cycle market, Jhandewalan, Delhi and the same was used in fabricating cheque No. TSP 786680 for Rs. 40,00,000/-. Mohd. Nauman gave Rs. 1,20,000/- to Nipun Bansal (A-4) in cash.

14. On conclusion of investigation, DoE filed a complaint under Section 200 Cr.P.C. read with Sections 45(1), 3, 4 and 8 (5) of the PMLA before the Special Judge for CBI Cases-cum-Special Court under PMLA stating that material placed on record establishes that Mukesh Jain, Shiv Kumar Bhargava,

Benu Jain, Nipun Bansal (A-4) and Mohd. Nauman (since deceased) directly indulged in the process connected with the property involved in money laundering as they acquired and possessed the properties involved in money laundering and projected the same as untainted property and thereby committed an offence of money laundering U/s 3 of the PMLA, 2002 which is punishable U/s 4 of the PMLA, 2002.

Cognizance

15. Cognizance of the complaint was taken by the Ld. Predecessor vide order dated 23.07.2020 and accused were summoned for 25.09.2020. On 25.09.2020, attendance were put in on behalf of accused persons except Mohd. Nauman (A-5) (since deceased). Copies of the complaint and documents were supplied to accused persons as mentioned in order dated 11.10.2021.

Charge

16. On the basis of material on record, Ld. Predecessor found that prima facie offence U/s 3 of PMLA, punishable U/s 4 of PMLA was made out against accused persons, namely, Mukesh Jain, Shiv Kumar Bhargava, Benu Jain and Nipun Bansal. Charges were framed accordingly, to which all of them pleaded not guilty and claimed trial.

Prosecution Evidence

17. To connect the arraigned accused persons with the offences charged, ED has examined 28 (twenty eight) witnesses in total.

18. **PW 1 Sh. Joshua Ngaihte**, the then Manager of Bank of Baroda, Hauz Khas Branch tendered in his evidence certified copy of Statement of Bank Account **(Ex. PW1/A colly)** of M/s BMPL bearing Current A/c No. 22750200000259 for the period from 31.03.2007 till 19.06.2017 duly certified under Sections 2-A of Bankers Book of Evidence Act and 65B of Evidence Act (**Ex. PW1/B & Ex. PW1/C).** He testified that as per **Ex. PW1/A** (colly), entries dated 21.03.2009 and 23.03.2009, Rs. 55,06,000/- and Rs. 51,65,000/ were credited in this Bank Account vide cheque bearing No. 512799 and cheque bearing No. 512780. He deposed that there are cash withdrawals of Rs. 38,00,000/- on 24.03.2009, Rs. 9,00,000/- vide cheque No. 323494 on 26.03.2009, Rs. 9,00,000/- vide cheque No. 323496 on 30.03.2009, Rs. 15,00,000/- vide cheque No. 528651 on 31.03.2009 and Rs. 5,00,000/- vide cheque No. 528652 as reflected in **Ex. PW1/A (colly)**. He further deposed that as per **Ex. PW1/A (colly)**, an amount of Rs. 25,25,000/- was transferred through RTGS vide cheque No. 323498 on 27.03.2009; an amount of Rs. 25,30,000/- was transferred through RTGS vide cheque No. 323500 on 30.03.2009 and an amount of Rs. 10,06,000/- was transferred through RTGS vide cheque No. 323495 on 30.03.2009.

19. During cross-examination conducted by Mukesh Jain (A-1) and Benu Jain (A-3), the witness admitted that he had no

personal knowledge of the deposit of the cheque and he was deposing on the basis of records made available to him. He showed his ignorance about the depositor of the two cheques vide which amount was credited to the Bank Account of M/s BMPL. He was not cross-examined by Shiv Kumar Bhargava (A-2) and Nipun Bansal (A-4).

20. **PW 2 Rishi Nanda**, the then Branch Manager, HDFC Bank, at Hauz Khas Branch, Delhi tendered the certified copy of Statement of Current Account No. 00922000023861 **(Ex. PW 2/A)** in the name of M/s AIPL Ltd. for period from 17.11.2008 to 31.03.2010 duly certified (**Ex. PW2/B)** U/s 2-A of Bankers Book of Evidence Act. He further deposed that vide communication (**Ex. PW2/C)**, KYC and Account Opening Form of M/s AIPL were forwarded to ED in response to the asking of ED. He was not cross-examined by accused persons.

21. **PW 3 Sh. Priyanshu Bansal**, Senior Vice President, HSBC, deposed that a letter dated 22.02.2017 (**Ex. PW-3/A)** was addressed to Assistant Director, ED by him along with KYC documents, Account Opening Form and Statement of Current Account (**Ex. PW3/C)** of M/s AIPL for the period from September, 2008 till August, 2009 duly certified under Sections 2-A of Banker's Book of Evidence Act and 65(B) of the Indian Evidence Act. He testified that as per the Statement of Current Account **(Ex. PW3/C)**, entries dated 27.03.20009, 31.03.2009 and 02.04.2009 respectively are regarding the amount of Rs. 25,25,000/- credited by transfer;

Rs.10,00,000/- credited by RTGS from Amcon Engineers Pvt. Ltd. and withdrawal/debit of amount of Rs.10,00,000/- in favour of M/s SG by cheque No. 049323 respectively.

22. During cross-examination conducted by Shiv Kumar Bhargava (A-2), he deposed that print outs of certificates **(Ex. PW3/C to Ex. PW3/E)** under Sections 2-A of Banker's Book of Evidence Act and 65 (B) of the Indian Evidence Act were taken by him on 20.05.2022. He further deposed that **Ex. PW3/E** was prepared by Central Team which was sent to him. He was not cross-examined by Mukesh Jain (A-1) and Benu Jain (A-3) and Nipun Bansal (A-4).

23. **PW 4 Sh. Rahul Sharma**, Regional Head, HSBC deposed that vide letter dated 23.02.2017 (**Ex. PW4/A)**, he handed over the documents viz copies of Statement of Current Account of M/s SG for the period from 30.06.2008 to 30.09.2009 (**Ex. PW4/B)** and Saving Account (**Ex. PW4/C)** of Mr Adhiraj Kumar for the period from 09.04.2008 to 01.01.2010. He produced certified copies of Statement of Accounts certified under Section 2-A of the Banker's Book of Evidence Act **(Ex. PW4/D)** and also certificates under Section 65 (B) of the Indian Evidence Act (**Ex. PW 4/E)**. He deposed that as per the Statement of Current Account **(Ex. PW3/C)**, entry dated 02.04.2009, Rs. 10,00,000/- was credited in the Bank Account by deposit of cheque bearing No. 049323. He was not cross-examined by Mukesh Jain (A-1), Benu Jain (A-3) and Nipun Bansal (A-4).

24. **PW 5 Sh. Moktar Hussain**, Relationship Manager, IndusInd Bank Ltd., Rohini Branch, Sector-7, New Delhi deposed that vide letter dated 14.11.2018 (**Mark PW5/X)**, Bank Statement of Account bearing No. 100023224712 (**Ex. PW5/A (colly)** for the periods from 01.04.2013 to 14.11.2018 to the DoE was sent as per request of DoE. He further deposed that as per **(Ex. PW5/A)**, there are cash deposits of Rs. 4700/- on 12.08.2013, Rs. 30,000/- on 15.11.2016, Rs. 1,53,500/- on 17.11.2016, Rs. 65,000/- on 23.11.2016, Rs. 18,000/- on 03.05.2018, Rs. 39,000/- on 09.05.2018 and Rs. 30,000/- on 03.11.2018. He also produced certificate U/s 2-A of Bankers Books of Evidence Act 1892 along with certificate U/s 65B of Evidence Act (**Ex. PW5/B and Ex. PW5/C)** respectively.

25. During cross-examination conducted by Shiv Kumar Bhargava (A-2) that he joined aforesaid Bank on 20.06.2022. He admitted that **(Ex. PW5/B)** was prepared on 16.07.2022. He never joined the investigation in the present case. He admitted that **(Ex. PW5/C)** was also prepared on 16.07.2022. He was not cross-examined by Mukesh Jain (A-1), Benu Jain (A-3) and Nipun Bansal (A-4).

26. **PW 6 Sh. Mohit Jain**, Sr. Manager, PNB, Naya Bazar, Delhi identified Account Opening Form pertaining to M/s BTC bearing no. 00081131000923 (**Ex. PW6/A colly)**; three vouchers dated 04.03.2009 (**Ex. PW6/B colly)** amounting to Rs. 10,80,000/-, Rs 7,00,000/- and Rs. 9,00,000/- in favour of M/s BTC ; Statement of Account (**Ex. PW6/C colly)** of M/s BTC bearing no. 00081131000923 for the period from

01.03.2009 to 23.02.2017 containing three entries dated 05.03.2009 through clearance and a debit entry dated 06.03.2009 through cheque bearing no. 4269 from M/s BTC to M/s BCC. He produced the certificates dated 27.08.2022 and 27.08.2022 **(Ex. PW6/D and Ex. PW6/E)** under Sections 2-A of Bankers Books of Evidence Act and 65B of Evidence Act respectively. During cross-examination conducted by Nipun Bansal (A-4), he admitted that he had no personal knowledge about the facts of the case, the entries and the Bank Statement. He was not cross-examined by Mukesh Jain (A-1), Shiv Kumar Bhargava and Benu Jain (A-3).

27. **PW 7 Ms. Neeru Samson**, Unit Manager, Internal Services, Standard Chartered Bank deposed that by way of the documents (**Ex. PW7/A)**, he had submitted Statement of Account bearing no. 54505061735 (**Ex. PW7/B (colly)** in the name of accused Shiv Kumar Bhargava. He further deposed that in **(Ex. PW7/B (colly.)**, there is cash deposit of Rs. 50,000/- and Rs. 1,50,000/- respectively. He further deposed that he had submitted Statement of Account (**Ex. PW7/C)** bearing no. 54510113810 in the name of Mr. Tushar Bhargava and the Statement of Bank Account annexed with **(Ex. PW7/C)** was exhibited as **(Ex. PW7/D (colly)**. He further deposed that as per **(Ex. PW7/D (colly.)**, there is cash deposit of Rs. 10,000/-, Rs. 1,00,000/-, Rs. 15,500/-, Rs. 300/-, Rs. 2,50,000/-, Rs. 1,30,000/- and Rs. 50,000/- respectively.

28. During cross-examination conducted by Shiv Kumar Bhargava (A-2), he admitted that he had not submitted the

certificates under Sections 2-A of Bankers Books Evidence Act and under Section 65-B of Indian Evidence Act at the time of submitting the statements of accounts **(Ex. PW7/A and PW7/C)** and showed his ignorance about the person who took the print outs of Statements of Account **(Ex. PW7/B (colly.)** and **(Ex. PW7/D (colly.)**. He also could not tell who retrieved the same from the server, however, stated that it was the duty of the authorized person. He was not cross-examined by Mukesh Jain (A-1), Benu Jain (A-3) and Nipun Bansal (A-4).

29. **PW-8 Amit Minhas**, Branch Operation Manager, HDFC Bank, Vasant Vihar Branch, New Delhi deposed that in response to the request of DoE, he forwarded the duly certified Statement of Bank Account No. 02178630000195 (**Ex. PW8/A)** of M/s Pankaj Kumar Suresh Kumar from the period 31.01.2009 to 30.10.2018 along with certificate **(Ex. PW 8/B)** under Section 2-A of Bankers Books Evidence Act, 1891. He further deposed that there was a credit entry (from point X1 to X2 at **Ex. PW 8/A**) of Rs. 2,85,000/- in the aforementioned Bank account and the said amount was transferred on 04.03.2009 from the Bank Account No. 03302560004523 vide cheque No. 495636. During cross-examination conducted by accused Shiv Kumar Bhargava, PW 8 deposed that he took the print out of the Statement of Account **(Ex. PW 8/A)** on 03.12.2018. He admitted that the print out of the certificate **(Ex. PW 8/B)** was taken on 30.11.2018. He denied that the certificate was prepared by

him prior to taking the print out and verifying **Ex. PW 8/A**. PW 8 was not cross-examined by Mukesh Jain (A-1), Beenu Jain (A-3) and Nipun Bansal (A-4).

30. **PW-9 Sh. Sombir Singh**, deposed that while posted as Sub Registrar (VA), Hauz Khas, New Delhi in 2018, he submitted certified copies of Agreement to Sale, General Power of Attorney, Sale Deed and Gift Deed (**Ex. PW 9/A (colly)** regarding property No. Street No. 5, House No. 13, Ground floor, Sarvapriya Vihar, New Delhi-110016 along with a forwarding letter **(Ex. PW 9/B)** to DoE. During cross-examination conducted by Mukesh Jain (A-1) and Beenu Jain (A-3), nothing came in his testimony to assail his version as he has produced only official records. PW 9 was not cross-examined by Shiv Kumar Bhargava (A-2) and Nipun Bansal (A-4).

31. **PW-10 Sh. Asit Kumar Gupta**, Sr. Manager, PNB, M.G. Marg, Lucknow, Uttar Pradesh deposed that in 2017, he received communication from DoE requesting him to supply the details of M/s BCC and he provided computer generated statement of account of SIFCL vide letter (**Ex. PW-10/A (colly)**. He further deposed that as per the entry dated 21.03.2009 reflected in the said statement of account, an amount of Rs. 55,06,000/- vide cheque No. 512799 was debited from the account of SIFCL and credited to the account of BMPL. He further deposed that as per the entry dated 23.03.2009 on the said statement of account, an amount of Rs. 51,65,000/- vide cheque No. 512780 was debited from

the account of SIFCL and credited to the account of BMPL. He further deposed that he provided computer generated statement of account of BCC vide letter **Ex. PW-10/B** (colly). During cross-examination conducted by accused Shiv Kumar, he denied the suggestion that statement of account **(Ex. PW-10/A)** and **(Ex. PW-10/B)** are forged and fabricated. PW 10 was not cross-examined by Mukesh Jain (A-1), Benu Jain (A-3) and accused Nipun Bansal (A-4),

32. **PW-11 Sh. Brijesh Kumar Tripathi**, Sr. Manager, Lal Bag Branch of PNB at Lucknow deposed that on 14.12.2018, he received communication from DoE requesting him to supply the details of statement of account of M/s BCC from 01.01.2009 to 14.12.2018 and accordingly, he supplied the said statement to DoE vide communication dated 15.12.2018 **(Ex. PW 11/A colly)**. He further deposed that as per the entry dated 26.02.2009, on the said statement of account, an amount of Rs. 40,00,000/- bearing cheque No. 786680 was debited from the account of M/s BCC and was credited to the account of M/s BTC.

(i) The witness denied in cross-examination conducted by Shiv Kumar Bhargava (A-2) that the statement of account **(Ex. PW-11/A)** was forged and fabricated. During cross-examination conducted by accused Nipun Bansal, he deposed that he did not have any knowledge whether an amount of Rs. 25,00,000/- was subsequently debited from the Bank Account of accused Nipun Bansal (A-4) and credited to the Bank

Account of M/s BCC. He was not cross-examined by Mukesh Jain (A-1) and Benu Jain (A-3).

33. **PW-12 Sh. Sachin Parab**, the then Vice President, Banking Operations in HSBC Ltd. deposed that vide forwarding letter dated 17.04.2018 **(Ex. PW 12/A)**, he had sent computer generated statement of Bank Account of M/s SGC **(Ex. PW 12/B)**. He brought certificates under Bankers Books Evidence Act **(Ex. PW-12/C)** and U/s 65 of Indian Evidence Act in the Court **(Ex. PW-12/D)**. He further deposed that vide an entry dated 02.04.2009, cheque No. 049323 for Rs. 10,00,000/- was deposited in the said Bank Account. During cross-examination conducted by Mukesh Jain (A-1) and Benu Jain (A-3), he deposed that the print out of the statement of account was taken by some staff of the Bank subordinate to him. He volunteered to state that he had also verified the entries in the statement of accounts at the time of taking out the print out of the same. He again deposed that he verified the same at the time of signing of forwarding letter. He denied that he was not the competent person to file certificates under Bankers' Books Evidence Act and Indian Evidence Act. During cross-examination conducted by Shiv Kumar Bhargava (A-2) he denied that forwarding letter **Ex. PW-12/A** was fabricated document as it did not bear the stamp of the Bank. PW 12 was not cross-examined by accused Nipun Bansal (A-4).

34. **PW-13 Sh. Amit Kumar**, the then Personal Banker Authorizer (PBA) deposed that vide forwarding/covering

letter dated 05.12.2018 **(Ex. PW-13/A)**, he had sent computer generated Statements of Bank Accounts of M/s Rahul Kumar Rohit Kumar **(Ex. PW-13/B)**, M/s Bansal Trading Co. **(Ex. PW-13/C)**, and M/s Shri Radha Enterprises **(Ex. PW-13/D)**, to Mr. Pankaj Kumar posted in DoE in pursuance to letter dated 31.10.2018 alongwith a certificate under Bankers Books Evidence Act **(Ex. PW-13/E)**. He further deposed that the entry dated 03.03.2009 in the Statement of Account of M/s Rahul Kumar Rohit Kumar showed that Rs. 27,00,000/- were credited to the aforesaid Bank account from account No. 03302560004523. He further deposed that three entries dated 03.03.2009 in the Statement of Account of M/s Rahul Kumar Rohit Kumar shows that three pay orders of Rs. 10,80,000/-, 7,00,000/- and 9,00,000/- respectively were prepared from the aforesaid account. He further deposed that the entry dated 26.02.2009 in the Statement of Account of M/s BTC shows that Rs. 40,00,000/- were credited to the aforesaid account through the clearance of cheque bearing No. 786680. He further deposed that the entry dated 27.02.2009 in the Statement of Account of M/s BTC shows that Rs. 5,00,000/- were debited from the said account and credited to the account of M/s Mohan Das Shankar Lal bearing A/c No. 05532320002611. He further deposed that the entry dated 27.02.2009 in the Statement of Account of M/s BTC shows that a pay order of Rs. 4,27,592/- was prepared from the said account. He further deposed that the entry dated 03.03.2009 in the Statement of Account of M/s BTC shows that Rs.

29,50,000/- were debited from the said Bank Account to the Bank Account of M/s Shri Radha Enterprises bearing account No. 03302560004523. He further deposed that the entry dated 03.03.2009 in the Statement of Account of M/s Shri Radha Enterprises shows that Rs. 29,50,000/- were credited in the said Bank Account from Bank Account No. 03302560001578 of M/s Bansal Trading Co. He further deposed that the entry dated 03.03.2009 in the Statement of Account of M/s Shri Radha Enterprises shows that Rs. 27,00,000/- were debited from the said Bank Account and credited to the Bank Account of M/s Rahul Kumar Rohit Kumar bearing Bank Account No. 03302560004776. He further deposed that the entry dated 04.03.2009 in the Statement of Account of M/s Shri Radha Enterprises shows that Rs. 2,85,000/- were debited and credited to the Bank Account of M/s Pankaj Kumar Suresh Kumar bearing account No. 02178630000195. He was not cross-examined by any of the accused persons.

35. **PW-14 Sh. Naresh Kumar Sharma**, deposed that he was posted at Shisganj Gurudwara Branch of HDFC Bank, Delhi as Backup Branch Manager in 2013. He deposed that he handed over computer generated statements of account **(Ex. PW-14/A)** of M/s Mohan Das Shankar Lal to DoE alongwith Certificate **(Ex. PW-14/B)** under Bankers Books Evidence Act. He further deposed that the entry dated 27.02.2009 shows that Rs. 5,00,000/- were credited to the Bank Account of M/s Mohan Das Shankar Lal from the Bank Account

bearing No. 03302560001578. He was not cross-examined by any of the accused persons.

36. **PW-15 Sh. Anthony Alfredo Rodrigues**, deposed that in 2016, he was posted at GK Part-I Branch of HDFC Bank, Delhi as Branch Operation Manager. He deposed that computer generated statements of account of M/s AIPL **(Ex. PW-15/A)** was handed over by him to DoE. He had brought Certificates **(Ex. PW-15/B (colly)** under Bankers Books Evidence Act and Indian Evidence Act in the Court. He had also handed over photocopies of KYC and Account Opening Form **(Mark PW-15/1)** of M/s AIPL to DoE vide letter dated 01.03.2017 **(Ex PW-2/C)**. He further deposed that the two entries dated 30.09.2009 in the aforesaid statement of Bank Account shows that an amount of Rs. 25,30,000/- and 10,06,000/- were credited to the account of M/s AIPL through RTGS. He further deposed that other two entries of the even date shows that Rs. 25,00,000/- were withdrawn through cash using cheque No. 180007 and on 31.03.2009, there had been a RTGS transfer to M/s AIPL for an amount of Rs. 10,00,000/- using cheque No. 180008. He was not cross-examined by any of accused persons.

37. **PW-16 Sh. Saumitra Mishra**, Assistant Enforcement Officer, Delhi Zonal Office deposed that in the present case, he conducted discreet enquiries on the instructions of Mr. Pankaj Kumar, AD, PMLA and investigation officer of the present case. He further deposed that he visited at the addresses given by him and conducted enquiries and prepared

his report dated 20.12.2018. He identified his signature on the enquiry report (**Ex. PW-16/A)** which was handed over by him to the IO Pankaj Kumar. He was not cross-examined by any of accused persons.

38. **PW-17 Sh. J.P. Mishra,** Dy. Director in Delhi Zonal office of Enforcement Directorate from October 2016 to October 2020 deposed that he was supervisory officer of IO Pankaj Kumar in respect of investigations conducted by him and he was competent to invoke provisions of Section 5 of PMLA, 2002. He testified that Sh. Pankaj Kumar, IO of the present case had placed material collected by him before him and requested to issue Provisional Attachment Order (PAO in short) with respect to PoC acquired and possessed by Mukesh Jain (A-1). He further deposed that after going through the record, he was satisfied that Mukesh Jain (A-1) was in possession of some movable and immovable property which were PoC. Accordingly, he issued PAO (**Ex. PW-17/A)** on 07.05.2018 provisionally attaching 35% shares of Mukesh Jain (A-1) in property No. 5/13, Ground Floor, Sarvapriya Vihar, New Delhi-16 belonging to his son, namely, Aakash Jain and Rs. 10,00,000/- (as on 23.04.2018) available in the Bank Account of M/s SG bearing No. 052845559001 with HSBC, Barakhambha Road, New Delhi. He further deposed that prior to passing of the PAO, he prepared a Satisfaction Note dated 07.05.2018, copy of which alongwith copy of PAO was sent to Ld. Adjudicating Authority constituted under PMLA after passing of the PAO. He further deposed that thereafter, he

filed Original Complaint (OC) **(Ex. PW-17/B)** on 31.05.2018 before Ld. Adjudicating Authority praying for confirmation of the said PAO.

39. During cross-examination conducted by Mukesh Jain (A-1) and Benu Jain (A-3), he deposed that draft of PAO was first prepared by IO and same was legally vetted by Law Officer of the Directorate. He further deposed that at the time of perusal of the draft of PAO submitted by IO, he perused the entire record such as chargesheet filed by CBI, statements recorded by IO of DoE and Bank statements of all parties concerned of the present case prior to sending the same to Law Officer for vetting. He deposed that he satisfied himself that accused was in possession of PoC prior to sending file to Law Officer. He further deposed that as per the PAO, PoC of Rs. 46,10,000/- being 35% shares of Mukesh Jain in the name of his son Aakash Jain invested in immovable property and Rs. 10,00,000/- lying in Bank Account of M/s SG were provisionally attached.

40. PW 17 further deposed that as per the paragraph no. 15 of PAO, total sale consideration of the immovable property was Rs. 3,00,00,000/- as on 28.07.2017 and the shares of Mukesh Jain (A-1) in the said property was 35% which comes to Rs. 1,05,00,000/- Crores. The amount of PoC attributable to Mukesh Jain (A-1) was Rs. 46,10,000/- and Rs. 10,00,000/- lying in the Bank Account of M/s SG. To a question, with regard to break-up of Rs. 46,10,000/- as PoC in the name of Mukesh Jain, PW 17 deposed that he had given break up of

Rs. 46,10,000/- in para No. 8.4 and Table No. 1 and in paragraph No. 20, Table 2 in his PAO.

41. In his cross-examination, PW 17 denied that aforesaid tables in the relevant paragraphs did not suggest the break-up of Rs. 46,10,000/- or that he had not perused the record prior to passing PAO. He denied that he had not gone through the draft put by IO before him and had mechanically signed on the same and converted it into PAO.

42. **PW-18 Sh. Gunjan Poonia,** Assistant Enforcement Officer in DoE, deposed that he rendered his assistance in investigation conducted by Investigating Officers. He deposed that PAO (**Ex. PW 17/A**) was handed over to him by Investigating Officer Sh. Pankaj Kumar, for service of the same upon one Adhiraj Kumar and accordingly, he effected service of the aforesaid PAO on Adhiraj Kumar by way of affixation at his ancestral property at Meerut, UP as he could not find him at four addresses provided by IO. He further deposed that he had drawn panchnama dated 22.05.2018 **(Ex. PW 18/A)** in respect of affixation at the aforesaid place in the presence of two witnesses, namely, Ashwani Kumar Jain and Kamal Kumar Khanna. He further deposed that he prepared a service report dated 23.05.2018 **(Ex. PW 18/B)** in respect of the aforesaid PAO at four addresses of Adhiraj Kumar. He further deposed that the then IO Sh. Pankaj Kumar also handed over summon for service of Sh. Adhiraj Kumar. Accordingly, he visited different places to serve the same and submitted his report dated 23.05.2018 **(Ex. PW 18/C)** which

was also served by way of affixation at the ancestral property of Sh. Adhiraj Kumar vide panchnama dated 22.05.2018 **(Ex. PW 18/D)** which was drawn on the spot. He deposed that the original of the panchnama was affixed at the ancestral property of Adhiraj Kumar. PW 18 further deposed that he also prepared a report dated 29.06.2018 **(Ex. PW 18/F)** in respect of service of the aforesaid OC. PW 18 was not cross-examined by any of the accused persons.

43. **PW-19 Sh. Sharad Choudhry,** Assistant Director in DoE, deposed that ECIR No. ECIR/292/DZ/2009 **(Ex. PW 19/A)** was recorded by him on 14.12.2009. During cross-examination conducted by Mukesh Jain (A-1) and Benu Jain, he deposed that he did not recollect as to how many days prior to recording of the aforesaid ECIR on 14.12.2009, he came to know about commission of the scheduled offences. He deposed that he collected FIR of the scheduled offences and, thereafter, he recorded the aforesaid FIR. He deposed that he had only collected FIR and no other document was collected by him. He did not recollect as to who conducted preliminary inquiry prior to recording of the aforesaid ECIR, which was only limited to knowing about commission of scheduled offences. He further deposed that he stated about the offence U/s 120B IPC committed by Mukesh Jain (A-1) and Beenu Jain (A-3) in the ECIR on the basis of contents of the FIR lodged by CBI. He denied that he recorded ECIR mechanically without application of his mind. He was not cross-examined by remaining accused.

44. **PW-20 Sh. Vipin,** Assistant Enforcement Officer at Delhi Zonal Office from 21.04.2016 till 17.11.2020 and, thereafter, as Enforcement Officer from 17.11.2022 till 21.06.2022 deposed that he assisted Sh. Pankaj Kumar, AD (PMLA) in investigation of the present case. He deposed that he collected documents i.e. Account Opening Form, KYC(s) and Bank Account Statement of M/s BTC from Oriental Bank of Commerce (hereinafter referred to as 'OBC'), Naya Bazar Branch, Delhi and thereafter, handed over to Sh. Pankaj Kumar, AD (PMLA) vide his report dated 23.02.2017 (**Ex. PW 20/A)**. He further deposed that vide the aforesaid Report, he handed over documents i.e. Account Opening Form alongwith KYC(s) (**Ex. PW 6/A** colly.), copies of Vouchers (**Ex. PW 6/B**); Bank Account Statement (**Ex. PW 6/C** colly.) of M/s BTC after collecting the same from Oriental Bank of Commerce. He was not cross-examined by any of the accused.

45. **PW-21 Sh. Vikrant Kumar,** Assistant Enforcement Officer at Delhi Zonal Office from 20.12.2016 till 17.11.2020 and, thereafter, as Enforcement Officer from 17.11.2022 till 21.06.2022 deposed that he assisted Sh. Pankaj Kumar, AD (PMLA) in investigation of the present case. He further deposed that he was asked by Sh. Pankaj Kumar to serve copy of OC No. 980/2018 alongwith Show Cause Notice (SCN) issued by the Adjudicating Officer upon Mr. Adhiraj Kumar at D-189, IIIrd Floor, Saket, New Delhi. When he reached there, he was not found present at the aforesaid

address. He affixed the copy of SCN alongwith OC on the front entrance of the Flat at the aforesaid address and he prepared Panchnama (**Ex. PW 21/B)** and subsequently, prepared a Report **(Ex. PW 21/A)** in this regard which was submitted to Sh. Pankaj Kumar alongwith Panchnama and the photographs of affixation of SCN and OC. He further deposed that vide the aforesaid Report, he handed over Panchnama alongwith photographs of affixation of SCN and OC. He further deposed that the photographs **(Mark PW 21/1)** were taken by his Mobile Phone and, thereafter, print-outs were taken and he identified the same on the judicial file. During cross-examination conducted by Mukesh Jain (A-1) and accused Benu Jain (A-3), PW 21 deposed that after the tenants told him that Adhiraj Kumar used to reside at the aforesaid address long back, he reverified the same fact from the owner, who reiterated and reaffirmed that no such person had ever resided at the said place, however, he did not record statements of the landlord and tenants. He was not cross-examined by remaining accused.

46. **PW-22 Sh. C.S. Prakash Naryanan**, Assistant Director (Retd.), Directorate of Enforcement, deposed that he was on deputation as Inspector of Police in CBI, Economic Offences Wing, New Delhi from October 2004 to November 2009. He further deposed that FIR bearing RC No. 0712009(E)0003 dated 06.04.2009 **(Ex. PW22/A)** was assigned to him for investigation and he conducted the investigation. He further deposed that during the course of investigation, he had

collected relevant documents i.e. certified copy of complaint **(Ex. PW22/C)** given by the Chief Manager, PNB to S.P. CBI, EOW on the basis of which, FIR was registered; certified copy of account details of SGC **(Ex. PW22/D)**; certified copies of two vouchers and two cheques **(Ex. PW22/E colly)** with regard to M/s BMPL; certified copies of cheques and account opening forms **(Ex. PW22/F colly)** relating to accounts of M/s BMPL and M/s AIPL ; certified copies of cheques of AIPL of account **(Ex. PW22/G)** maintained HDFC Bank ; certified copies of cheques, account opening form and RTGS transfer related document (**Ex. PW22/H)** of M/s SG of account maintained with HSBC Bank; certified copy of account opening form of M/s AIPL **(Ex. PW22/I)** ; certified copies of documents provided containing copies of cheques, audit trails, outward item detail report **(Ex. PW22/J)** of account of M/s Leepakshi Overseas (hereinafter referred to as 'M/s LO') certified copies of images of CTC data file, verification of cheques, back office related operations **(Ex. PW22/K)**; certified copies of cheques, details of the transactions (**Ex. PW22/L colly)** in PNB provided by Assistant Manager, SIFCL; certified copies of deposit slip of HDFC **(Ex. PW22/M)** for depositing cheque issued to BTC by BCC; certified copies of account opening form of BTC maintained with HDFC Bank along with relevant documents required for opening of account and cheques (**Ex. PW 22/N)** issued from BTC as well as related deposit slips; certified copies of account opening form of BTC maintained with

OBC, Naya Bazar along with relevant documents required for opening the account and deposit slips (**Ex. PW22/O)**; certified copies of letter dated 29.04.2009 addressed by Vice Presiding, HSBC Bank for furnishing certified copy of account opening form of M/s AIPL, specimen signature card and statement of account **(Ex. PW22/P colly)**; certified copies of letter dated 15.05.2009 issued by Chief Manager, PNB, Lal Bagh, Lucknow for furnishing the complaints of M/s SIFCL and BCC and other related letters as well as legal notice from Sh. Anurag Shukla, Advocate sent to PNB on behalf of BCC (**Ex. PW22/Q colly)**; certified copy of letter addressed by M/s AIPL to HDFC Bank, G.K.-I **(Ex. PW22/R)** and examined witnesses. He further deposed that on the basis of investigation conducted by him, he had filed charge-sheet (**Ex. PW22/B)** after conclusion of investigation against the ten accused persons including, present accused persons, namely, Mukesh Jain, Benu Jain, Shiv Kumar Bhargava, Nipun Bansal (A-4) and Mohd. Nauman (since deceased) for fraudulent encashment of cheques relating to accounts held by different entities with PNB.

47. **PW-23 Satyendra Nath Bajpai** deposed that he has been doing the business of construction of roads and buildings for last 25-30 years under the name and style of M/s BCC and he has been maintaining Bank Account having last digit as …..707 of M/s BCC with PNB, Lal Bagh, Lucknow in which he was the authorised signatory. He further deposed that probably in 2009, he found that an amount of Rs. 65,00,000/-

was debited from his Account through cheque. He made a complaint {part of **Ex. PW 22/Q (colly)**} in writing to the Manager of PNB in this regard. He further deposed that on next day, the said amount was credited in his said Account. He further deposed that he asked the Manager of PNB to show the Statement of Account and found that on the previous occasion, a sum of Rs. 40,00,000/- was debited from his Account and credited through cheque in the Bank Account of M/s BTC. He further deposed that the cheque through which the said amount was debited from his Bank Account, was in his Cheque Book and the leaf of cheque was cloned for debiting the said amount from his Bank Account. He further deposed that he was called by DoE at Delhi and his statement **(Ex. PW 23/A)** was recorded on 25.05.2019 by Sh. Pankaj Kumar, the then Assistant Director. He further deposed that he also handed over copy of his driving license **(Ex. PW 23/B)** for the purpose of identification. PW 23 further deposed that Sh. Vivek Kumar Bajpai is his nephew through whom, he sent documents (**Ex. PW 23/B (colly)** to DOE and he submitted the documents accordingly. He identified the letter written by his nephew Vivek Kumar Bajpai in his handwriting and having his signature vide which he had submitted those documents through the said letter with DOE.

48. He further deposed that CBI Officer, namely, Mr. Narayanan, also seized original cheque No. 786680 (**Ex. PW 23/C (colly)** of the said Account No. 2408002100007073 of M/s BCC,

from him vide seizure memo dated 18.05.2009 which was in his Cheque Book and same was cloned for debiting Rs. 40,00,000/- from Bank Account of M/s BCC and crediting in the Bank Account of BTC. PW 23 was not cross-examined by accused persons, namely, Mukesh Jain, Benu Jain and Shiv Kumar Bhargava.

49. During cross-examination conducted by accused Nipun Bansal, he deposed that he himself was managing his Bank Account of M/s BCC. He could not say whether Rs. 25,00,000/- credited to his Bank Account was debited from Account of M/s BTC. He admitted that he received full amount of Rs. 40,00,000/- in his Account.

50. **PW-24 Vivek Kumar Bajpai** deposed that he was the nephew of Sh. Satyendra Nath Bajpai who asked him to submit certain documents with DOE, New Delhi and accordingly, he visited office of DOE in May, 2019 and submitted documents vide his letter dated 21.05.2019 **(Ex. PW 23/B (colly)**. He was not cross-examined by any of the accused.

51. **PW-25 Sh. Jayendra Singh** deposed that he joined the services of Sahara India in April, 1994 and thereafter, he was transferred to SIFCL in 2003 and worked there till 2013-14 and, thereafter, he was transferred to Sahara Credit Cooperative Society Ltd. and he resigned from Sahara Group of Companies in 2019. He further deposed that in 2009, SIFCL was maintaining its Bank Account with PNB, Lal Bagh Branch, Lucknow, UP and he alongwith Sh. Subhash

Chandra Gupta, Regional Manager of SIFCL and Sh. Sudershan Banerjee, Cashier was its authorised signatory. The said Bank Account could be operated with the signatures of any two authorised signatories. He further deposed that as per the directions of the Head Quarter of SIFCL, the balance amount in the Current Account on 31st March of every year, used to be converted into fixed deposit. On 31st March, 2009, he alongwith Sudershan Banerjee visited PNB, Lal Bagh Branch, Lucknow, UP for instructing the Bank Manager to convert the amount lying in the Current Bank Account of SIFCL to fixed deposit. He further deposed that when he submitted FD request slip having signature of Sh. Banerjee with the Cashier of PNB, Lal Bagh Branch, he told him that there was no balance lying in the said Account. He further deposed that after going through the statement of Bank Account, they came to know that around Rs. 55,00,000/- and around Rs. 51,00,000/- were got debited from the Bank Account of SIFCL in favour of M/s BMPL through two cheques which were never issued to SIFCL by PNB, Lal Bagh Branch and the said cheques were never issued by SIFCL in favour of M/s BMPL as there had never been any business dealings of SIFCL with M/s BMPL. Thereafter, he alongwith Sh. Subash Chandra Gupta and Sh. Sudershan Banerjee made written complaint **(Ex. PW 25/A)** about the illegal withdrawal of an amount of Rs. 1,06,71,000/- approximately to the Bank Manager of PNB Lal Bagh Branch, Lucknow, UP and local Police of Hazrat Ganj,

Lucknow, UP. He identified certified copies of cheques No. 512780 dated 18.03.2009 for sum of Rs. 51,65,000/- and 512799 dated 19.03.2019 for sum of Rs. 55,06,000/- (**Ex. PW 25/B** and **Ex. PW 25/C** respectively) purported to have been issued in favour of M/s BMPL from the Bank Account of SIFCL. He further deposed that on the aforesaid cheques at points 'A' though signature was attempted to be looked like his signatures, however, same were not his signatures. He deposed that same was his reply with regard to the signatures of Sh. Sudershan Banerjee at points B and these signatures were not his signature. PW 25 further deposed that in 2019, he was called by the DoE at its Delhi Office and his statement **(Ex. PW 25/D)** was recorded there with regard to the aforesaid. He identified supplementary complaint including photocopies of the aforesaid cheques. He was not cross-examined by accused persons, namely, Mukesh Jain and Benu Jain.

52. **PW-26 Sh. Sudershan Banerjee** deposed that he joined the services of SIFCL on 04.10.1996 and worked there till 19.05.2019. He further deposed that in 2009, SIFCL was maintaining its Bank Account with PNB, Lal Bagh Branch, Lucknow, UP and its authorised signatories were Sh. Subhash Chandra Gupta, Regional Manager of SIFCL; Sh. Jaynendra Singh, Assistant Regional Manager (Technical) and myself (Cashier) which could be operated with the signatures of any two authorised signatories. He further deposed on the same lines as deposed by PW 25, which are not being repeated

herein for the sake of brevity. He deposed that his statement (**Ex. PW 26/A)** was recorded by DOE.

53. **PW-27 Sh. Pankaj Kumar,** Assistant Director (PMLA) deposed that he received the file of the present case from the previous IO Sh. A.K. Srivastava on 17.08.2016. He testified that during the course of investigation, he recorded the statements and supplementary statements of Amit Aggarwal, Nipun Bansal, Mohd Nauman (since deceased), Chandra Bhan Singh, Ganesh Lal, Raje @ Rajeev and Jamir Ahmed U/s 50 of PMLA. He deposed that statement as well as supplementary statements of Mukesh Jain (A-1) U/s 50 of PMLA (**Ex. PW 27/J)** and **(Ex. PW 27/K, L & M)** respectively were written by the Mukesh Jain (A-1) in response to his questions. He further deposed that during the course of his supplementary statements, Mukesh Jain (A-1) submitted Bank Statement of M/s BMPL (**Mark PW 27/7)**. He deposed that statement as well as supplementary statements of Shiv Kumar Bhargava (A-2) U/s 50 of PMLA (**Ex. PW 27/N)** and **(Ex. PW 27/O & P)** respectively were written by S.K. Bhargava in response to his questions. He deposed that statement as well as supplementary statement of Pramod Kumar Pandey U/s 50 of PMLA (**Ex. PW 27/R)** and **(Ex. PW 27/S)** respectively were written by the accused Pramod Kumar Pandey in response to his questions. He deposed that statement as well as supplementary statements of accused Benu Jain U/s 50 of PMLA (**Ex. PW 27/T)** was written by the accused Benu Jain in response to his questions

and during the course of recording her statement, he confronted photocopies of four self cheques **Mark PW 27/10 (collectively)** drawn on Bank of Baroda and she admitted that the said cheques were issued by her and she countersigned on the same. He deposed that statement as well as supplementary statements of Aakash Jain U/s 50 of PMLA (**Ex. PW 27/Q)** was written by Aakash Jain in response to his questions.

54. He deposed that summon dated 11.01.2018 (**Ex. PW 27/V**) was issued by him to Mukesh Jain (A-1) whereby he was directed to be present before him on 24.01.2018 and after receipt of the aforesaid summon by Mukesh Jain (A-1), he gifted his 35% share in immovable property bearing No. 5/13, Ground Floor, Sarvpriya Vihar, New Delhi-110016 in favour of his son vide registered Gift Deed dated 23.01.2018 (**Ex. PW 9/B**). He further deposed that PAO dated 07.05.2018 **(Ex. PW 17/A)** was passed by the then Deputy Director Sh. J.P. Mishra, after he placed the file of the present case before him. He further deposed that OC No. 980 of 2018 dated 31.05.2018 **(Ex. PW 17/B)** was filed by Sh. J.P. Mishra, the then Deputy Director in respect to PAO dated 07.05.2018 and he provided his assistance to Sh. J.P. Mishra in finalising the aforesaid original complaint. He identified certified copy of the Order dated 08.10.2018 passed by the Adjudicating Authority confirming the PAO dated 07.05.2018 **(Ex. PW 17/A)** and allowed the OC No. 980 of 2018 dated 31.05.2018 **(Ex. PW 17/B)**. He attended the said proceedings before the

Adjudicating Authority and received the certified copy (**Ex. PW 27/W)** of the aforesaid Order.

55. He deposed that statement and supplementary statement of Akhilesh Chandra (**Ex. PW 27/X & Y)** U/s 50 of PMLA were recorded by Akhilesh Chandra in his handwriting in response to his questions. He further deposed that during the course of investigation, he recorded statements of the accused and witnesses U/s 50 of PMLA and collected documents from the Banks, Sub-Registrar and Statutory Authorities and after conclusion of investigation in the present case, he filed prosecution complaint dated 31.12.2018 (**Ex. PW 27/AA**) accompanied with documents in this case in terms of Notification No. 6/14/2008-ES dated 11.11.2014. He further deposed that subsequent to the filing of the aforesaid complaint before this Court, he conducted further investigation and recorded the statement of the witnesses.

56. He further deposed that respective statements of Jayendra Singh and Sudershan Banerjee U/s 50 of PMLA **(Ex. PW 25/D)** and **(Ex. PW 26/A)** were recorded in their respective handwritings in response to his questions and during the course of recording the aforesaid statements, they were confronted with photocopies of two cheques **(Ex. PW 25/D)** and **(Ex. PW 26/A)** to which they stated that the said cheques were not issued by them and their signatures on the same were forged. He further deposed that statement of Satyendra Nath Bajpai U/s 50 of PMLA **(Ex. PW 23/A)** in his handwriting was written by him in response to his questions.

He further deposed that letter dated 21.05.2019 **(Ex. PW 23/B)** was received by him from Sh. Vivek Kumar Bajpai on behalf of Sh. Satyendra Nath Bajpai alongwith copy of complaint given by Satendra Nath Bajpai to PNB. He further deposed that he had also sent photocopy of production-cum-seizure memo **(Ex. PW 23/C)** and Bank Account Statement alongwith the said letter. He further deposed that after recording the statements of the aforesaid witnesses, he filed supplementary complaint dated 23.12.2019 **(Ex. PW 27/AB)** accompanied with the documents.

57. During cross-examination conducted on behalf of A-1 Mukesh Jain and A-3 Benu Jain, he deposed that he did not recollect as to what specific documents were received by him from the previous IO Sh. A.K. Srivastava, however, so far as he recollected, same were copy of ECIR and some notesheets. He also received photocopy of FIR in the scheduled offences. He received 'relied upon documents' from CBI and he made inquiries about the scheduled offences falling under PMLA. He further deposed that he could not examine Adhiraj Kumar during his investigation. He volunteered to state that he sent summons and also made inquiries about his whereabouts but he could not be traced. He did not recollect whether any panchnama in respect to the summon to Adhiraj Kumar was prepared or not. He denied that neither any service of the summon was attempted to be effected upon the said witness nor any physical inquiry with regard to his whereabouts were made. He admitted that in his statement U/s 50 of PMLA,

witness Pramod Kumar Pandey stated that Akhilesh Chandra Shukla asked him to take deposit from Mukesh Jain (A-1) in his account or that Akhilesh Chandra Shukla, in his statement U/s 50 of PMLA in an answer to the specific question, denied to have stated Pramod Kumar Pandey to take deposit from Mukesh Jain (A-1). He did not recollect whether he confronted the aforesaid statement of Akhilesh Chandra Shukla with Pramod Kumar Pandey. He could not say whether only Rs. 61,000/- of the tainted money were in the Account of M/s AIPL. He did not make any inquiry from Pramod Kumar Pandey with regard to the aforesaid amount of Rs. 61,000/-. He admitted that in his statement that Pramod Kumar Pandey stated that he got deposited the alleged tainted money in his Account for getting 5% commission or that Pramod Kumar Pandey was aware of the fact that the said amount got deposited in his Bank Account, was tainted money. He further deposed that he did not arraign Pramod Kumar Pandey as accused in the present case as investigation in his respect could not be completed as written in the complaint **(Ex. PW 27/AA)** at para 5.1. He admitted that he himself recorded two statements of Pramod Kumar Pandey. He did not know whether any further investigation was pending in the present case. He admitted that he could not say where the tainted money travelled further as concluded by him in the para 4.6 of the complaint.

Statement of accused U/s 313 Cr.P.C.

58. After conclusion of prosecution evidence, statements of accused persons were recorded U/s 313 Cr.P.C. separately. They denied the incriminating evidence against them and claimed to be falsely implicated. Mukesh Jain (A-1) stated that there was contract for supply of T-Shirts between SIFCL through its agent Shiv Kumar Bhargava (A-2) and his Company M/s BMPL and the said contract was seized by IO in the 'SO' case on the day of raid at his house from his briefcase alongwith one Agreement between M/s BMPL and M/s AIPL. He further stated that the amount which was credited in his Company's Bank Account, was handed over to Shiv Kumar Bhargava (A-2) and balance amount in the aforesaid Bank Account of his Company was seized by the CBI. Shiv Kumar Bhargava (A-2) stated that he never received any amount from Mukesh Jain (A-1) or any other person in the present case and he was already acquitted in the scheduled offences vide Judgment dated 25.11.2023. Benu Jain (A-3) stated that she being housewife, was only sleeping Director in M/s BMPL and was not looking after its day-to-day affairs. She further stated that she had not received any money withdrawn from the Bank Account of M/s BMPL. Nipun Bansal (A-4) simply claimed innocence and did not offer any explanation to the incriminating evidence against him.

Defence Evidence

59. No witness was examined in defence by any of the accused persons.

Arguments

60. I have heard Sh. Deepak Bhadana, Ld. Counsel for Mukesh Jain (A-1) and Benu Jain (A-3) ; Md. Qamar Ali, Ld. Counsel for Shiv Kumar Bhargava (A-2), Sh. R.P. Shukla, Advocate for Nipun Bansal (A-4) and Sh. Naveen Kumar Matta, Ld. Special PP for DoE at length on multiple dates. I have perused the entire record including evidence and Judgements relied upon by Ld. Counsels.

Arguments on bahalf of DoE/Prosecution

61. In respect of the Shiv Kumar Bhargava (A-2) and Benu Jain (A-3), it is argued by Ld. Special PP for DoE that their acquittal in 'SO', will have no bearing on the present case as commission of the offenc of money-laundering U/s 3 of PMLA is independent of predicate offence in which accused have been acquitted. It is argued that the law laid down by the Hon'ble Supreme Court in **Vijay Madan Lal Chaudhary V. and others Vs. Union of India and others: 2020 (10) SCALE 527** relied upon by Shiv Kumar Bhargava (A-2) and Benu Jain (A-3), did not hold that upon acquittal of the accused from 'SO', the said accused shall be automatically exonerated from the offence of money-laundering. It is argued that as per the case of the DoE/Prosecution against Benu Jain (A-3), she withdrew cash of Rs. 9,00,000/- alongwith Mukesh

Jain (A-1) out of PoC of Rs. 1,06,71,000/- deposited in the Bank Account of M/s BMPL. It is further argued that DoE has also proved by way of statement (**Ex. PW27/T)** of Beenu Jain (A-3) U/s 50 of PMLA that she was very much involved in laundering of the PoC while withdrawing same from the Bank of M/s BMPL. It is further argued that once the Prosecution/DoE has succeeded in proving that the amount of Rs. 1,06,71,000/- credited to the Bank Account of M/s BMPL was PoC, presumption U/s 24 of PMLA shall trigger against Benu Jain (A-3) and it is for her to rebut the said presumption by way of adducing evidence, however, in the present case none of the accused persons including Benu Jain (A-3) led any evidence to rebut the said presumption. In support of his submission, Ld. Special PP for DoE has relied upon para no. 89 of the Judgment of the Hon'ble Supreme Court of India in **Vijay Madanlal Chaudhary and others (Supra)** submitting that Hon'ble Supreme Court of India held that once existence of the PoC and involvement of the accused in any process or activity connected therewith is established, the onus shifts on the person charged for the offence of money-laundering to rebut the legal presumption by producing evidence within her personal knowledge that the accused is not involved in money-laundering. Ld. Special PP for DoE has also placed reliance of **Ram Kishore Bandu Rane Vs. State of Maharashtra (973) SCC 366** to contend that statuary presumption must be rebutted by explanation with proof and not by bare explanation which is merely plausible. On the

strength of aforesaid submissions, it is submitted that Benu Jain (A-3) is liable to be convicted for commission of offence punishable U/s 3 of PMLA.

62. Against Shiv Kumar Bhargava (A-2), it is argued by Ld. Special PP that it is established through the testimony of Mukesh Jain (A-1) that more than Rs. 50,00,000/- were handed over to him out of PoC of Rs. 1,06,71,000/- and it was very much in his knowledge that the said amount is PoC and therefore, he has committed an offence U/s 3 of PMLA Act. Reliance has been placed on the Judgment of Hon'ble Supreme Court in **Naresh J. Sukhwani Vs. Union of India: 1996 SUPL(4) SSC 663** to contend that statement of co-Mukesh Jain (A-1) recorded U/s 50 of the PMLA Act is admissible against the Shiv Kumar Bhargava (A-2) in the same manner as the statement of co-accused recorded U/s 108 of the Custom's Act was held admissible by the Hon'ble Supreme Court and therefore, on the strength of statement of the Mukesh Jain (A-1) recorded U/s 50 of PMLA Act, it is proved that the Shiv Kumar Bhargava (A-2) is guilty for the offence of money-laundering U/s 3 of PMLA and thus he is liable to be convicted U/s 3 of PMLA.

63. In respect of Mukesh Jain (A-1), it is argued by Ld. Special P.P. for DoE that it is established that Mukesh Jain (A-1) got deposited two forged and fabricated cheques amounting to Rs. 1,06,71,000/- in the Bank Account of M/s BMPL and after the encashment of the aforesaid cheques, the said amount was utilised by him alongwith Shiv Kumar Bhargava

(A-2) and Smt. Benu Jain (A-3). It is argued that Mukesh Jain (A-1) was one of the beneficiaries of the aforesaid amount fraudulently obtained through the forged and fabricated cheques from the Bank Account of SIFL, and thus he was involved in money-laundering. It is submitted that the prosecution has succeeded in proving that Mukesh Jain (A-1) alongwith his wife Smt. Benu Jain (A-3) withdrew in cash an amount of Rs. 38,00,000/- on different occasions and Rs. 66,61,000/- were diverted to the Bank Account of M/s AIPL and Rs. 10,00,000/- to the Bank Account of M/s SG whose Proprietor was Adhiraj Kumar who was the relative of Mukesh Jain (A-1). It is argued that it is established by the documents and testimonies of witnesses that Mukesh Jain (A-1) directly indulged in the proceeds connected with the property i.e. an amount of Rs. 1,06,71,000/- and thereafter laundered the same projecting it as untainted and therefore he is liable to be convicted U/s 3 of PMLA.

64. It is argued that the prosecution has also established that a sale deed was executed by one Ms. Shahana Raza on 28.07.2017 in respect of property no. 5/13, Ground Floor, Sarvapriya Vihar, New Delhi (hereinafter referred to 'Property') for an amount of Rs. 3 Crore in favour of Ms. Avni Jain daughter of Mukesh Jain (A-1) (65% undivided share) and Mukesh Jain (35% undivided share). It is further argued that Mukesh Jain (A-1) after receipt of the summon dated 11.01.2018 from DoE to appear on 24.01.2018 gifted his share (35%) of the aforesaid 'Property' on 23.01.2018 i.e. one

day prior to his appearance before DoE with ulterior design and he did not disclose the said fact during recording his statement U/s 50 of PMLA. It is argued that prosecution has also succeeded in proving that PAO dated 07.05.2018 and Confirmation Order dated 08.10.2018 attaching aforesaid property to the extent of Rs. 46,10,000/- and further Rs. 10,00,000/- deposited in the account of M/s SG was as per law in the facts, circumstances and evidence on record. Lastly, it is argued that Mukesh Jain (A-1) is liable to be convicted for offence of money-laundering U/s 3 of the PMLA and his aforesaid property is to be confiscated to the Central Government.

65. In respect of accused Nipun Bansal, it is argued by Ld. Special PP for DoE that prosecution has succeeded in proving that an amount of Rs. 40,00,000/- was received in the Bank Account of M/s BTC on 26.02.2009 through fraudulent transaction. The proprietor of M/s BTC was accused Nipul Bansal (A-4) and he utilized the said amount by routing to different Bank Accounts. It is further submitted that though the accused returned the amount of Rs. 25,00,000/- on 05.03.2009 and, thereafter, Rs. 15,00,000/- on 14.09.2010, nonethless, it is proved on record that accused Nipul Bansal (A-4) remained in possession of the aforesaid PoC during the interregnum. It is further argued that subsequent return of the aforesaid PoC of Rs. 40,00,000/- will not exonerate Nipul Bansal (A-4) from the offence of money-laundering U/s 3 of

the PMLA and, therefore, he is liable to be convicted for commission of the aforesaid offence.

Arguments on behalf of the Defence Counsels

66. Ld. Counsel for the Shiv Kumar Bhargava (A-2) and Beenu Jain argued that since both the accused stood acquitted in the Schedule Offence case in FIR No. RC-071 2009(E)0003 dated 06.04.2009 and thus, there can be no offence of money-laundering against them as per the ratio of the Judgment of the Hon'ble Apex Court in **Vijay Madanlal Chaudhary and Ors., (supra)** in paragraph 187 (v)(d) wherein it is held that 'the offences under the PMLA would not survive if the accused is discharged and acquitted in the predicate offences'.

67. On merits, it is argued on behalf of Benu Jain (A-3) that neither CBI in predicate offence nor DoE in the present case succeeded in establishing any link of Benu Jain (A-3) with PoC of Rs. 1,06,71,000/-. The prosecution has only established that an amount of Rs. 9,00,000/- was withdrawn through cheques with the signature of Benu Jain (A-3) from the Bank Account M/s BMPL however it has failed to establish that Benu Jain (A-3) was aware of the said amount being PoC. It is submitted that Benu Jain (A-3) was only the name lender in M/s BMPL and was not aware with its day to day's affairs and thus, it cannot be presumed that she was having any knowledge of the company indulging in PoC and. therefore she is liable to be acquitted on merits too.

68. Ld. Counsel for Shiv Kumar Bhargava (A-2) argued on merits that DoE has miserably failed to prove that Shiv Kumar Bhargava (A-2) was involved and/or connected with PoC as there is no evidence or material establishing that he had received any portion of money alleged to be PoC from his co-Mukesh Jain (A-1). It is submitted that Shiv Kumar Bhargava (A-2) cannot be held liable only on the strength of the statement of co-Mukesh Jain (A-1) as there is no independent evidence corroborating version of Mukesh Jain (A-1) and accordingly he is entitled to be acquitted.

69. Ld. Counsel for Mukesh Jain (A-1) argued that offences U/s 420/471 r/w section 120B IPC for which he has been convicted in FIR No. RC-071 2009(E)0003 dated 06.04.2009 were not 'SO' at the time of recoding of ECIR in the present case as the said offences were included in the schedule of PMLA on 01.04.2009 i.e. prior to the date of alleged commission of offence and therefore, the same cannot be applied retrospectively. It is submitted that the offence of money-laundering as contended by Ld. Special PP for DoE is not a continuing offence as the same ceased to exist on the date when the alleged amount was credited to the Bank Account of M/s BMPL and was utilised. Ld. Counsel has also relied upon Judgment of Hon'ble Supreme Court of India in **Pavana Dibbur Vs. Directorate of Enforcement 2023 SCC Online SC 1586** to contend that if criminal activity was committed before the offence was notified as Schedule Offence for the purpose of PMLA, accused cannot be

prosecuted under PMLA. It is further submitted that attachment of the properties of Mukesh Jain (A-1) to the extent of Rs. 46,10,000/- is bad in law as the prosecution has failed to establish that the said property was purchased out of PoC. It is further submitted that Mukesh Jain (A-1) had already gifted his share in the said property in favour of his son and therefore the attachment of the same is not tenable in law. On the strength of the aforesaid submission, it is prayed that Mukesh Jain (A-1) be acquitted and the attached property be released.

70. Ld. Counsel for accused Nipun Bansal has also adopted the arguments/contentions advanced /raised on behalf of Ld. Counsel for accused Mukesh Jain submitting that since amended Schedule to Section 2 (y) of PMLA incorporating Sections 120-B, 420, and 471 IPC came into force on 01.06.2009, the same cannot be applied retrospectively in violation of Article 20(2) of the Constitution of India. It is pertinent to mention here that after the arguments were concluded in the present case on 06.03.2024, accused Nipun Bansal approached the Hon'ble High Court of Delhi by way of filing a Writ Petition (Crl.) No. 671/2024 seeking quashing of proceedings in the present case against him on the strength of his aforesaid contention and the Hon'ble High Court of Delhi vide its order dated 18.03.2024 was pleased to dispose of the aforesaid Writ Petition with the expectation from this Court to consider the aforesaid contention raised on behalf of accused Nipun Bansal in accordance with law. Thereafter,

written submission was filed by the Ld. Counsel for accused Nipun Bansal reiterating his aforesaid submissions.

71. On merits, it is argued that accused Nipun Bansal (A-4) received the amount of Rs. 40,00,000/- in his Bank Account on 26.02.2009 for order of supply of rice placed by co-accused Mohd. Nauman and, thereafter, upon cancellation of the said order, Rs. 25,00,000/- were returned on 05.03.2009 and remaining amount of Rs. 15,00,000/- on 14.09.2010. On the basis of the aforesaid, it is argued that since the alleged PoC of Rs. 40,00,000/- have already stood returned, the accused Nipun Bansal (A-4) cannot be proceeded for commission of offence of money-laundering U/s 3 of PMLA Act.

Case of Prosecution and Legal Provisions involved

72. The case of the prosecution, in nutshell, is that accused no.1 to accused no. 4 and Mohd. Nauman (since expired) defrauded PNB for Rs. 1,46,71,000/- vide three forged and fabricated cheques and diverted and utilized the said PoC and, thus, committed an offence of money-laundering U/s 3 of the PMLA.

73. The case of prosecution against Mukesh Jain (A-1), Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) is that they used the Bank Account of M/s BMPL to deposit two forged cheques dated 18.03.2009 and 19.03.2009 for Rs. 51,65,000/- and Rs. 55,06,000/- respectively and diverted and utilized the

PoC of Rs. 1,06,71,000/- and thus, they committed the offence U/s 3 of the PMLA.

74. The case of prosecution against Nipun Bansal (A-4) and Mohd. Nauman (since expired) is that Nipun Bansal (A-4) with the help of co-accused Mohd. Nauman got deposited a forged and fabricated cheque dated 23.02.2009 for Rs. 40,00,000/- and, thereafter, diverted and used the POC attracting the commission of offence of money laundering U/s 3 of the PMLA.

75. It is undisputed that an FIR No. RC-071-2009 (E) 0003 dated 06.04.2009 was registered against the accused persons in the present case and other accused including deceased Mohd. Nauman for commission of offence U/s 120B r/w Section 420, 467, 468, 471 & 511 IPC and Section 13(2) r/w Section 13(1)(b) of P.C. Act. Vide Judgment dated 25.11.2023, in a separate trial in **CC No. 131/2019**, titled **CBI Vs. Mukesh Jain & Ors.**, Mukesh Jain (A-1) and Nipun Bansal (A-4) were convicted for the offence U/s 420/471 IPC r/w 120B IPC and for the substantive offence punishable U/s 420/471 IPC and thereafter, they were sentenced vide order dated 01.12.2023. However, in the aforesaid trial, Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) were acquitted of the charges framed against them. Trial against accused Mohd. Nauman stood abated as he had expired during the course of the said trial.

76. At the outset, it is deemed appropriate to take note of the object of PMLA and its relevant provisions before proceeding

to analyze the evidence produced on record in the light of arguments put forth by prosecution and defence and the law applicable to the present case. The PMLA was enacted to address the urgent need to have a comprehensive legislation inter alia for preventing money-laundering by setting up agencies and mechanisms for co-ordinating measures for combating money-laundering, to prosecute the persons indulging in the process or activity connected with PoC, attachment of PoC, adjudication and confiscation thereof including vesting of it in the Central Government.

77. The offence of money-laundering is defined in Section 3 of the PMLA, which reads as under :

> "Offence of money-laundering.--Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering."

78. By virtue of the Finance (No. 2), Act, 2019 No. 23 of 2019, notified on 01.08.2019, Section 3 of PMLA has been amended and following explanation has been inserted in the Section, which reads as under :

"**Explanation.- For the removal of doubts, it is hereby clarified that -**

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or
(f) claiming as untainted property, in any manner whatsoever,
(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever".

79. Section 2 of PMLA defines various words and expressions appearing in the PMLA. "Proceeds of crime" is defined in Section 2(1)(u) of PMLA, which reads as under :

2(u) : **"Proceeds of crime"** means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [(3) or where such property is taken or held outside the country, then the property equivalent in value held within the country] [(4) or abroad];

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

3. Inserted by the Finance Act, 2015 (20 of 2015), Section 145(i) (w.e.f. 14-05-2015);
4. Inserted by Act 13 of 2018, Section 208(a) (w.e.f. 19-04-2018), vide G.S.R. 383(E) dated 19.04.2018)
5. Inserted by the Finance (No. 2) Act, 2019, section 192(iii) (w.e.f. 01.08.2019).

80. Section 2 (1)(v) of PMLA defines "property" as under:

"property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

81. Section 2(1)(x) of PMLA defines "schedule" as under:

"Schedule" means the Schedule to this Act;

82. Section 2(1)(y) of PMLA defines "scheduled offence" as under:

"scheduled offence" means -

(i) the offences specified under Part A of the Schedule; or

ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule;

83. Section 4 of PMLA prescribes punishment for the offence of money-laundering, which reads as under :

Punishment for money-laundering.- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine [***]

[Words "which may extend to five lakh rupees" omitted by Act No. 2 OF 2013]:

Provided.....

84. Procedure for attachment, adjudication and confiscation of the property involved in money-laundering has been provided under Chapter III of the PMLA. Section 5 of the PMLA provides as under :

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, 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 clause (b), 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.] [Substituted by Act No. 2 OF 2013]

[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 further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.] [Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, alongwith the material in his 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 order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under [sub-section (3)] [Substituted 'sub-section (2)' by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. Explanation. For the purposes of this sub-section, person interested, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

85. Section 8 of PMLA provides for disposal of PoC on conclusion of trial. Relevant portion of the Section is reproduced as under :

"8. Adjudication.- .....
(1) .....
(2).....

(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] on record shall -
(a) continue during [investigation for a period not exceeding [three hundred and sixty-five days] [Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.] 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] [Substituted for the words "scheduled offence before a court; and" by Act No. 2 OF 2013] ;

(b) [become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 5 8 B or sub-section (2A) of section 60 by the Adjudicating Authority] [Substituted by Act No. 2 OF 2013] ;

[Explanation. - For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.] [Inserted by Finance Act, 2019 (Act No. 7 of 2019) dated 21.2.2019.]

(4) .....

(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) .....

(8) ....."

86. Section 24 Burden of proof - In any proceeding relating to PoC under this Act :

(a) in the case of a person charged with the offence of money-laundering Under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and ;

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

87. After going through the above quoted provisions, it is manifest that post recording of ECIR, PMLA contemplates two proceedings in Court - one, criminal trial of person(s) accused of the offence of money-laundering before Special

Court and the other, for the provisional attachment of the property derived from or involved in money-laundering being PoC, its confirmation by Competent Authorities and confiscation by Special Court. In trial of accused for commission of offence of money-laundering under Section 3 PMLA, the Court examines on the basis of evidence on record whether accused has dealt with the PoC in any manner specified in the section. For this purpose, "PoC" would mean a property defined under Section 2 (1) (u) of PMLA. If a trial concludes with the findings that offence of money-laundering has been committed and the property so attached is involved in money-laundering and falls within the definition of PoC as provided under section 2(1)(u) of PMLA, the Court shall order confiscation of the property involved in money-laundering to the Central Government. However, if on conclusion of trial, the Court finds that offence of money-laundering is not committed or that the property is not involved in money-laundering or that the property is not PoC, it shall order release of the property to the rightful claimant. The Trial Court is under the statutory mandate to decide the fate of the property attached during investigation, even when the trial cannot be conducted for any reason, including death of the accused.

88. Thus, first and foremost, it is to be examined as to whether offence of money-laundering as defined under Section 3 of PMLA has been committed or not by the accused persons.

Money-Laundering as Continuing Offence - Proceeds of Crime - Evidence & Analysis

89. In order to constitute offence of money-laundering under Section 3 of PMLA, first, it is to be established that the criminal activity relating to a 'SO' has been committed; secondly, the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity and third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being PoC. Commission of 'SO', existence of PoC and the involvement of accused in any process or activity connected therewith, constitutes offence of money-laundering. Thus, three jurisdictional facts namely, (a) scheduled offence; (b) criminal activity and (c) PoC must exist conjunctively and only then presumption U/s 24 of the PMLA will get triggered. If the Prosecution succeeds in proving the aforesaid three ingredients, burden lies on the accused to rebut the presumption that he is not involved in money laundering and the property alleged to be PoC is untainted. Accused has to establish that he/she has no nexus with PoC and/or the properties attached by the DoE is not PoC. If the person concerned/accused is able to disprove his involvement in any process or activity connected with PoC by producing evidence which is within his personal knowledge in that regard, the legal presumption would stand rebutted.

90. In order to prove its case against accused, at the outset the prosecution has to prove that offence(s) for which FIR has

been registered, accused have been proceeded with or convicted falls under ‘SO’ as defined under PMLA. 'SO' is a *sina qua non* for the offence of money laundering showing generation of money as a result of the commission of ‘SO’. PMLA contains Schedules which originally contained three parts namely Part A, Part B and Part C. Part A contains various paragraphs which enumerates offences in IPC etc. The aforesaid Schedule was amended w.e.f. 01.06.2009 and by way of said amendment, Section 120B IPC defining criminal conspiracy, Section 420 IPC defining cheating and dishonestly inducing delivery of property and Section 471 IPC defining punishment for use of forged documents were included in Part A of the Schedule to PMLA .

91. Ld. Counsel for Mukesh Jain (A-1) contended that prior to the amendment in PMLA w.e.f. 01.06.2009, offences U/s 120B, 420 & 471 IPC were not 'Scheduled Offences' and, therefore, Mukesh Jain (A-1) cannot be prosecuted for commission of offence U/s 3 of PMLA for utilising aforesaid amount prior to 01.06.2009. Per contra, contention of learned Special PP for ‘DoE’ is that offence of money laundering is in the nature of continuing offence as the punishment under Section 4 of PMLA is not for commission of a 'SO' but for laundering proceeds of a scheduled crime.

92. In view of aforesaid rival submissions, this Court shall first examine whether the offence U/s 3 PMLA is continuing offence. A ‘continuing offence’ is one which is susceptible to continue and is distinguished from the one which is

committed once and for all. Whether particular offence is a continuing offence or not depends upon the nature of offence, language of statute which creates that offence and purpose intended to be achieved as an offence. In **Shanker Dasti Das vs. Banjula Dasti Dass 2006 (13) SCC 470**, it was held that *"the very essence of continuing wrong is act which creates a continuing source of injury rendering the doer of the act responsible and liable for the continuous injury"*. In **Gokak Patel v. Dundayya Gurushiddaiah Hiremath : 1991 (2) SCC 141,** the term "continuing offence" has been explained as under :

> "7. What then is a continuing offence? According to the Blacks' Law Dictionary, Fifth Edition (Special Deluxe), **'Continuing means "enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences." Continuing offence means "type of crime which is committed over a span of time."** As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. "A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse." **So also a 'Continuous Crime' means "one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act".**
>
> (emphasis supplied)

93. In the backdrop of aforesaid settled law with regard to continuing offence, it is to be seen whether offence of money-laundering as defined under Section 3 of PMLA is a continuing offence. The offence of money-laundering is set forth in Section 3 of PMLA which defines it to mean any process or activity connected with PoC including its concealment, possession, acquisition or use and further includes the projection of the said property as being untainted. The offence essentially is of any process or activity that may be undertaken by a person in connection with 'PoC'. The ingredients of the aforesaid offence stand further clarified by virtue of the Explanation I & II which came to be inserted in Section 3 by Act 23 of 2019 making the process/activity connected to PoC as a continuing activity. Explanation II of Section 3 of PMLA stipulates that the process or activity connected with PoCis continuing activity and it continues till such time a person is directly or indirectly enjoying PoC by way of its concealment or possession or acquisition or usage or projecting it as untainted property or claiming it as untainted property in any manner whatsoever. The addition of phrase *'in any manner whatsoever'* has resulted into rendering the activities connected to PoC as a continuing offence. A conjoint reading of amended provision of Section 3 with Section 2(1)(u) of PMLA, renders process or activity connected with the PoC, a continuing offence till such time a person enjoys the PoC and the offence of laundering of PoC would not come to an end once the process of placement,

layering is complete but would continue till the fruits are enjoyed by the person concerned. While dwelling upon the expression 'continuing offence' in the context of PMLA, the Hon’ble High Court of Madras in **Advantage Strategic Consulting Pvt. Ltd. vs. The Assistant Director, Directorate of Enforcement, Ministry of Finance and Ors.: MANU/TN/2506/2019,** has observed in para 17 of the Judgment as under :

> "Though the expression 'continuing offence' is not defined in the PMLA, whether a particular offence is a continuing one or not depends upon the nature of offence and purpose intended to be achieved. **The concept of continuing offence is keeping the offence alive day by day without wiping the original guilt. Thus, there is an ingredient of continuance of the offence in continuing offence.** Therefore, the contention of petitioner that the second proviso to Sec. 5(1) is only prospective and not retrospective is without substance or force. The second proviso is applicable to property acquired even prior to the coming into force of this provision. **Hence, retrospective penalization is permissible"**.
>
> (emphasis supplied)

94. Ld. Counsel for Accused Nipun Bansal (A-4) has relied upon the Judgement of the Hon’ble Delhi High Court in **Mahanivesh Oils & Foods Pvt Ltd vs. Directorate of Enforcement: 2016 SCC OnLine Del 475** where the Hon'ble Single Judge has showed his disinclination to the preposition that offence U/s 3 of PMLA is a continuing offence. The Hon'ble Delhi High Court has observed as under :

> “33.....Thus, a person concealing or coming into possession or bringing proceeds of crime to use would have committed the offence of money-laundering when he came into possession or concealed or used the proceeds of crime. For any offence of money-laundering to be alleged, such acts must have been done after the Act was brought in force. **The proceeds of**

crime which had come into possession and projected and claimed as untainted prior to the Act coming into force, would be outside the sweep of the Act.

34. In the circumstances, it cannot be readily accepted that any offence of money-laundering had been committed after the Act coming into force. **This Act cannot be read as to empower the authorities to initiate proceedings in respect of money-laundering offences done prior to 01.07.2005 or prior to the related crime being included as a scheduled offence under the Act."**

(emphasis supplied)

95. This Court is conscious of **Order dated 20.11.2016** in **LPA 144/2016** whereby the aforesaid findings recorded by Hon'ble Single Judge of Delhi High Court were stayed by Hon'ble Division Bench of Delhi High Court after making it clear that *'findings so recorded by Ld. Single Judge shall not be construed as conclusive and binding precedent until further orders'*. The aforesaid LPA is still pending adjudication before the Hon'ble Delhi High Court.

96. However, in the meantime before Hon'ble Delhi High Court in Coal Block Allocation case titled as **Prakash Industries Ltd. and Ors. vs. Directorate of Enforcement: MANU/DE/2491/2022,** wherein**,** it was contended that since the allocation was made on 04 September 2003 i.e. prior to promulgation of the PMLA and Sections 420 and 120B of IPC being not part of 'Scheduled Offences' on that date, any action initiated under PMLA would clearly violate the constitutional guarantee conferred by Article 20(1) of Constitution of India. The Hon'ble Delhi High Court rejected the aforesaid contentions holding as under :

"55. However, **an equally well settled principle relating to the retroactive application of penal provisions is that merely because a requisite or facet for initiation of action pertains to a period prior to the enforcement of the statute, that would not be sufficient to characterize the statute as being retrospective. Mr. Raju the learned ASG has rightly submitted that merely because the predicate offence, even though it forms the originating trigger for an offense of money laundering, may have been committed prior to the commencement of the Act, a person who launders proceeds of crime after its enforcement would still be liable to be tried for that offence.**

56.xxxxxxxxxxxxxxxx

57. Having outlined the contours of Article 20(1) of the Constitution and the underlying spirit of the Act, it must be held that any act of money laundering as defined in Section 3 which may have been committed and completed prior to the enforcement of the Act cannot be subjected to action under the Act. However, and at the same time it must also be held that an offense of money laundering that may be committed post 01 July 2005 would still be subject to the rigours of the Act notwithstanding the predicate offence having been committed prior to that date. As noted hereinabove, Section 3 creates an offence for money laundering. Neither that provision nor the Act is concerned with the trial of the predicate offense. **Thus, any activity or process that may be undertaken by a person post 01 July 2005 in terms of which proceeds of crime are acquired, possessed or used and/or projected as untainted property would still be subject to the provisions of the Act. This because it is the act of money laundering committed after the enforcement of the Act which is being targeted and not the predicate offense. The Court also bears in mind the Explanation (ii) to Section 3 which clarifies that money laundering is a continuing activity and continues till such time as the person is directly or indirectly "enjoying" the proceeds of crime by its concealment, possession, acquisition or use and/or projecting it as untainted property. The word "enjoying" clearly appears to have been consciously used in order to impress and convey its usage in its present and continuous form. Therefore, from a reading of Explanation (ii) also it is evident that the action that may be initiated under the Act is aimed at the offence of laundering of criminally acquired gains and profits and such activities and processes answering the description of money laundering which may occur or**

be indulged in after the Act has come into force. Accordingly, it must be held that while the commission of a predicate offense would constitute the bedrock for initiation of action, the date on which such an offence may have been committed would be of little relevance provided an act of money laundering is alleged to have been committed after the Act had come into force".

(emphasis supplied)

97. It was finally concluded in para 108 as under :

"N. The Court thus concludes that an offense of money laundering that may be committed post 01 July 2005 would still be subject to the rigours of the Act notwithstanding the predicate offense having been committed prior to that date. As noted hereinabove, Section 3 creates an offense for money laundering. Neither that provision nor the Act is concerned with the trial of the predicate offense. **Thus, any activity or process that may be undertaken by a person post 01 July 2005 in terms of which proceeds of crime are acquired, possessed or used and/or projected as untainted property would still be subject to the provisions of the Act.**

O. The Court exposits and reiterates the legal position to be that it is the date of the commission of the offence of money laundering and not the date of commission of a scheduled offence which is relevant and determinative. The date of inclusion of a crime as a scheduled offence would also not be determinative and the issue would have to be decided bearing in mind whether an allegation of money laundering stood committed after the Act had come into force.

(emphasis supplied)

98. A useful reference may be made in this regard to the Judgments delivered by the Hon'ble Supreme Court in **STO v. Oriental Coal Corporation : 1988 (Suppl) SCC 308 and in K.S. Paripoornan v. State of Kerala : (1994) 5 SCC 593.** In **STO v. Oriental Coal Corporation (supra)**, the Hon'ble Supreme Court pointed out that *'where there is no hint of*

retrospectivity, in the statute itself, it is not possible to read retrospectivity'. Similarly, in **K.S. Paripoornan (supra)**, the Hon'ble Supreme Court made the distinction between a statute dealing with substantive rights and a statute which relates to procedure or evidence or is declaratory in nature. It was held that a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect. On the contrary, a statute concerned mainly with matters of procedure, or evidence or which is declaratory in nature has to be construed as retrospective, unless there is clear indication to the contrary.

99. The Hon'ble Supreme Court of India in **Vijay Madan Lal Chaudhary (supra)** has categorically held that Explanation II inserted by way of amendment in Section 3 of PMLA in 2019 does not entail in expanding the purport of Section 3 as it stood prior to 2019, but is only clarificatory in nature. It has been held that this provision plainly indicates that any (every) process or activity connected with the PoC results in offence of money-laundering. It has further been held that projecting or claiming the PoC as untainted property, in itself, is an attempt to indulge in or being involved in money-laundering, just as knowingly concealing, possessing, acquiring or using of PoC, directly or indirectly. It has been held as under :

> **"270.** Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). **It**

would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act - for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019.Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all".

(emphasis supplied)

100. In view of the aforesaid settled law, notwithstanding the criminal activity having been committed prior to notification of 'SO' under PMLA, the person/accused can still be prosecuted for commission of offence U/s 3 PMLA, if the said person/accused has continued to indulge in PoC by continuing to possess or conceal the same even after enactment of 'SO' under PMLA. If the accused has been retaining the possession of PoC, he shall be deemed to continue his activities of commission of money-laundering. In

the present case, the fact that the scheduled crime was committed prior to the enactment of section 120-B, 420 and 471 of the IPC as 'SO' under PMLA, would not render the application of PMLA retrospectively as only the offence of money-laundering is being proceeded against the accused persons under PMLA. Accordingly, contrary submissions made by the Ld. Counsels for accused Mukesh Jain and Nipun Bansal are rejected.

101. By keeping the above principle of law in mind, this Court shall now appreciate and analyse the evidence placed by the complainant/prosecution in regard to acquisition of the properties by the accused persons out of crime. As noted above, initial burden lies on the prosecution to prove that accused persons were involved in criminal activities and they generated/acquired PoC, utilized and claimed it as untainted.

Findings in respect of Shiv Kumar Bhargava (A-2) and Beenu Jain (A-3)

102. In the instant case, as per the case of prosecution, an amount of Rs. 1,06,71,000/- was derived from the criminal activity by Mukesh Jain (A-1), Shiv Kumar Bhargava (A-2), Benu Jain (A-3) and for which they faced trial in a predicate offence, wherein, Mukesh Jain (A-1) stood convicted while Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) were acquitted. The relevant portion of the Judgment dated 25.11.2023 is re-produced as under :

"292: Having considered the evidence adduced by the Prosecution, it is proved that **two cheques in question were forged and fabricated,** however, the Prosecution has failed to prove as to who amongst the accused forged the said two cheques. Prosecution has also proved that the **two aforesaid cheques were presented and encashed into the Bank Account of M/s BMPL**. As per the case of prosecution, the said amount was utilised by A-1 Mukesh Jain and A-8 Smt. A-8 Benu Jain being the directors of the said Company. However, it is contended on behalf of A-8 Benu Jain that she was only a sleeping director and was not having any role to play in day-to-day affairs of M/s BMPL. Per contra, Ld. PP for CBI has contended that A-8 Benu Jain had signed on cheque of Rs.9 lakhs (Ex.PW20/A1) and the said amount was withdrawn by her and, therefore, she was actively involved in the affairs of the company. The aforesaid rival contentions are being considered keeping in view the evidence having come on record. A-4 Mukesh Jain, who examined himself as DW-7 deposed that he had formed the said Company in 2001 and in 2005, he started manufacturing unit of garments and started manufacturing and supply of ready-made garments. He did not specify any role to A-8 Benu Jain in the day-to-day affairs of the company. Even in his version about the transaction of the aforesaid two cheques in question, he did not assign any role to A-8 Benu Jain. Furthermore, prosecution has also neither attributed any role to A-8 Benu Jain in day-to-day affairs of the Company nor in alleged transaction between A-4 Mukesh Jain and A-7 S.K. Bhargava. In order to arrive at the guilt of A-8 Benu Jain, it was incumbent upon prosecution to prove that A-8 Benu Jain was also in-charge and responsible along with A-4 Mukesh Jain for the conduct of the business of M/s BMPL at the relevant time when the offence was committed and not on the basis of merely holding a designation or office of director in M/s BMPL. No such evidence has come on record except signing of cheque of Rs.9 lakhs by A-8 Benu Jain along with her husband Mukesh Jain. It has come on record that M/s BMPL was a functioning Company as deposed by IO/ PW-60 who testified that on verification it was revealed that turnover of M/s BMPL for the year 2007-08 was around Rs.5 crores and balance-sheet of the aforesaid Financial Year was also given to him by A-1 Mukesh Jain. Thus, it can be inferred that A-8 Benu Jain might have signed on the said cheque of only Rs.9 lakhs in her capacity of one of the authorised signatories as she might have signed in the past. It is settled law that an individual either as a Director or Managing Director or Chairman of the Company can be made an accused only if, there is sufficient

material to prove his/ her active role coupled with the criminal intent to commit offence. **As reflected from the evidence, A-8 Benu Jain was only a non-executive director and was neither involved in day-to-day affairs of running of M/s BMPL nor she was in-charge and responsible for the conduct of its business and, therefore, she cannot be held liable for the transaction in respect of two cheques in question.** It is proved that A-1 Mukesh Jain was handling day-today affairs of Company and it he who is the ultimate beneficiary of aforesaid fraudulent transaction of cheques in question. The plea/ defence taken by him with regard to the Contract/ Agreement with M/s SIFCL is an after-thought as he failed to prove the same. **Prosecution has miserably failed to prove that any amount out the proceeds of two cheques in question was handed over by A-1 Mukesh Jain to A-7 S.K. Bhargava or that A-7 S.K. Bhargava was involved in any conspiracy with any of the accused persons.....**".

(Emphasis supplied)

103. Now it is to be examined as to whether acquittal of Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) has any impact on the outcome of the present case of money-laundering against them.

104. The Hon'ble Apex Court in **Vijay Madanlal Choudhary and others (supra)** while dealing with the powers of the authority to proceed against a person under PMLA, has categorically held that when a person is finally discharged/acquitted of the 'SO' or the criminal case against him is quashed by a Court of competent jurisdiction, there can be no offence of money-laundering against that person. This ratio has also been subsequently followed by the Hon'ble Supreme Court in **Parvathi Kollur and another v. State by Directorate of Enforcement, 2022 Live Law (SC) 688**. For better appreciation, paragraph 187(v)(d) of the Judgment of

the Hon'ble Apex Court in **Vijay Madanlal Choudhary and others(supra),** is extracted as follows:

> "187. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:
>
> (v) (d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money- laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending inquiry/trial including by way of criminal complaint before the competent forum. **If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."**
>
> (emphasis supplied)

105. In view of the above enunciation of law by the Hon'ble Apex Court to the effect that once the basis of a proceedings under PMLA is gone, all consequential acts, actions, orders would fall to the ground automatically, there can be no offence of money-laundering against Shiv Kumar Bhargava (A-2) and Benu Jain (A-3), if they have been acquitted in predicate offence. The Hon'ble Supreme Court of India has succinctly summed up that offence under Section 3 is dependent on the wrongful gain and illegal gain of property as a result of criminal activity relating to 'SO'. There must be a 'SO' and there should be a live proceedings viz., stage of preliminary inquiry, stage of registration of FIR, stage of first charge sheet, stage of trial and stage of conviction after

Judgement. All are part of existence of 'SO' but if the same has been quashed or culminated in acquittal of accused, there is no live proceedings.

106. In the present case, Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) already stood acquitted, therefore, there is no live crime against them at present. As per the findings recorded in the Judgement dated 25.11.2023 passed by this Court in the case of Predicate Offence, neither Benu Jain (A-3) nor Shiv Kumar Bhargava (A-2) was found involved in the diversion and utilization of any portion of the amount out of Rs. 1,06,71,000/- being PoC fraudulently deposited in the Bank Account of M/s. BMPL and therefore no offence under Section 3 of PMLA is made out against them.

107. The contention of Ld. Special PP for DoE that even if Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) were acquitted of the offence in the Predicate Offence, the Court can still look into whether they were in any way directly or indirectly involved in any process or activity connected with the crime runs counter to the ratio of the judgment passed by Hon'ble Supreme Court in **Vijay Madanlal Choudhary & Ors. (supra).** Since Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) stood acquitted in the Scheduled Offence case, they are entitled to be acquitted in the present case as per the ratio of the Judgments cited above. However, in order to obviate the possibility of remanding this matter back to the Special Court by the Hon'ble Superior Court in case, the said acquittal is set aside by the Hon'ble Superior Court, this Court

shall also examine the merits of the case of Prosecution against the accused to see whether any evidence has come on record showing direct or indirect involvement of the aforesaid accused in any process or activity connected with money-laundering.

108. The case of prosecution against Benu Jain (A-3) is that since she had signed on cheque of Rs. 9 lakhs vide which the aforesaid amount was withdrawn by her out of the PoC and, therefore, she is liable for convicted for the offence of money laundering. The gravamen of the charge U/s 3 of PMLA is that accused can only be fastened the liability to commit the offence of money laundering only if he / she has the requisite mens rea to commit the offence. The expression "proceeds of crime" constitutes the core of the offence of money-laundering, "the concealment, possession, acquisition or use" of "proceeds of crime" in a manner where the same are projected or are claimed to be "untainted property" being what forms the essential part of actus reus, the intent to so conceal, possess, acquire or use, or guilty knowledge, being the requisite mens rea. The Hon'ble Gujrat High Court in '**Jafar Mohammed Hasanfatta and Ors. vs. Deputy Director and Ors.: MANU/GJ/0219/2017** while dealing with the contention of the prosecution based on Section 24 of PMLA that 'knowledge' of the "SO" or PoC is not essential u/s 3 of PMLA and mere assistance in handling PoC even without knowledge would attract the offence of money laundering and burden would shift on the accused to prove

that he is not involved in money laundering, has repelled the said contention. It was observed as under :

> **“37. A holistic reading of this definition of 'proceeds of crime' and the penal provision under Section 3 of PMLA, which uses conjunctive 'and', makes it luminous that any persons concerned in any process or activity connected with such "proceeds of crime" relating to a "scheduled offence" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two prerequisites are satisfied i.e.-**
> **(i) Firstly, if he-**
> **(a) directly or indirectly 'attempts' to indulge,**
> **(b) 'knowingly' either assists or is a party, or**
> **(c) is 'actually involved' in such activity; and**
> **(ii) Secondly, if he also projects or claims it as untainted property;"**
> 38. The first of the two pre-requisite to attract Section 3 of PMLA shall thus satisfy any of the following necessary ingredients-
>
> **"A. RE: DIRECT OR INDIRECT ATTEMPT:**
>
> In **State of Maharashtra v. Mohd. Yakub, MANU/SC/0239/1980 : (1980) 3 SCC 57**, the Hon'ble Supreme Court observed that-
> "13. Well then, what is an "attempt"? ... In sum, a person commits the offence of "attempt to commit a particular offence" when (i) he intends to commit that particular offence and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence."
>
> **Thus, an "attempt to indulge" would necessarily require not only a positive "intention" to commit the offence, but also preparation for the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such 'intention' and 'attempt' on the part of any of the petitioners.**

B. RE: KNOWINGLY ASSISTS OR KNOWINGLY IS A PARTY:

In **Joti Parshad v. State of Haryana, MANU/SC/0161/1993**, the Hon'ble Supreme Court has held as follows-

"5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise, "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same."

The same test, therefore, applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to show that any of the petitioners, 'Knowingly', assisted or was a party to, any offence.

C. Actually involved:

Actually, involved would mean actually involved into any process or activity connected with the proceeds of crime and thus scheduled offence, including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to substantiate any such allegation qua the petitioners.

D. Neither any of the petitioners is arraigned as accused in the 'Scheduled Offences' punishable under Indian Penal Code for direct or indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of them."

39. The second of the two pre-requisite to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of crime as untainted

property. For making such claim or to project 'proceeds of crime' as untainted, the knowledge of tainted nature i.e. the property being 'proceeds of crime' derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence, would be utmost necessary, which however is lacking in the instant case.

40. Great emphasis was laid on behalf of the Respondent on Section 24 of PMLA which reads after amendment vide Act 2 of 2013 as under -

"24. Burden of Proof.--In any proceeding relating to proceeds of crime under this Act,-
(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
(b) in the case of any other person the Authority or court, may presume that such proceeds of crime are involved in money-laundering."

41. On the basis of the said Section 24 read with Section 3 of PMLA, it was contended on behalf of the Respondent that 'knowledge' of the Scheduled Offence or proceeds of crime is not essential under Section 3, and mere assistance in handling proceeds of crime even without knowledge would attract offence of money laundering, and burden would shift on the accused to prove that he is not involved in money laundering. It was submitted that the petitioners are all adults having knowledge of right and wrong. The Bank accounts in which they received payments and-made further payments were all in their names and they were the signatories having power to operate the accounts. None of them had the slightest hesitation in allowing their account to be used as a transit point for further transfer of the proceeds of crime. It shall thus be presumed that they have thus knowingly allowed the use of their Bank accounts and knowingly involved themselves in this activity having full knowledge of the purpose and intent of the transactions and helped in the process of layering. Thereby they are involved in the process of money laundering.

42. I find no merit in this stand of the Respondent. I am of the view that this amended Section 24 shows legislative

intent of attachment and confiscation of proceeds of crime by presuming involvement of proceeds of crime in money laundering irrespective of whether the person concerned is or not charged with the offence of money laundering. Thus, there shall be a legal presumption in any proceeding relating to proceeds of crime under PMLA that such proceeds of crime are involved in money-laundering. Burden would be on the person concerned to show to the contrary. **However, as rightly pointed out by the Learned Senior Counsel for the petitioners, there is no legal presumption in this Section 24 that** -

"(a)The concerned property is "proceeds of crime",
(b)The person accused has knowledge that the property is "proceeds of crime", and
(c)The person is involved in or is guilty of "money-laundering" merely for possessing or having any concern with the proceeds of crime."

In fact this Section 24 clearly indicates that even a person in possession or connected with any proceeds of crime may or may not be charged with the offence of money laundering. Whether a person shall be charged with money laundering or not shall thus depend only upon satisfying the requirements of Section 3 of PMLA as already explained above.

43. In the instant case, neither there is anything to raise a presumption of fact or law that any of the petitioners was aware that the monies received in their Bank accounts through Banking channels were 'proceeds of crime' derived from any 'scheduled offence', nor is there anything to further presume that the petitioners were intentionally projecting or claiming any proceeds of crime as untainted one. In absence of the same, merely because the petitioners are close relatives of Shri Afroz and had Banking transaction with him or at his instance would not attract offence of money laundering under Section 3 of PMLA even on prima facie basis.

(emphasis supplied)

109. In view of the aforesaid settled law, the presumption U/s 24 of PMLA would not trigger unless the prosecution first establishes that accused Benu Jain has the requisite *mens rea*

that property (Rs. 9,00,000/- in respect of accused Benu Jain) was PoC. There is no allegation in the entire ECIR, let alone evidence, that accused Benu Jain had any knowledge that Rs.9,00,000/- which were allegedly withdrawn by her by signing on the cheque is PoC. The prosecution has even failed to show prima-facie that accused Benu Jain had knowledge about the alleged acts and omissions of Mukesh Jain (A-1) defrauding PNB for the aforesaid amount. Consequently, Benu Jain (A-3) is entitled to be acquitted on merits too, as the prosecution has failed to establish that she was having requisite mens rea to commit an offence U/s 3 of PMLA while withdrawing the amount of Rs. 9,00,000/-.

110. The case of the prosecution against accused Shiv Kumar Bhargava is that Rs. 25,00,000/- each were withdrawn from the two Bank accounts of M/s. AIPL maintained with HDFC Bank and HSBC Bank on 30.03.2009 in cash by Sh. Pramod Kumar Pandey, Director of M/s. AIPL and handed over to Mukesh Jain (A-1) with whom accused Shiv Kumar Bhargava was available and accused Shiv Kumar Bhargava received the full amount of Rs. 50,00,000/-. In nutshell, as per the case of prosecution, accused Shiv Kumar Bhargava laundered PoC of Rs. 50,00,000/- out of PoC of Rs. 1,06,71,000/-. Prosecution failed to adduce any evidence, documentary or oral (except the statement of co-Mukesh Jain (A-1) recorded U/S 50 of the PMLA) establishing that Rs. 50,00,000/- had ever come into the possession of accused Shiv Kumar Bhargava (A-2). The statement of the accused

Shiv Kumar Bhargava recorded U/s 50 of the PMLA is of exculpatory nature showing his plea of alibi on 30.03.2009. Prosecution has placed heavy reliance upon the statement of co-Mukesh Jain (A-1) recorded U/s 50 of the PMLA, wherein he stated that he handed over Rs. 50,00,000/- to accused Shiv Kumar Bhargava. The contention of Ld. Special PP for DoE is that the statement of co-accused is admissible against accused Shiv Kumar Bhargava on the strength of the ratio of the judgment in **Naresh J. Sukhwani (supra)** wherein the Hon'ble Supreme Court of India held that statement of co-accused recorded U/s 108 of Customs Act against his accomplice is admissible in evidence being material piece of evidence. Perusal of the said Judgment reflects that in the aforesaid case, accused in his statement besides incriminating his co-accused also incriminated himself and in that eventuality, the Hon'ble Supreme Court of India made the statement of co accused admissible U/s 108 of the Customs Act. In the present case, Mukesh Jain (A-1) did not incriminate himself rather, laid blames at the door steps of accused Shiv Kumar Bhargava stating that he took away Rs. 50,00,000/- from him and thus, the ratio of the said Judgment is not applicable to the facts and circumstances of the present case. While deciding the reliability which can be placed on by the Court in the confessions by the co-accused, the Hon'ble Supreme Court has held in the case of **Hari Charan Kurmi v. State of Bihar, A.I.R. 1964 S.C. 1184** that the confession of a co-accused cannot be treated as substantive evidence, and

can be pressed upon only when the Court is inclined to accept other evidence, and feels the necessity of seeking an assurance in support of its conclusions deductible from other evidence. In **A. Tjudeen vs. Union of India, (2015) 4 SCC 435**, in a matter under Foreign Exchange Regulation Act, 1973 while dealing with the evidentiary value of the statement made by the accused in proceedings U/s 50 of the PMLA, it was held by the Hon'ble Supreme Court of India that :

> "28. Having given our thoughtful consideration to the aforesaid issue, we are of the view that the statements dated 25.10.1989 and 26.10.1989 can under no circumstances constitute the sole basis for recording the finding of guilt against the appellant. **If findings could be returned by exclusively relying on such oral statements, such statements could easily be thrust upon the persons who were being proceeded against on account of their actions in conflict with the provisions of the 1973 Act. Such statements ought not to be readily believable, unless there is independent corroboration of certain material aspects of the said statements, through independent sources.** The nature of the corroboration required, would depend on the facts of each case....."
>
> (emphasis supplied)

111. Recently, the Hon'ble Delhi High Court in **Sanjay Jain vs. Enforcement Directorate, 2024 LiveLaw (Del.) 285** decided on 07.03.2024 while discussing evidentiary value of confessional statement of co-accused U/s 50 of PMLA against other accused, has observed as under :

> "57. Another question that assumes importance in the backdrop of the factual matrix of this case is whether the confessional statement of co-accused recorded under Section 50 of the PMLA can be used against another accused.

58. **The proceedings under Section 50 of the PMLA may be judicial proceedings for the limited purpose mentioned therein but a confession made by an accused in his statement under Section 50 of the PMLA is not a judicial confession nor there is any provision in the PMLA like Section 15 of Terrorist and Disruptive Activities Act, 1987 or Section 18 of Maharashtra Control of Organised Crime, 1999 which specifically makes confession of a co-accused admissible against the other accused under certain eventualities. Therefore, Section 30 of the Evidence Act has to be invoked for consideration of a confession of an accused against a co-accused, abettor or conspirator charged and tried in the same case along with the accused.** xxxxxx Judicial confessions are those which are made before Magistrate or Court in course of judicial proceedings [**AIR 2022 SC 5273: (2022) 15 SCALE 425 : Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh**].

59. The expression ‘the Court may take into consideration such confession' in Section 30 of the Evidence Act, signifies that such confession by the maker as against the co-accused himself should be treated as a piece of corroborative evidence.

60. It is trite that the Court cannot start with the confession of the co-accused to arrive at a finding of guilt but rather after considering all other evidence placed on record and arriving at the guilt of the accused, can the court look at the statement of the co-accused to receive assurance to the conclusion of guilt.

61. In **Surinder Kumar Khanna vs. DRI [(2018) 8 SCC 271]** the Hon’ble Supreme Court tracing the law as regards the general application of a confession of a co-accused as against other accused under Section 30 of the Evidence Act, laid down that the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. This proposition of law has been further reiterated by the Hon’ble Supreme Court in **Deepak Bhai Patel vs. State: (2019) 16 SCC**.

> **62. Thus, the confessional statement of a co-accused under Section 50 of the PMLA is not a substantive piece of evidence and can be used only for the purpose of corroboration in support of other evidence to lend assurance to the Court in arriving at a conclusion of guilt".**
>
> (emphasis supplied)

112. In view of the aforesaid settled law, statement of Mukesh Jain (A-1) recorded under Section 50 of the PMLA alone cannot be sufficient to bring home the guilt of Shiv Kumar Bhargava (A-2) in the absence of any material in support of version of co-accused Mukesh Jain (A-1). Furthermore, a bare look at the Judgment dated 25.11.2023 passed in the predicate offence shows that Mukesh Jain (A-1) in that case gave oscillating statements blowing hot and cold in the same breath while stating at one place that Shiv Kumar Bhargava (A-2) was handed over Rs. 88,00,000/- and at other place Rs. 50,00,000/-, thereafter, Rs. 5,00,000/- and Rs. 18,00,000/- and thus, the testimony of Mukesh Jain (A-1) is not worthy of credence.

113. The prosecution has further contended that it has been established through Bank Statement of Shiv Kumar Bhargava (A-2) and his family members that there are entries of different amounts in the Bank Account of Shiv Kumar Bhargava (A-2) and his family members and he could not explain the said entries. It is submitted that the aforesaid amount in the Bank Statement of Shiv Kumar Bhargava (A-2) is, in fact, part of PoC received by Shiv Kumar Bhargava (A-2) from Mukesh Jain (A-1). Per contra, it has been contended

by learned Counsel for accused Shiv Kumar Bhargava (A-2) that the said entries in the Bank Account have not been proved by prosecution in accordance with U/s 65-B of Indian Evidence Act as certificates in regard to the said entries have not been tendered in evidence by competent person or the said certificates are ante-dated. It is further argued that prosecution has failed to prove that the aforesaid amount is part of PoC.

114. This Court has gone through the computer generated Statement of Accounts of Shiv Kumar Bhargava (A-2). Statement of Account tendered by PW 5 reflects that the entries pertain to the period from 01.04.2013 to 14.11.2018. The said period is not contemporaneous with period of alleged handing over of Rs. 50,00,000/- to Shiv Kumar Bhargava (A-2) by accused Mukesh Jain and therefore, it cannot be inferred that the amounts so reflected in the statement of Bank Accounts were, in fact, alleged amount received by Shiv Kumar Bhargava (A-2) from accused Mukesh Jain. Furthermore, Certificates **(Ex. PW5/B and Ex. PW5/C)** were prepared on 16.07.2022 with regard to the aforesaid computer generated Statements of Bank Accounts and brought by witness PW 5 on the date of his examination on 27.08.2022 while statements of account were sent through letter dated 14.11.2018 to DoE, that is, much prior to the date of preparation of Certificates. Furthermore, witness PW 5 joined IndusInd Bank only on 20.07.2022, subsequent to the

preparation of the Certificate U/s 65-B of Indian Evidence Act.

115. Likewise, PW 7 who has tendered statement of account Ex. PW7/A to Ex. PW7/D showing deposits of cash of Rs. 50,000/- and Rs. 1,50,000/- and other entries in Bank Account of accused Shiv Kumar Bhargava has also failed to prove the said entries in accordance with law as he did not depose who retrieved the said statement of account from the computer of the Bank and thus, aforesaid statement of accounts are admissible in evidence. Thus, in view of aforesaid infirmities with regard to the Certification of the Statements of Bank Accounts, these are inadmissible in evidence. Furthermore, the Prosecution has failed to establish any live link of the amounts shown in statement of account of accused Shiv Kumar Bhargava (A-2) and his families with PoC.

116. Contentions of learned Special PP for DoE that accused Shiv Kumar Bhargava has failed to give any explanation with regard to the deposits of aforesaid amounts in his Bank statement and therefore, same be treated as PoC is not tenable in law. It is settled law that to be PoC, the property must have been derived or obtained directly or indirectly as result of criminal activities relating to the 'SO' and mere possession of any unaccounted properties shall not raise presumption of said properties being PoC.

117. In view of the aforesaid facts & circumstances, the Prosecution has miserably failed to prove that accused Shiv Kumar Bhargava (A-2) ever came in possession of Rs.

50,00,000/- out of PoC or that he utilized and diverted the same. The prosecution has failed to prove that accused Shiv Kumar Bhargava has committed offence money-laundering and accordingly, he is entitled to be acquitted on merits too.

118. In the backdrop of the aforesaid settled law applying to the facts of the instant case, and Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) are hereby acquitted from **ECIR No. ECIR/55/DZ1/2010** from offence U/s 3 punishable U/s 4 of PMLA, 2002.

Findings in respect of Mukesh Jain (A-1)

119. Now coming to the case of prosecution against Mukesh Jain (A-1), it has been established by the prosecution that two forged cheques dated 18.03.2009 & 19.03.2009 for Rs. 51,65,000/- and Rs. 55,06,000/- respectively were credited in the Bank Account of M/s BMPL from the Bank Account of SIFCL. FIR in question in predicate offences was registered on 06.04.2009 and subsequently, on the basis of the aforesaid FIR and ECIR was recorded by ED on 14.12.2009.

120. PW-25 Jayender Singh in his testimony before this Court testified that during 2003 till 2013-14, he was one of the authorized persons to operate the Bank Account of SIFCL maintained with PNB, Lal Bagh Branch. He deposed that in March 2009, he came to know from the statement of Bank Account of SIFCL that Rs. 1,06,71,000/- were debited from the Bank Account of SIFCL to the Bank Account of M/s BMPL through two cheques which were purportedly shown

to have been signed by him and other authorized signatory Sh. Sudershan Banerjee. He deposed that the said signatures on cheques in question were forged. The aforesaid statement was corroborated by another witness i.e. PW-26 Sudershan Banerjee who also deposed on the similar lines. These two witnesses were not cross-examined by Mukesh Jain (A-1) and, thus, it is established signatures on these two cheques were forged and fabricated and thereafter an amount of Rs. 1,06,71,000/- was credited to the Bank Account of M/s BMPL.

121. It is not disputed by Mukesh Jain (A-1) that the said amount was not credited to his Bank Account, however, he raised the defence that the said amount was got transferred by Shiv Kumar Bhargava (A-2) who had represented himself as the agent of SIFCL which gave an order of preparation of garments by M/s BMPL. The said defence raised by accused Mukesh could not be established by him by adducing any evidence or suggesting to the aforesaid witnesses namely PW-25 Jayender Singh and PW-26 Sudershan Banerjee that M/s SI FCL was having any business transaction with M/s BMPL or that Shiv Kumar Bhargava (A-2) was their agent. The prosecution has, thus, succeeding in proving that Mukesh Jain (A-1) has fraudulently received an amount of Rs. 1,06,71,000/- through the aforesaid two forged cheques in Bank Account of his firm M/s BMPL by cheating PNB, Lal Bagh Branch and its customer M/s SIFCL. It has been further established by the Prosecution that accused Mukesh Jain (A-

1) laundered the said amount by siphoning off the same to different Bank Accounts. The said amount could not be traced by the authorities meaning thereby that Mukesh Jain (A-1) had been enjoying the said PoC through-out.

122. In view of the settled law cited above, commission of offence U/s 3 of PMLA by generating PoC as a result of criminal activity and thereafter continuing to deal with PoC by retaining its possession, is a continuing offence. Possession of any property linked to a 'SO' irrespective of when it was acquired, would itself constitute the offence of money-laundering. Mukesh Jain (A-1) who committed a scheduled crime; acquired proceeds therefrom; and thereafter, projected it as untainted money post inclusion of Sections 120B, 420 & 471 IPC in PMLA, would nonetheless be guilty of the offence of money-laundering. Accordingly, even though case registered under 'SO' against the Mukesh Jain (A-1) and PoC (Rs. 1,06,71,000/-) acquired is earlier to 01.06.2009, he can be prosecuted for commission of offence U/s 3 of PMLA as it is undisputed fact that he has been enjoying PoC acquired as a result of the alleged crime even after 01.06.2009.

123. Further case of the Prosecution against accused Mukesh Jain is that out of total POC of Rs. 1,06,71,000/-, Rs. 60,61,000/- were transferred to the Bank Account of M/s AIPL wherefrom Rs. 10,00,000/- were further transferred to the Bank Account of M/s SG and Rs. 50,00,000/- were withdrawn in cash and handed over to Shiv Kumar Bhargava

(A-2). Thus, total sum of Rs. 61,000/- out of transferred amount of Rs. 60,61,000/- remained with M/s AIPL. Mukesh Jain (A-1) had also withdrawn Rs. 38,00,000/- in cash and thus, Rs. 98,61,000/- out of POC were utilised by him. An amount of Rs. 7,88,000/- being projected by Mukesh Jain (A-1) untainted, was found lying in Bank Account of M/s BMPL and same was freezed by CBI. As noted above, the Prosecution as well as Mukesh Jain (A-1) failed to establish that amount of Rs. 50,00,000/- was ever handed over to Shiv Kumar Bhargava (A-2) and thus, entire amount of Rs. 1,06,71,000/- being POC was laundered by Mukesh Jain (A-1). He has failed to rebut the presumption U/s 24 of the PMLA that the said money was not POC or that it was not generated as a result of any criminal activity and thus he has committed offence under section 3 of PMLA.

Findings in respect of Nipun Bansal (A-4)

124. The case of prosecution/DoE against the accused Nipun Bansal (A-4) is that he got deposited a forged cheque dated 23.02.2009 for a sum of Rs. 40,00,000/- in the Bank Account of his firm M/s. BTC and thereafter, he utilized the aforesaid amount which was generated as a result of criminal activity. In the trial concluded under the predicate offence, this Court vide Judgment dated 25.11.2023 convicted accused Nipun Bansal (A-4) for commission of an offence U/s 420/471 r/w Section 120B IPC and for substantive offence thereof.

Relevant portion of the aforesaid Judgment is reproduced herein below :

> "Upon analysis of the aforesaid evidence with regard to the cheque dated 23.02.2009 for sum of Rs.40 lakhs, the Prosecution has succeeded in proving that the aforesaid cheque was forged and fabricated after having been taken from the Cheque Book found in possession of A-5 Ganesh Lal, however, the Prosecution has failed to prove as to who amongst the accused persons forged the cheque in question. The Prosecution has also established that the deposit slip (Ex.PW13/B) vide which cheque in question was presented with Bank, was filled up by A-6 Chandra Bhan Singh and thus it is proved that he was instrumental in presenting the said cheque at HDFC Bank. **The Prosecution has succeeded in proving that the said forged cheque was used and encashed into Bank Account of M/s BTC of Nipun Bansal (A-4)who failed to give any explanation as to under what circumstances, the said cheque was credited into his Bank Account from the Bank Account of M/s BCC. He did not take any steps to inform the Bank that the said amount was credited wrongly into his Bank Account and only got transferred Rs.25 lakhs on 06.03.2009, when he probably became aware that the investigation with regard to the aforesaid cheque had commenced. Subsequently, he deposited Rs.15 lakhs on the strength of the bail Order.**
>
> **In view of the aforesaid evidence, the Prosecution has succeeded in proving that there was criminal conspiracy amongst A-6 Chandra Bhan Singh, A-5 Ganesh Lal and A-2 Nipun Bansal (A-4)to induce the Bank and its customer to deliver the amount of Rs.40 lakhs by forging the cheque and presenting the same for encashment and in pursuance to the said conspiracy caused a wrongful loss to the PNB, Lal Bagh Branch Lucknow and its Customer M/s BCC to the tune of Rs 40 Lakhs**."
>
> (emphasis supplied)

125. The undisputed facts emerging out of the findings arrived at in the trial of the predicate offence and evidence adduced by the prosecution in the present case are that an amount of Rs. 40,00,000/- was got credited in the Bank

Account of M/s. BTC, a proprietorship firm of accused Nipun Bansal (A-4) from the Bank Account of M/s BCC, a proprietorship firm run by PW 23 Sh. Satender Nath Bajpayee. PW 23 testified that the cheque through which amount of Rs. 40,00,000/- was debited from the Bank Account of M/s. BCC was in his cheque book and the leaf of the cheque used for the aforesaid purpose, was cloned for debiting the said amount from his Bank Account. It is also undisputed that on 26.02.2009, an amount of Rs. 25,00,000/- were got transferred by accused Nipun Bansal (A-4) on 06.03.2009 to the Bank account of M/s. BCC and subsequently, Rs. 15,00,000/- on 14.09.2010 in pursuance to the order granting bail to him in the Schedule Offence case after registration of FIR by CBI on 06.04.2009. Thus, it emerges out that accused Nipun Bansal (A-4) remained in possession of Rs. 40,00,000/- w.e.f. 26.02.2009 to 05.03.2009 and thereafter remaining Rs. 15,00,000/- till 14.09.2010.

126. The contention of Ld. Counsel for Nipun Bansal (A-4) that since amended Schedule of the PMLA incorporating the offence U/s 120B, 420 & 471 IPC came into force on 01.06.2009 while the alleged PoC of Rs. 40,00,000/- was credited in the Bank Account of M/s BTC on 26.02.2009 and, therefore, there cannot be any retrospective operation of the law, has already been dealt with above and rejected being contrary to settled law. On merits, it is contented by Ld. Counsel for accused Nipun Bansal (A-4) that since the entire amount of Rs. 40,00,000/- was refunded by accused Nipun

Bansal, no offence of money laundering survived and accordingly, he is entitled to be acquitted. It is also contended by Ld. Counsel for accused Nipun Bansal (A-4) that the aforesaid amount of Rs. 40,00,000/- was got transferred by accused Mohd. Nauman (since deceased) to the Bank Account of M/s. BTC on the strength of an order to purchase stock of rice in which BTC was dealing in and when subsequently, the order was got cancelled, the amount was returned. Accused Nipun Bansal (A-4) failed to adduce any evidence to substantiate his defence, rather it is proved by the prosecution that he utilized the aforesaid amount of Rs. 40,00,000/- by crediting Rs. 5,00,000/- to the Bank Account of M/s. Mohandass Shanker Lal on 27.02.2009; Rs.29,50,000/- to the Bank Account of M/s. Shree Radha Enterprises and Rs. 4,27,592/- were paid to ICICI Bank on 27.02.2009. Thereafter, an amount of Rs.27,00,000/-, out of Rs. 29,50,000/- was credited to the Bank Account of M/s. Rahul Kumar Rohit Kumar on the same day i.e. 03.03.2009 from the Bank Account of M/s. Shree Radha Enterprises and subsequently, Rs. 26,80,000/- came to the Bank Account of M/s. BTC on 05.03.2009. Thus, it is reflected that accused Nipun Bansal (A-4) was very much aware of the fact that the said amount of Rs. 40,00,000/- was ill-gotten money fraudulently obtained on the basis of forged cheque and when the investigations were commenced to unearth the fraud, he transferred Rs. 25,00,000/- on 06.03.2009 to the Bank Account of M/s BCC.

127. The Prosecution/DoE has thus succeeded in proving that accused Nipun Bansal (A-4) laundered PoC of Rs. 40,00,000/- and retained its possession from 26.02.2009 to 05.03.2009 and thereafter, retained the possession of remaining amount of Rs. 15,00,000/- till 14.09.2010. It is contended of learned Counsel for the accused Nipun Bansal (A-4) that Rs. 25,00,000/- out of alleged PoC of Rs. 40,00,000/- was already refunded to the Bank Account of M/s. BCC on 06.03.2009 i.e. prior to sections 120B, 420, 471 IPC being made part of 'SO' under PMLA. In respect of the remaining amount of Rs. 15,00,000/-, it is submitted that the accused Nipun Bansal (A-4) was incapacitated to use the said amount due to his incarceration in the present case and thus he did not commit offence of money laundering under Section 3 of PMLA. Per contra, learned Special PP for DoE submitted that the accused Nipun Bansal (A-4) remained in possession of Rs. 15,00,000/- till 14.09.2010 and as per settled law, mere retention of possession of PoC shall amount to the offence of money laundering under Section 3 of PMLA. This Court has considered the aforesaid rival submissions of Ld. Counsel for the accused Nipun Bansal (A-4) and learned Special PP for DoE keeping in view of the law cited above. Since accused Nipun Bansal (A-4) had already returned the amount of Rs. 25,00,000/- out of Rs. 40,00,000/- which was PoC prior to the enactment of Sections 120B, 420, 471 IPC being made part of the 'SO' of PMLA, the accused Nipun Bansal (A-4) cannot be held guilty of offence under Section 3 of PMLA in respect of

amount of Rs. 25,00,000/-. However, undisputedly, remaining amount of Rs.15,00,000/- being PoC was retained by him since 26.02.2009 to 14.09.2010 i.e. after the aforementioned 'SO' were included under PMLA w.e.f. 01.06.2009. The contention of learned Counsel for the accused Nipun Bansal (A-4) with regard to his incapacity to deal with the aforesaid amount of Rs. 15,00,000/- due to his languishing in judicial custody is not tenable in law as he had already laundered the said amount by transferring it to different Bank Accounts as noted above and returned the said amount only on 15.09.2010 as a pre-condition to his release on bail. As per law cited above, mere retention of the possession of part of PoC by the accused Nipun Bansal (A-4) shall be sufficient to conclude that he committed offence under Section 3 of PMLA and his subsequent return of the amount shall not exonerate him from the offence of money laundering. Accordingly, he is liable to be convicted under Section 3 of PMLA.

Provisional Attachment Order, Confirmation Order and Confiscation of Property

128. Chapter III of PMLA comprises of Sections 5 to 11 which deal with attachment, adjudication and confiscation of PoC. Section 5 of PMLA, provides that if a report has been forwarded to a Magistrate under Section 173 Cr.P.C. 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 and the competent attaching authority has reason to believe, which must be recorded in writing, on the basis of material in his possession that any person is in possession of any PoC and such PoC are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such PoC, may provisionally attached such property for the limited period not exceeding 180 days. Section 5 further provides that the officer who provisionally attaches any property under this Section shall file a complaint stating the facts of such attachment before the Adjudicating Authority within a period of thirty days from such attachment,.

129. As per Section 8 of the PMLA, the Adjudicating Authority shall serve notice upon the person whose property has been attached calling upon him to indicate source of his income, earning or assets out of which or by means of which he has acquired attached property. Adjudicating Authority after considering representation shall record a finding whether

properties are involved in money laundering or not. The attachment shall continue during investigation for a period not exceeding 90 days (amended to 365 days by Act 7 of 2019) or pendency of criminal proceedings relating to offence under PMLA before Competent Court. The provisional attachment shall become final on conclusion of the trial. If on the conclusion of trial, the Special Court finds that offence of money laundering has not taken place or property is not involved in money laundering, it shall release the property.

130. Reverting to the facts in the present case against accused Mukesh Jain, it is established by the prosecution that the offence of money-laundering has taken place as an amount of Rs. 1,06,71,000/- was credited to the Bank Account of M/s BMPL and subsequently, the said amount was laundered by accused Mukesh Jain by way of withdrawal in cash and transferring the same to the Bank Accounts of M/s AIPL and M/s SG. It is also established by the prosecution that at the stage of investigation, PAO No. 9 of 2018 dated 07.05.2018 was passed for attachment of 35% share in the property no. 5/13, Ground Floor, Sarv Priya Vihar, New Delhi

for an amount of Rs. 46,10,000/- and for an amount of Rs.10,00,000/- available in the Bank Account of M/s S.G. While passing the aforesaid order, Deputy Director, Sh. J.P. Mishra observed as under :

"19. **At the current stage of the investigation, while the liability of Sh. Mukesh Jain, Director of M/s Bahubali Marketing Pvt. Ltd. having possession and acquisition of the property involved in money laundering to the extent of Rs. 46,10,000/- is reasonably believed, the actual traceability of such properties involved in money laundering is not possible. Hence, it is appropriate and logical to invoke the provision with reference to "value thereof" as defined under Section 2 (1) (u) r/w Section 2 (v) of the PMLA** that 'Proceeds of Crime' means any property derived or obtained, directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or the value of any such property. Further there are reasons to believe that there is likelihood of subject property being transferred/dealt with in any manner which may frustrate the proceedings as the immovable and movable property could be disposed off by the party without permission/knowledge of this office.

20. Now, therefore, on the basis of material and evidences brought before me, having the reasons to believe that Sh. Mukesh jain in order to frustrate the proceedings under PMLA, gifted his share in the property viz. 5/13, Ground Floor, Sarvapriay Vihar, New Delhi to his son Sh. Aakash Jain during ongoing investigation with a view to escape from clutches of law and that the properties mentioned below are likely to be further transferred or dealt with any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, I hereby order provisional attachment of the properties (immovable and movable) involved in money laundering to the extent of Rs. 56,10,000/- being Rs. 46,10,000/- the equivalent value of proceeds of crime, as defined under Section 2 (1)(u) of PMLA,2002 in the hands of Sh. Mukesh Jain and Rs. 10,00,000/- as 'Proceeds of Crime' available in the account of M/s Saint Grandeur for a period of 180 days and further order that the same shall not

be transferred, disposed, parted with or otherwise dealt with in any manner, whatsoever, until or unless specifically permitted to do so by the undersigned.

(emphasis supplied)

131. Thereafter on the basis of Original Complaint No. 980/2018 filed on 31.05.2018 under Section 5 of PMLA by Sh. J.P. Mishra, Deputy Director, before Adjudicating Authority, Sh. Tushar V. Shah, Member Law passed, CO dated 18.10.2018 was passed confirming the aforesaid attachment of the properties. While confirming the attachment, the Adjudicating Authority observed that 'term value thereof" under Section 2 (1)(u) of PMLA would include equivalent value of the assets of accused and in case PoC is not traceable or is dissipated, any other property belonging to the accused could be confiscated. It was further observed by Adjudicating Authority that considerable evidence regarding generation of PoC by commission of the SO and thereafter its utilization by the accused Mukesh Jain, his son Akash Jain and Adhiraj Kumar, Proprietor of M/s SG are available and, therefore, it was concluded that the immovable property standing in the name of Akash Jain and movable property i.e. Rs. 10,00,000/- available in the Bank Account of M/s SG are PoC and thereby confirmed the attachment of the aforesaid properties.

132. As per Section 8 of PMLA noted above, finality of the aforesaid PAO and CO is subject to judicial scrutiny by this Court being Special Court on conclusion of the trial and this court has to examine as to whether the PAO and CO have

been passed by the competent authorities adhering to the stipulated procedural and substantive safeguards as provided in section 5 and 8 of PMLA.

133. So far as the procedural safeguards are concerned, it is born out from the record that after conclusion of the investigation pertaining to 'SO', charge sheet was filed on 01.07.2009 and the cognizance of the offences on the basis of the aforesaid charge sheet was taken on 04.07.2009 and thus the condition of submission of report under section 173 Cr.P.C. provided in the first proviso of Section 5 of the PMLA was satisfied at the time of passing of PAO on 07.05.2018. It is also established that complaint as per sub Section (5) Section 5 of the PMLA was filed before the Adjudicating Authority on 31.05.2018 i.e. within the stipulated period of 30 days from the date of passing PAO. Furthermore, CO was passed by the Adjudicating Authority on 08.10.2018 which is within time as stipulated under sub Section (3) of the Section 5 and Section 8(3)(a) of PMLA. hereafter, complaint/chargesheet was filed before this Court on 31.12.2018 within 90 days of passing CO as applicable at the relevant time under Section 8(3)(a) of PMLA. Thus, aforesaid PAO and CO have been passed adhering the procedural safeguards as provided U/s 5 and 8 of PMLA.

134. Now, coming to the substantive aspects of the aforesaid orders, it is clear from the scheme of PMLA that any property can be provisionally attached under Section 5 subject to the necessary checks and balances being complied with; namely,

that attachment is preceded by the concerned authority having reason to believe that such properties are PoC as defined under Section 2(1) (u) of PMLA. Further, such reasons to believe must be formed on the basis of material in possession of the officer concerned and must be recorded in writing. A Division Bench of the Hon'ble Delhi High Court in **J. Sekhar v. Union of India MANU/DE/0075/2018** while examining challenge to vires of Section 5(1) of PMLA held that reason to believe cannot be a rubber stamping of the opinion already formed by someone else. It is observed that the officer who is supposed to write down his reason to believe has to independently apply his mind sans mechanical reproduction of the words in the statute so that when an authority judicially reviewing such a decision peruses such reason to believe, the process of thinking of that officer must be discernible and it must be apparent that the officer penning the reasons had applied his mind to the materials available on record and has on that basis arrived at his reason to believe. It was further held that the reasons have to be made explicit as it is only the reasons that can enable the reviewing authority to discern how the officer formed his reason to believe.

135. Having examined the contours of the expression reason to believe, now it is to be examined as to whether the Properties attached by way of PAO and confirmed by CO fall within the definition PoC as defined under Section 2(1)(u) of PMLA. The jurisdictional fact whereby the provisions regarding attachment can be invoked is that the properties

sought to be attached and confiscated must be PoC. The definition of PoC as provided under section 2(1)(u) of PMLA as reproduced above may be deconstructed into three limbs :

> (i) property derived or obtained (directly or indirectly) as a result of criminal activity relating to scheduled offence; or
>
> (ii) the value of any such property as above; or
>
> (iii) if the property of the nature first above mentioned has been "taken or held" abroad, any other property "equivalent in value" whether held in India or abroad.

136. The first limb deals with property directly or indirectly obtained from criminal activity making the said property as "tainted", having been acquired through commission of a Schedule Offence. The second limb covers 'value of property' derived/obtained from criminal activity. The third limb is applicable where property derived/obtained from criminal activity is held or taken outside India and in that eventuality, property of equivalent value held in India or abroad would be PoC.

137. So far as first limb is concerned, it needs no elaboration as it is a simple case when a person commits an offence which is enlisted in the Schedule of the PMLA called as the SO or Predicate Offence and generates or earns some property, the property so generated or earned, becomes PoC. In the present case as noted above, an amount of Rs. 1,06,71,000/- which was credited fraudulently to the Bank Account of M/s BMPL operated by accused Mukesh Jain is the entire PoC. The said amount is the result of the criminal activity under Section 420 and 471 r/w 120 B IPC which are

predicate/scheduled offence under the PMLA. Out of the aforesaid POC, only Rs. 10,00,000/- lying in the Bank Account of M/s S.G. operated by Adhiraj Kumar is traceable and thus, the said amount of Rs. 10,00,000/- is PoC falling under first limb of the definition under Section 2 (1)(u) of PMLA. However, the remaining PoC could not be traced by the investigating agency and therefore, now the question arises whether the untainted property of the accused falls within the second and third limb of PoC. The Hon'ble Single Judge of Delhi High Court in the **Deputy Director, Directorate of Enforcement Delhi and Ors. vs. Axis Bank and Ors., MANU/DE/1120/2019** after splitting the definition of PoC under section 2(1) (u) into three parts as reproduced above, held that the second and third limbs have to be taken together and even the property, which is not obtained on account of the crime, will also be liable for attachment and confiscation to the extent of the value of the property derived from the crime. Explaining the extent of the aforesaid last two limbs defining PoC, it was held thus:-

> **"**109. The inclusive definition of "proceeds of crime" respecting property of the second above-mentioned nature - i.e. "the value of any such property" - gives rise (as it has done so in these five appeals) to potential multi-layered conflicts between the person suspected of money-laundering (the accused), a third party (with whom such accused may have entered into some transaction vis-a-vis the property in question) and the enforcement authority (the State). **Since the second of the above species of "proceeds of crime" uses the expression "such property", the qualifying word being "such", it is vivid that the "property" referred to here is equivalent to the one indicated by the first kind. The only difference is that it is not the same property as of the first kind, it having been picked up from among other properties of the accused, the intent of the legislature being**

that it must be of the same "value" as the former. The third kind does use the qualifying words "equivalent in value". Though these words are not used in the second category, it is clear that the said kind also has to be understood in the same sense.

110. Thus, it must be observed that, in the opinion of this Court, if the enforcement authority under PMLA has not been able to trace the "tainted property" which was acquired or obtained by criminal activity relating to the scheduled offence for money-laundering, it can legitimately proceed to attach some other property of the accused, by tapping the second (or third) above-mentioned kind provided that it is of value near or equivalent to the proceeds of crime."

(emphasis supplied)

138. Thus, the Hon'ble Delhi High Court interpreted the term '**such property'** in the second limb of PoC to include even untainted property or clean property which has been acquired with the legitimate source of money and held that even that property is liable to be attached as '**value equivalent'** being as 'deemed' POC or alternate attachable property as per the third limb of PoC as defined under section 2(1) (u) of PMLA.

139. However, the Division Bench of the Hon'ble Punjab & Haryana High Court in **Seema Garg v. Deputy Director, Directorate of Enforcement, MANU/PH/0204/2020** held on the ambit of "value of such property" appearing in the second limb, that this term is not the same as the term "property equivalent in value held within the Country or abroad", which appears in the third limb, and the same meaning cannot be given to both terms. It was held as under :

“32. ..... The question arises that if phrases 'value of such property' and 'property equivalent in value held within the country or abroad' are of same connotation and carry same meaning, there was no need to insert third limb in the definition of 'proceeds of crime'. The amendment made by legislature cannot be meaningless or without reasons. Use of different words and insertion of third limb in the definition cannot be ignored or interpreted casually. Every word chosen by legislature deserves to be given full meaning and effect. **Accordingly, words 'value of such property' and 'property equivalent in value held within the country or abroad' cannot be given same meaning and effect. Had there been intention of legislature to include any property in the hands of any person within the ambit of proceeds of crime, there was no need to make three limbs of definition of proceeds of crime. It was very easy and convenient to declare that any property in the hands of a person who has directly or indirectly at any point of time had obtained or derived property from scheduled offence. There was even no need to declare property derived or obtained from scheduled offence as proceeds of crime. xxxxxx** As per Section 8(1) of the PMLA, the Adjudicating Authority has to serve notice calling upon the person to indicate the source of his income, earning or assets out of which or by means of which he has acquired the property attached under Section 5 of the PMLA. **Seeking explanation about source of property and furnishing explanation is meaningless if property inspite of genuine and explained source may be attached. As per Section 24 of the PMLA, burden to prove that property is not involved in money laundering is upon the person whose property is attached. There is no sense on the part of any person to discharge burden qua source of property if any property may be attached, irrespective of its source.**

34. .....A person who is not connected with commission of scheduled offence as well property derived from said offence but had dealt with any other property of a person, who had committed scheduled offence, would fall within the ambit of Section 3 of the PMLA, which cannot be countenanced in law. There would be total chaos and uncertainty. The authorities would get unguided and unbridled powers and may implicate any person even though he has no direct or indirect connection with scheduled offence and property derived from thereon but has dealt with any other property (not involved in scheduled offence) of the person who has derived or obtained property from scheduled offence. It would amount to violation of Article 20 and 21 of Constitution of India.

35. In our considered opinion, to understand true meaning of second limb of definition of 'proceeds of crime', it must be read in conjunction with Section 3 and 8 of the PMLA. If all these sections are read together, phrase 'value of such property' does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity. 'Value of such property' means property which has been converted into another property or has been obtained on the basis of property derived from commission of scheduled offence e.g. cash is received as bribe and invested in purchase of some house. House is value of property derived from scheduled offence. Cash in the hands of an accused of offence under Prevention of Corruption Act, 1988 is property directly derived from scheduled offence, however if some movable or immovable property is purchased against said cash, the movable or immovable property would be 'value of property' derived from commission of scheduled offence. If a person gets some land or building by committing cheating (Section 420 of IPC) which is a scheduled offence and said building or land is sold prior to registration of FIR or ECIR, the property derived from scheduled offence would not be available, however money generated from sale or transfer of said property in the form of cash or any other form of property may be available. The cash or any other form of property movable or immovable, tangible or intangible would be 'value of property' derived from commission of scheduled offence."

(emphasis supplied)

140. Contrary to the aforesaid interpretation of second and third limb of definition of PoC, the Hon'ble Delhi High Court in **Prakash Industries Ltd. and Ors. (supra)** after considering the conflicting views of the Hon'ble Delhi High Court and Hon'ble Punjab and Haryana High Court in **Axis Bank (supra)** and **Seema Garg (supra)** has held as under:

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66. The Court had while recording the submissions addressed by the respective counsels for parties noted the reliance placed by Mr. Chawla on the decision rendered by a Division Bench of the Punjab and Haryana High Court in Seema Garg. **The decision in Seema Garg ex facie holds contrary to what was laid down by this Court in Axis Bank. Post the decision rendered in Seema Garg, various other High Courts have also followed the dictum laid down therein. Notwithstanding the above and the Court is conscious that the decision in Axis Bank would bind,** it would be apposite to briefly dilate on this issue in order to appreciate the submission addressed by Mr. Chawla on this score and turning on the decisions in Axis Bank and Seema Garg.

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

77. Having rendered careful thought and consideration on the aforesaid observations, this Court finds itself unable to sustain the line of reasoning as adopted for the following reasons. It becomes pertinent to note [and as would be evident from the chart extracted hereinabove and which exhibits how Section 2(1)(u) came to be amended from time to time] that the expression "or the value of any such property " existed right from the inception of the Act itself. Section 2(1)(u) consequently as it stood originally included both property derived or obtained directly or indirectly by a person indulging in criminal activity as well as the value of any such property. The phrase "property equivalent in value" came to be introduced by virtue of the 2015 Amendment to the Act and while dealing with a situation where property is taken or held outside the country. To deal with such a situation, the Legislature by virtue of the 2015 Amendment also empowered the Directorate in such a contingency to initiate action against property equivalent in value held

within the country itself. The words "or abroad" came to be included in the third limb of Section 2(1)(u) by virtue of the 2018 Amendment to the Act. The Court also bears in mind the Explanation which came to be added to Section 2(1)(u) which further sheds light on the expansive sweep of Section 2(1)(u) and prescribes that proceeds of crime would also extend to "any property" which may be directly or indirectly derived or obtained as a result of any criminal activity.

78. As would be evident from the transformative journey of Section 2(1)(u) between 2005 to 2019 it is manifest that the expressions "value of any such property" and "property equivalent in value" were both used to deal with distinct contingencies. The phrase "equivalent in value" was placed in the provision to be read in conjunction with property taken or held outside the country. The phrase "equivalent in value" cannot be understood or interpreted to control the first or the second limb of Section 2(1)(u). The expression "value of any such property" always stood hinged to the first limb of the definition of proceeds of crime. It would therefore be incorrect to assume that the expression "value of any such property" was either surplusage or of no import at all.

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

80.In the considered opinion of this Court to tie the Directorate's power to move forward in this direction only in cases where property is taken or held outside the

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

> **81. The Court also takes note of the position that although SLP (Crl.) No. 28906/2019 is pending before the Supreme Court against the decision rendered in Axis Bank, the judgment of this Court has not been stayed or placed in abeyance. The interim order of 30 August 2019 passed in the aforesaid Special Leave Petition only requires parties to maintain status quo. Insofar as the judgment of the Punjab and Haryana High Court in Seema Garg is concerned, although SLP (C) No. 14713-14715/2020 preferred against the same came to be dismissed, while doing so the Supreme Court recorded that the petition was being rejected in the peculiar facts and circumstances of the case. The dismissal of the aforesaid Special Leave Petition cannot in any case be interpreted or understood as being an affirmation of the view as expressed by the Punjab and Haryana High Court.**

141. In para no.108 of the aforecited case, it was concluded as under:-

> "V. These tests as spelt out in Axis Bank adequately safeguard third party interests. **Seema Garg while proceeding to hold to the contrary appears to have brushed aside and downplay the imperative of a fair balance being struck and thus ignoring the need and criticality of empowering the Directorate to proceed against other properties in a situation where tainted property is untraceable. For the reasons recorded in the body of this judgment, the Court finds itself unable to agree with the reasoning assigned in Seema Garg. The principles articulated in Axis Bank are reiterated.** "
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> (emphasis supplied)

142. Thus, the phrase '***value of any such property'*** and '***value equivalent'***, would mean and include any property of the accused or any person not only in those case, where the PoC are taken or held abroad but also in cases where the PoC are within the country itself or when they are untraceable but not taken abroad, then in all those cases the DoE can invoke

the phrase ‘value equivalent’ and attach any other property. This has been further fortified by the Hon’ble Supreme Court in **Vijay Madan Lal and others (supra)** where contention of the Ld. Counsel for the accused that alternate property of the accused cannot be attached in case PoC have not been stashed away in foreign country, was repelled observing as under :

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

143. In view of the aforesaid exposition of law with regard to the contours of PoC as defined U/s 2 (1)(u) of PMLA, even untainted property of accused and any other person shall fall within the definition of "PoC" if the tainted properties of those persons are not traceable and thus, the same can be attached in exercise of powers under Section 5(1) of the Act. In the present case, it is established by the Prosecution that PoC in the sum of Rs. 1,06,71,000/- were generated by Mukesh Jain (A-1) and, thereafter, he laundered the same by way of transferring the same to different Bank Accounts as

noted above. Admittedly, from the inception of the proceedings, the authorities could not find all the tainted properties i.e. PoC and the immovable property attached in the present case was not established to have been derived, acquired or obtained from illegitimate source of income. In the present case as noted above, Mukesh Jain (A-1) owned 35% share of the property in question till the time of execution of registered gift deed by him in favour of his son. However, the said gift by him in favour of his son was executed and got registered only after receipt of the summons of DoE with the sinister design to defeat and circumvent the provision of law and the said transfer cannot be countenanced in law.

144. In light of the settled law and applying to the facts of the present case, the authorities while exercising their powers under Sections 5 and 8 of the Act, 2002 applied their minds properly and the PAO and CO have been passed within the mandates of Section 5 and 8 of PMLA as there was ample material before the Authorities to come to a conclusion that the Property No. 5/13, Ground Floor Sarvapriya Vihar, New Delhi-110016 is PoC. In view of the aforesaid facts, circumstances and reasons mentioned in PAO and CO, this Court is of considered view that necessary conditions for passing PAO under Section 5 (1) of the Act was satisfied and thus Attachment order passed by PAO and CO thereof for attachment of the property to the extent of Rs. 46,10,000/- and Rs. 10,00,000/- is confirmed. E*x-consequenti*, out of 35%

share in the Property of accused Mukesh Jain, his share to the extent of value of Rs. 46,10,000/- is confiscated to Central Government as per Section 8 (5) 0f PMLA. Likewise, Rs. 10,00,000/- lying in the Bank Account of 'M/s SG' of Adhiraj Kumar are also confiscated to Central Government.

145. Rule 3 (1) of the Prevention of Money-Laundering (Restoration of Confiscated Property) Rules, 2016, prescribes the manner for restoration of confiscated property, It provides as under :

> "Rule 3 (1) - The Special Court, within forty-five days from the date of passing the order of confiscation under sub-section (5) section 8 of the Act in respect of property, shall cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where the property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof".

146. In view of aforesaid Rule, Ahlmad is directed to get 'Notice' published as mentioned above in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where the property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.

Defects in Investigation

147. As noted above, while appreciating evidence in respect of Mukesh Jain (A-1) for the allegations of laundering an

amount of Rs. 1,06,71,000/-, it is established that after credit of the aforesaid amount in the Bank Account of M/s BMPL, Mukesh Jain (A-1) transferred an amount of Rs.60,61,000/- in the Bank Account of M/s. AIPL whose Director was Pramod Kumar Pandey. It is also established that Rs. 10,00,000/- were transferred to the Bank Account of M/s SG from the aforesaid Bank Account and Rs. 50,00,000/- were withdrawn in cash. Thus, an amount of Rs. 61,000/- out of the amount of Rs.60,61,000/- was still lying in the Bank Account of M/s. AIPL at the time of recording of ECIR. During the course of recording of statement **(Ex. PW27/S)** of Pramod Kumar Pandey under Section 50 of PMLA, IO Pankaj Kumar did not put any question to him as to under what circumstances, an amount of Rs. 60,61,000/- was credited in the Bank Account of M/s. AIPL. Rather, a direct question was asked by IO from Pramod Kumar Pandey as to how much commission, he got from Mukesh Jain. The said line of questioning by IO from Pramod Kumar Pandey demonstrates that he presumed about the receipt of commission by Pramod Kumar Pandey from Mukesh Jain in lieu of use of the Bank Account of M/s. AIPL. Pramod Kumar Pandey was not asked about the status of M/s. AIPL being a functioning or dormant company, nature of its business activities, filing of its Income-Tax Returns, receiving of any work order from M/s BMPL or Mukesh Jain (A-1). With regard to deposit, withdrawal and transfer of the amount, Pramod Kumar Pandey stated that one Akhlesh Chand Shukla asked him to deposit the aforesaid amount in

his Bank Account upon the promise of paying five per cent commission on that amount. However, Sh. Akhilesh Chandra Shukla in his statement **(Ex. PW27/Y)** U/s 50 of PMLA in an answer to a specific question denied to have stated that he ever suggested Parmod Kumar Pandey to take any deposits/money from accused Mukesh Jain and IO did not bother to confront this statement of with Pramod Kumar Pandey. In his cross-examination, IO Pankaj Kumar testified as under :-

> "*.....It is correct that Akhilesh Chandra Shukla, in his statement U/s 50 of PMLA in an answer to the specific question, denied to have stated Pramod Kumar Pandey to take deposit from accused Mukesh Jain. I do not recollect whether I confronted the aforesaid statement of Akhilesh Chandra Shukla with Pramod Kumar Pandey.* ***I cannot say whether only Rs. 61,000/- of the tainted money were in the Account of M/s Analytical Impex. I did not make any inquiry from Pramod Kumar Pandey with regard to the aforesaid amount of Rs. 61,000/-.*** *It is correct in his statement, Pramod Kumar Pandey stated that he got deposited the alleged tainted money in his Account for getting 5% commission.* ***It is correct that Pramod Kumar Pandey was aware of the fact that the said amount got deposited in his Bank Account, was tainted money. I did not arraign Pramod Kumar Pandey as accused in the present case as investigation in his respect could not be completed as written in the complaint (Ex. PW 27/AA) at para 5.1.*** *It is correct that I myself recorded two statements of Pramod Kumar Pandey.* ***I do not know whether any further investigation is pending in the present case.*** *Vol. in February, 2020, I was transferred from Delhi Zone to Head Quarter and in April, 2023, I had been repatriated to my parent cadre. It is correct that I cannot say where the tainted money travelled further as concluded by me in the para 4.6 of the complaint.*"
>
> (emphasis supplied)

148. From the aforesaid deposition, it is manifest that Bank Account of M/s AIPL was used for laundering the part of PoC and Pramod Kumar Pandey assisted Mukesh Jain (A-1) in that nefarious act. Bank Account of M/s SG operated by Adhiraj Kumar was also used for laundering of Rs.10,00,000/- which were transferred to the aforesaid Bank Account by Pramod Kumar Pandey from the Bank Account of M/s. AIPL. There was ample material before IO that both of them assisted Mukesh Jain in laundering of PoC. As per record, neither Pramod Kumar Pandey nor Adhiraj Kumar was accused in the 'predicate offence case' registered by CBI. However, it is no longer *res integra* that it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the Scheduled Offence case. The Hon'ble Supreme Court of India in ***Vijay Madan Lal & Ors. (Supra)*** has held that *'it would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime'*. It has been observed as under :

> "**269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form - be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money- laundering. This offence otherwise has**

nothing to do with the criminal activity relating to a scheduled offence - except the proceeds of crime derived or obtained as a result of that crime".

(emphasis supplied)

149. Recently, the Hon'ble Supreme Court in **Pawna Dibbur (supra)** has reiterated and reaffirmed the ratio of the Judgment of the Hon'ble Supreme Court of India in Madan Lal case and observed as under :

"15. **Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence Under Section 3 of the PMLA.** To give a concrete example, the offences Under Sections 384 to 389 of the Indian Penal Code relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An Accused may commit a crime of extortion covered by Sections 384 to 389 of Indian Penal Code and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said Accused in the concealment of the proceeds of extortion. In such a case, the person who assists the Accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. **Therefore, it is not necessary that a person against whom the offence Under Section 3 of the PMLA is alleged must have been shown as the Accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary MANU/SC/0924/2022 supports the above conclusion.** The conditions precedent for attracting the offence Under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in Clause (u) of Sub-section (1) of Section 3 of the PMLA.

16.In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the Accused or discharge of all the

> Accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable Under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the Accused against whom the complaint Under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the Accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. **However, an Accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an Accused in the scheduled offence. Such an Accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned Senior Counsel appearing for the Appellant on the ground that the Appellant was not shown as an Accused in the chargesheets filed in the scheduled offences deserves to be rejected".**
>
> (emphasis supplied)

150. In view of the aforesaid settled law, there was no bar for DoE to proceed against the aforesaid two persons, namely, Pramod Kumar Pandey and Adhiraj Kumar but they have not been arraigned as accused by IO, Pankaj Kumar. Perusal of charge-sheet reflects that the statement of Pramod Kumar Pandey was recorded under Section 50 of PMLA and he was made a witness in the present case despite his involvement in assisting Mukesh Jain (A-1) in laundering of PoC having been made out from the material on record. So far as Adhiraj Kumar is concerned, it is stated in the charge-sheet that he could not be located during the investigation at the addresses available with DoE and his role in the offence of money-laundering was to be further examined. However, DoE had not taken any step to trace his whereabouts and/or take

coercive steps against him under section 82 Cr.P.C. in accordance with law.

151. Likewise, out of Rs. 40,00,000/- received in the Bank Account of M/s BTC operated by Accused Nipun Bansal on 26.02.2009, Rs. 5,00,000/- were credited to the Bank Account of M/s Mohan Das Shanker Lal on 27.02.2009; Rs. 29,50,000/- to the Bank Account of M/s Shri Radha Enterprises on 03.03.2009; Rs. 27,00,000/- from the Bank Account of M/s Shri Radha Enterprises to the Bank Account of M/s Rahul Kumar Rohit Kumar on the same day i.e. 03.03.2009; Rs 2,85,000/- from the Bank Account of M/s Shri Radha Enterprises to the Bank Account of M/s Pankaj Kumar Suresh Kumar. Since the aforesaid Bank Accounts were used for layering PoC of Rs. 34,50,000/-, it was incumbent on IO Pankaj Kumar to conduct thorough investigation with regard to the operations of the aforesaid Bank Accounts. However, he paid only a lip service to the mandate of law of conducting fair and proper investigation and got conducted perfunctory investigation by Somit Mitra Enforcement Officer (PW16) who filed 'Field Inquiry Report Ex. PW 16/A'. In the said report, it is stated that the addresses of the aforesaid Bank Accounts could not be located and no records of the persons operating the said Bank Accounts were found available with the Banks concerned. No notice under Section 91 Cr.P.C. was given to the Banks concerned to produce the documents of the persons concerned who opened the aforesaid Bank Accounts and had been operating the same. IO Pankaj Kumar

failed to conduct any investigation as to who were the persons operating the aforesaid Bank Accounts and under what circumstances, the aforesaid tainted money was credited to these Bank Accounts. In his cross-examination conducted by accused no. 4 Sh. Nipun Bansal with regard to the role of M/s Radha Enterprises and M/s Pankaj Kumar Satish Kumar, it was deposed as under :-

> *"..... I had summoned Proprietor of M/s Radha Enterprises to join investigation, as Rs. 29.50 lakhs were transferred to his account by A-4 Nipun Bansal. I am not able to recall whether proprietor of M/s Radha Enterprises joined the investigation in response to aforesaid summon. I am also not able to recall whether I recorded any of his statement. I am also not able to recall the name of Proprietor of M/s Radha Enterprises.*
>
> *It is wrong to suggest that I had not issued any summons either to M/s Radha Enterprises or its owner or that I had made any attempt to collect information from M/s Radha Enterprises w.r.t. transaction in question.*
>
> *I had summoned Proprietor of M/s Pankaj Kumar Suresh Kumar however, he could not be traced. I had recorded statement of Sh. Satender Bajpai, Proprietor of M/s Bajpai Construction Company (**BCC**).*"

152. Thus IO, Sh. Pankaj Kumar has also failed to investigate the role of the persons/suspects operating the aforesaid Bank Accounts as there is nothing on record to suggest that any interrogation was done by him from the operators of the said Bank Accounts. The aforesaid omissions on the part of IO Pankaj Kumar coupled with non-arraignment of Promod Kumar Pandey and Adhiraj Kumar as accused reflect his lackadaisical and nonchalant conduct towards his duty to conduct fair, honest, sincere and dispassionate investigation. To bring out the real, complete

and unvarnished truth, it was his duty to unearth all the material relating to the present case in respect of all the suspects who indulged in the offence of money-laundering but he conducted a truncated investigation confining himself only to the persons who were arraigned accused by CBI. The manner in which investigations are conducted is of critical importance in the functioning of the Criminal Justice System as successful prosecution of the guilty depends on a thorough and careful search for whole truth. Serious miscarriage of justice results if there is any error or malpractice in collection of evidence and therefore it is the duty of IO to investigate properly and thoroughly and collect all evidence, whether or for against the suspects. The Hon'ble Supreme Court in a landmark judgment of ***Zahira Habibullah Sheikh & anr. Vs. State of Gujrat & ors.,*** in **Crl. Appeal Nos.446-449 of 2004, decided on 08.03.2006,** has held that :

> "If primacy given to design or negligent investigation to the omission or lapses by the perfunctory investigation or omission, the faith and confidence of the people would be shaken not only in the law enforcing agency but also in administration of justice. **Thus aim of the investigation in the entire criminal justice system is based on the fair investigation as in the absence of the same, probability of the acquittal of criminal and conviction of innocent will increase which would not be good for the society as a whole"**.
>
> (emphasis supplied)

153. The Division Bench of **Hon'ble Delhi High Court in Ravi Vs. State: MANU/DE/0180/2015** delineated the role of

investigation officer in Criminal Justice System and observed as under :

> "21. Role of police in investigation is imminent, crucial and prominent bedrock in the criminal adjudication mechanism. **The ineffective or improper investigation as a result of acts of omission or commission, deliberate or otherwise, by the Investigating officers, have confounded the Court. Whether or not the lapse is a mere irregularity which would not result in acquittal but an illegality which would adversely affect the case of the prosecution depends upon several facts including the conduct of the Investigating Officer.....**"
>
> (emphasis supplied)

154. The Hon'ble Superior Courts have heavily condemned Investigating Officers in cases where faulty investigation is evident and mandated that the officer responsible for the same must be dealt with sternly. The Hon'ble Supreme Court in the case of ***Dayal Singh and others Vs. State*** reported in **AIR 2012 SC 3046 contains discussion on the said aspects in the following words :**

> **"14. Now, we will deal with the question of defective or improper investigation resulting from the acts of omission and/or commission, deliberate or otherwise, of the Investigating Officer or other material witnesses, who are obliged to perform certain duties in discharge of their functions and then to examine its effects. In order to examine this aspect in conformity with the rule of law and keeping in mind the basic principles of criminal jurisprudence, and the questions framed by us at the very outset of this judgment, the following points need consideration:**
>
> **(i) Whether there have been acts of omission and commission which have resulted in improper or defective investigation.**
>
> **(ii) Whether such default and/or acts of omission and commission have adversely affected the case of the prosecution.**
>
> **(iii) Whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case.**

(iv) If the dereliction of duty and omission to perform was deliberate, then is it obligatory upon the court to pass appropriate directions including directions in regard to taking of penal or other civil action against such officer/witness.

15. In order to answer these determinative parameters, the Courts would have to examine the prosecution evidence in its entirety, especially when a specific reference to the defective or irresponsible investigation is noticed in light of the facts and circumstances of a given case.

16. The Investigating Officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the police manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An Investigating Officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution. It is possible that despite such default/omission, the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But, at the same time, the default and omission would have a reasonable chance of defeating the case of the prosecution in some events and the guilty could go scot-free. We may illustrate such kind of investigation with an example where a huge recovery of opium or poppy husk is made from a vehicle and the Investigating Officer does not even investigate or make an attempt to find out as to who is the registered owner of the vehicle and whether such owner was involved in the commission of the crime or not. Instead, he merely apprehends a cleaner and projects him as the principal offender without even reference to the registered owner. Apparently, it would prima facie be difficult to believe that a cleaner of a truck would have the capacity to buy and be the owner, in possession of such a huge quantity, i.e., hundreds of bags, of poppy husk. The investigation projects the poor cleaner as the principal offender in the case without even reference to the registered owner.

17. Even the present case is a glaring example of irresponsible investigation. It, in fact, smacks of intentional mischief to misdirect the investigation as well as to withhold material evidence from the Court. It cannot be considered a case of bona fide or unintentional omission or commission. It is not a case of faulty investigation simplicitor but is an investigation coloured with motivation or an attempt to ensure that the suspect can go scot free. .....

24. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general."

39. Having analyzed and discussed in some elaboration various aspects of this case, we pass the following orders:

A).XXXXXXX

B)XXXXXXX

C)XXXXXXX

D) Director Generals of Police UP/Uttarakhand are hereby directed to initiate, and expeditiously complete, disciplinary proceedings against PW6, SI Kartar Singh, whether he is in service or has since retired, for the acts of omission and commission, deliberate dereliction of duty in not mentioning reasons for non-disclosure of cause of death as explained by the doctor, not sending the viscera to the FSL and for conducting the investigation of this case in a most callous and irresponsible manner. The question of limitation, if any, under the Rules, would not apply as it is by direction of the Court that such enquiry shall be conducted.

E) We hold, declare and direct that it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution. Further, the Courts would be fully justified in

directing the disciplinary authorities to take appropriate disciplinary or other action in accordance with law, whether such officer, expert or employee witness, is in service or has since retired.

(emphasis supplied)

155. The underlying philosophy and the 'concern expressed' by the Hon'ble Apex Court in the aforesaid case is that there can be 'no tolerance to any degree' whatsoever, when it comes to the pardoning of any person for his lapses in the administration of criminal justice. Anyone who, either deliberately or unwittingly weakens the bed-rock of any given criminal case shall be sternly dealt with under the law, lest it may weaken the administration of the Criminal Justice System.

156. In the backdrop of the aforesaid proposition of law applying to the facts and circumstances and looking at the material and the evidence brought during the course of enquiry and trial of the aforesaid case, it transpires that IO, Pankaj Kumar has failed to conduct fair and proper investigation in the present case. While holding so, the Court reflected upon the conduct of the IO and is constrained to comment on the manner in which the investigation in the subject case has been carried out by him. Despite being prosecutable material having come on record during investigation against Pramod Kumar Pandey and Adhiraj Kumar, they were not arraigned as accused by IO. Furthermore, his conduct of not conducting investigation with respect to the Bank Accounts of in which Accused Nipun

Bansal transferred PoC, non-examination of their respective operators smacks of intentional mischief to misdirect the investigation as well as withhold material evidence which would have implicated them. These proceedings asseverate to be not only a glaring case of faulty investigation but also a case of seemingly an investigation coloured with motivation or an attempt to ensure that certain persons can go scotfree.

157. By adhering to the dictum of the Hon'ble Supreme Court in Dayal Singh & Ors. (*supra*) and applying the same to the facts and circumstances to the present case, it is established that IO Pankaj Kumar has prima-facie committed acts of omissions and commissions resulting in improper or defective investigation and such default and/or acts of omission and commission have adversely affected the case of the prosecution as guilty persons have gone scotfree and the aforesaid default and acts of investigation officer were deliberate, intentional and resulted from avoidable circumstances. The aforesaid acts of omissions of IO Pankaj Kumar makes it obligatory upon this Court to pass appropriate directions in regard to taking penal action U/s 166A & 217 Cr.P.C. and disciplinary action against him. Though the aforesaid Judgment does not provide for affording any opportunity of being heard to the IO for initiation penal and civil action against IO, nonetheless, keeping in view the salutary principle of *audi alteram partem*, this Court deems fit to issue a notice to IO, Sh. Pankaj Kumar to show cause as

to why a disciplinary and penal action be not recommended against him for the aforesaid defective investigation.

158. In addition to the aforesaid conduct of the Investigating Officer Pankaj Kumar, it is also apparent from the record that though ECIR was registered in the present case on 14.12.2009, however, charge-sheet/complaint and supplementary charge-sheet/complaint were filed on 31.12.2018 & 23.12.2009 respectively. No explanation has been given for the aforesaid inordinate delay in completion of the investigation. It is expected of Investigating Agencies that investigation be concluded without unnecessary and unwarranted delay so that evidence may not be lost during the prolonged investigation. In the present case, there is nothing on record to explain as to under what circumstances, it took around 9 to 10 years in completion of the aforesaid investigation. Investigating Officer, Pankaj Kumar in his testimony before this Court testified that he received file of the present case from previous IO Sh. A.K. Srivastav on 17.08.2016. However, there is nothing on record to suggest that any kind of investigation was conducted by Sh. A.K. Srivastav as record reflects that whatever investigation was conducted in the present case, it was by IO Pankaj Kumar. All the documents or witnesses were available in 2009 itself, however, documents were collected in 2018 and statements of the witnesses were also recorded from 2018 onwards. No explanation is forthcoming under what circumstances for what reasons, investigation was kept pending for over 9 to 10

years. When investigation is kept pending for such inordinate period, material evidence may potentially be rendered inaccessible or unavailable during investigation or trial as happened in the present case. It appears from the record that Officers concerned in DoE were just kept sitting over the file and they did not bother to supervise investigation of the present case. The Court has also noticed that the entire PoC of Rs. 1,06,71,000/- were credited to Bank Account of M/s BMPL operated by Mukesh Jain (A-1) and he laundered the aforesaid amount by crediting in various Bank Accounts and withdrawing the same. Only Rs. 10,00,000/- out of the aforesaid PoC was traced in the Bank Account of M/s AIPL operated by Adhiraj Kumar. The DoE was expected to proceed against Mukesh Jain (A-1) for the remaining amount of Rs. 96,71,000/-, however, attachment proceedings against him were initiated qua his share of Property only for Rs. 46,10,000/- while he was having 35% share in aforesaid Property which constitutes Rs. 1,05,00,000/-. No explanation is forthcoming from the side of DoE as to why Mukesh Jain (A-1) was proceeded for only Rs. 46,10,000/- instead of Rs. 96,71,000/- as it was he who laundered the said PoC from his Bank Account.

159. Economic offences seriously affect and wear down the fabric of democracy and these are against the National Economy and interest of the country. The sailent features of an economic offence were first discussed in the Report of 47th Law Commission of India (1972) and formulated on the topic

of 'Trial and Punishment of Social and Economic Offences' (Report). The Government of India, while formlulating this Report, had recognized economic offences as separate category of crimes that require special attention to ensure swift disposal of cases and meting out of punishment. Thereafter, special Legislature i.e. PMLA was brought out to prescribe the procedures and penalties for economic offences so that the accused charged with the offence of money-laundering be prosecuted swiftly and thus, delay and faults in the investigation cannot be brooked. In the present case, as noted above, there is not only undue, unwarranted and unexplained delay for over 9 to 10 years in presenting the charge-sheet or complaint, but also, the investigation is also faulty. Accordingly, it is for the competent authority of DoE to look into the circumstances and reasons for the delay and defects in the investigation and fix the responsibility of the Officers concerned liable for such lethargy. It is also an occasion for the DoE as an Institution that takes pride in being the Premier Investigating Agency of the country to introspect as to what steps are required in the direction to ensure conduction of expeditious and fair investigation in the cases. It may be ensured that there are sufficient checks and balances in place for Investigating Officers to act with expected urgency, diligence and alacrity in respect of every investigation.

Role of the Court in case of Defective Investigation

160. Criminal Justice System cannot afford to tolerate the acts of negligence or inadvertence of IO much less fraud and connivance, which endanger the credibility of the Prosecution case. An Investigator who has the statutory-duty of performing his functions/tasks to the best of his ability in bringing the guilty to book, cannot and shall not, in any manner, either by acts of negligence or by inadvertence, derail the cause of justice, for such a situation shall lead to miscarriage of Justice in the nature of either letting a criminal escape from the clutches of law or an innocent being wrongfully punished. In either case, the consequence that emanates from such miscarriage of Justice is rather very grave. The Hon'ble Supreme Court in **Gajoo vs. State of Uttarakhand (2012) 9 SCC 532** held that crime is a public wrong in breach and violation of public rights and duties which affects the community as a whole and is harmful to the society in general and in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. It was held by the Hon'ble Supreme Court as under:

> **"25.** Reiterating the above principle, this Court in the case of National Human Rights Commission v. State of Gujrat [(2009) 6 SCC 767], held as under :
>
> **"The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies.** Interest of society is not to be treated completely with disdain and as persona non grata. **The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice —often referred to as the duty to vindicate and uphold the**

'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. **If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators."**

26. xxxxx

27.xxxxx

28: Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. **The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.**

(emphasis supplied)

161. In view of the aforesaid mandate of law for the Court to conduct fair trial for doing justice to all, the accused, the victim and the society, the court has to examine as to whether there is any provision in law to remedy the circumstances cropped up due to perfunctory investigation by the

Investigatin Officer. The Constitution of Bench of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab & Ors., MANU/SC/0025/2014** has observed that it is the duty of the Court to do justice by punishing the real culprit where the Investigating Agency for any reason does not array real culprits as accused and the court is not powerless in calling those accused to face trial with the aid of Section 319 of Cr. P. C. It is held that Section 319 Cr. P.C springs out of the doctrine judex dommatur cum nocens absolvitur (Judge is concerned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C. Section 319 Cr.P.C. is an important provision in the code of criminal procedure, the basic purpose of which is that if in the course of any inquiry, or trial, it appears from the evidence that any person who has not been named as an accused, has committed any offence and can be tried together, the court may proceed against such person for the offence which he appears to have committed. The bare perusal of the provision makes it clear that the intention of the legislature is that if there is evidence on record against someone then the said person should not scot free. This power conferred by Section 319 Cr.P.C. can be exercised by the courts either *suo moto* or upon application by any person. The duty is imposed upon the Court to see that if there is material on record to show that an individual has committed an offence he should be dealt with accordingly under the relevant provisions of

law. The purpose of the law is the final adjudication of the matter after taking into account the entire evidence. It is observed in the said decision of **Hardeep Singh (supra)** that the entire effort is not to allow the real perpetrator of an offence to get away unpunished. It is observed that this is also a part of fair trial and in order to achieve this very end that the legislature thought of incorporating the provisions of Section 319 Cr.P.C. It is further observed that for the empowerment of the Courts to ensure that the criminal administration of justice works properly, the law has been appropriately codified and modified by the legislature under the Cr.P.C. indicating as to how the Courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law. It is also observed that it is the duty of the Court to find out the real truth and to ensure that the guilty does not go unpunished.

162. While dealing with the duty and power of the Court under Section 319 Cr.P.C., the Hon'ble Supreme Court in **Brijendra Singh and others Vs. State of Rajasthan, 2017(7) SCC 706**, has held as under:

> **"It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C."**
>
> **xx xx xx**
>
> **"The Court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not**

uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence." It also goes without saying that Section 319 Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Section 207/208 Cr.P.C., the committal etc., which is only a pre- trial stage intended to put the process into motion".

(emphasis supplied)

163. So far as the question at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C. is concerned, it would be appropriate to refer the Constitutional Bench judgement of the Hon'ble Apex Court in the case of **Sukhpal Singh Khaira Versus State of Punjab, (2023) 1 SCC 289,** in which the Hon'ble Apex Court after wholesome treatment interpreting the word and phrases "Trial", "Conclusion of trial" and "Trial when concluded" has settled the issue about the stage(s) of the proceeding at which power under Section 319 Cr.P.C. may be invoked. The relevant paragraphs of the said Judgment are as follows:-

"23. A close perusal of Section 319 of Cr.P.C. indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court. **Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised**

before the conclusion of trial. The connotation 'conclusion of trial' in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh (supra) since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court.

33. **In that view of the matter, if the Court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319 of Cr.P.C. can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion.** While arriving at such conclusion what is also to be kept in view is the requirement of sub- section (4) to Section 319 of Cr.P.C. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319 of Cr.P.C. after recording the evidence of the witnesses or after pronouncing the judgement of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273 of Cr.P.C. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319 of Cr.P.C,, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgement of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgement is required to be withheld and the application under Section 319 of Cr.P.C. is required to be disposed of and only then the conclusion of the judgement, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319 of CrPC can be exercised only before the conclusion of the trial by passing the judgement of conviction and sentence.

34. Though Section 319 of Cr.P.C. provides that such person summoned as per sub- section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the Court under Section 223 of Cr.P.C.

to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319 of Cr.P.C. and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgement being passed against the tried accused. **If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused.** However, what is important is that the decision to summon an additional accused either suo-moto by the Court or on an application under Section 319 of Cr.P.C. shall in all eventuality be considered and disposed of before the judgement of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the Court will get divested of the power under Section 319 of Cr.P.C. Since a power is available to the Court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319(1) of Cr.P.C, to be directory as held in Shashikant Singh (supra) which in our opinion is the correct view.

38. For all the reasons stated above, we answer the questions referred as hereunder.

39.(I). Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other co- accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. **Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction.** If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

40 (II). Whether the trial court has the power under Section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III). What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?"

41.1. If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried

afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of Cr.P.C can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re- hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

(emphasis supplied)

164. Thus as per the aforesaid dicta the power under Section 319 Cr.P.C. is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the Accused. Hence, the summoning order against the newly added accused has to precede the conclusion of trial by imposition of sentence in the case of conviction.

165. While applying the aforesaid ratio of the afore cited Judgments to evidence on record, it is established that the

Bank Account of Pramod Kumar Pandey was used for laundering an amount of Rs. 61,61,000/- and in the same fashion, Bank Account of Adhiraj was also used for credit of Rs.10,00,000/-. The aforesaid facts have been established in the testimony of witnesses namely PW 1 Sh. Joshua Ngaihte, PW 2 Rishi Nanda, PW 3 Sh. Priyanshu Bansal and PW 4 Sh. Rahul Sharma who proved bank records in this regard. The explanation given by Pramod Kumar Pandey in his statement U/s 50 of the PMLA that his Bank Account was being used for obtaining commission on depositing the amount, is self serving and is not corroborated by Akhilesh Kumar who falsified the version of Pramod Kumar Pandey in his statement. So far as Adhiraj Kumar is concerned, it has been proved that PoC of Rs. 10,000,00 was credited in his Bank Account and moreover, Prosecution itself has treated him an accused as reflected from the complaint, however, no coercive steps U/s 82 & 83 Cr.P.C.

166. This Court is satisfied that evidence has come on record against Pramod Kumar Pandey and Adhiraj Kumar showing their respective roles in assisting accused Mukesh Jain in laundering of PoC and accordingly, they are summoned under Section 319 Cr.P.C. to face the trial under Section 3 of PMLA punishable under Section 4 of PMLA. In view of the facts, circumstances of the present case and evidence on record, this Court finds that the aforesaid summoned accused, namely, Pramod Kumar Pandey and Adhiraj Kumar can be tried separately as their role in

commission of money-laundering can be easily segregated with the role of other accused persons and, therefore, the trial against them shall proceed afresh and separately in terms of the aforesaid Judgment of the Constitution Bench of Hon'ble Apex Court in **Sukhpal Singh Khaira (supra)**.

167. It is relevant to mention here that no notice to the aforesaid accused persons namely, Pramod Kumar Pandey and Adhiraj Kumar is being issued prior to summoning them under Section 319 Cr.P.C. as this Court is conscious of the Judgment of the Hon'ble Supreme Court in **Yashodhan Singh Vs. State of UP, Manu/SC/0808/2023**, wherein it has been held that the principle of affording opportunity to the persons who are summoned, can not be read into Section 319 Cr.P.C. and there is no necessity to give opportunity of hearing to said persons before adding them as accused.

168. However, this Court finds that there is no prosecutable evidence against the Account holders of Bank Accounts, namely, M/s. Mohandass Shanker Lal; M/s. Shree Radha Enterprises and M/s. Rahul Kumar Rohit Kumar as they were not found traceable by the Investigating Officer and their respective versions have not come on record with regard to transfer of the amount in their Bank Accounts. The power of the Court is fettered as at this stage, it cannot direct further investigation in respect of the aforesaid Bank Accounts as the Hon'ble Supreme Court in **Vinubhai Haribhai Malaviya and Ors. vs. The State of Gujarat and Ors. (MANU/SC//1427/2019)** has held that after framing of the

charge, the Trial Court has no power to direct further investigation. The power to direct further investigation after framing of charge rests only with the Constitutional Court as per the Judgment of the Hon'ble Supreme Court in **Anant Thanur Karmuse vs. The State of Maharashtra and Ors. (MANU/SC/0165/2023)**.

CONCLUSION

169. In view of the above discussion and evidence on record, the prosecution/DoE has been successful in proving its case beyond reasonable doubt that accused Mukesh Jain (A-1) and Nipun Bansal (A-4) have committed offence of money-laundering as defined under Section 3 of PMLA and they are convicted accordingly. However, prosecution has failed to prove the offence of money-laundering against Shiv Kumar Bhargava (A-2) and Benu Jain (A-3) and thus, they are acquitted U/s 3 of the PMLA.

170. Prosecution has further proved beyond reasonable doubt that amount of Rs. 56,10,000/- attached vide PAO dated 07.05.2018 and confirmed by C.O. dated 08.10.2018 are part of PoC and therefore, the aforesaid PoC is confiscated to the Central Government in terms of Section 8 (5) of PMLA. However, Rs. 10,00,000/- lying in the Bank Account of M/s SG and got freezed by CBI in predicate offence case were already directed to be defreezed and thereafter, to be deposited with the complainant i.e. M/s SIFCL vide Judgment dated 25.11.2023 in SO Case.

171. Since M/s SIFCL suffered a loss of Rs. 1,06,71,000/- as a result of criminal activity by accused Mukesh Jain, aforesaid properties in the sum of Rs. 56,10,000/- confiscated by this Court be restored to M/s SIFCL and accordingly, the Central Government is given direction U/s 8 (8) of PMLA to restore the same to M/s SIFCL.

172. Accused Pramod Kumar Pandey and Adhiraj Kumar be summoned under Section 319 Cr.P.C. for **15.04.2024** to face the trial afresh and separately under Section 3 of PMLA punishable under Section 4 of PMLA.

173. Notice be issued to IO Pankaj Kumar for **15.04.2024** to show cause as to why penal action U/s 217 & 166A Cr.P.C. and disciplinary action be not recommended against him. Copy of this Judgment be attached with aforesaid Notice.

174. Let Mukesh Jain (A-1) and Nipun Bansal (A-4) be heard on the quantum of sentence on **02.04.2024**.

175. Let copy of this Judgment be sent to the Director of DoE for taking necessary remedial measures for the defects / omissions as pointed out in paras 158 & 159 of this Judgment.

Announced in open Court on 30.03.2024

MOHD FARRUKH
Digitally signed by MOHD FARRUKH
Date: 2024.04.01 16:20:46 +0530

(Mohd. Farrukh)
Special Judge (PMLA)
Rouse Avenue District Courts, New Delhi
30.03.2024