2025:CGHC:35298-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 34 of 2025

Mr. Sourabh S/o Mr. A.L.Modi Aged About 45 Years R/o House No. A/21. Surya Residency Junwani Road, Kohka, Bhilai, Durg, Chhattisgarh.

--- **Appellant**

versus

Directorate Of Enforcement, GOI, Raipur Zonal Office A-1 Block, 2nd Floor, Pujari Chambers, Pachpedi Naka, Raipur, Chhattisgarh- 492001, Through- Its Assistant Director

--- **Respondent**

MA No. 35 of 2025

Mrs. Shanti Devi Chaurasia W/o Lt. Mr. O.N. Chaurasia, Aged About 78 Years R/o House No. A/22, Surya Residency, Junwani Road. Kohka, Bhilai, Durg, Chhattisgarh.

---**Appellant**

Versus

Directorate Of Enforcement, GOI, Raipur Zonal Office, A-1 Block, 2nd Floor, Pujari Chambers, Pachpedi Naka, Raipur, Chhattisgarh.- 492001, Through- Its Assistant Director.

--- **Respondent**

MA No. 37 of 2025

Mr. Anurag Chourasia S/o Mr. Tarkeshwar Prasad Chourasia Aged About 47 Years R/o House No. 02 Vidyapati Nagar, Mahabir Road, In Front Of Quarter No. 30, P.O. Baridih, Purbi Sighbhum, Jamshedpur, Jharkhand- 831017

---**Appellant**

Versus

Directorate Of Enforcement, GOI, Raipur Zonal Office A-1 Block, 2nd Floor, Pujari Chambers, Pachpedi Naka, Raipur, Chhattisgarh- 492001, Through- Its Assistant Director

--- Respondent

MA No. 41 of 2025

M/s Indermani Mineral India Pvt. Ltd. Having Its Registered Office At 711, Mungeli Road, Kailash Dall Mill, Kududand, Bilaspur, Chhattisgarh- 495001. Through Director- Prakash Chand Agrawal, S/o Late Sh. Mohan Lal, Age About 57 Years, R/o House No. 711, Mungeli Road, Kailash Dall Mill, Kududand, Bilaspur, Chhattisgarh- 495001.

---**Appellant**

Versus

1 - Directorate of Enforcement Government Of India, Through Assistant Director, Zonal Office, 2nd Floor, A-1 Block, Pujari Chambers, Pachpedi Naka, Raipur, District Raipur, Chhattisgarh.

2 - Deputy Director, Directorate of Enforcement, Zonal Office, 2nd Floor, A-1 Block, Pujari Chambers, Pachpedi Naka, Raipur, District Raipur, Chhattisgarh.

3 - Adjudicating Authority Under The Prevention Of Money Laundering Act, 2002, New Delhi Through Registrar, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi.

--- Respondent(s)

MA No. 44 of 2025

KJSL Coal And Power Private Limited Having Its Corporate Office At C-1, 1st Floor,ashwarya Chamber, G.E. Road, Telibandha, Raipur Chhattisgarh- 492001. Through Director - Ajay Kumar Sahu S/o Narayan Prasad Sahu Age About 49 Years, R/o Mukti Dham Road Surya Vihar, Yadunandan Nagar, Tifra- Bilaspur Distt. - Bilaspur (C.G.)

---**Appellant**

Versus

1 -Directorate Of Enforcement Government Of India, Through - Assistant Director, Zonal Office 2nd Floor, A-1 Block Pujari Chambers, Pachpedi Naka Raipur, Distt. Raipur (C.G.)

2 - Deputy Director, Directorate Of Enforcement, Zonal Office, 2nd Floor A-1 Block, Pujari Chambers Pachpedi Naka Raipur, Distt. Raipur (C.G.)

3 - Adjudicating Authority, Under The Prevention Of Money Laundering Act. 2002, New Delhi. Through - Registrar, Room No. 26, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi.

--- Respondent(s)

MA No. 48 of 2025

Divya Tiwari W/o Sh. Suryakant Tiwari Aged About 45 Years R/o I-34 Anupam Nagar Raipur, Chhattisgarh.

---**Appellant**

Versus

Directorate Of Enforcement Through Assistant Director Zonal Office, Raipur

--- Respondent

MA No. 49 of 2025

Kailash Tiwari W/o Lt. Sh. Shashibhushan Tiwari Aged About 70 Years R/o I-34 Anupam Nagar Raipur, Chhattisgarh.

---**Appellant**

Versus

Directorate Of Enforcement Through Assistant Director Zonal Office, Raipur

--- Respondent

MA No. 50 of 2025

Rajnikant Tiwari S/o Lt. Sh. Shashibhushan Tiwari Aged About 54 Years R/o H.No. 125, Near Raipur Naka Mahasamund, Chhattisgarh. Presently in Judicial Custody

---**Appellant**

Versus

Directorate Of Enforcement Through Assistant Director Zonal Office, Raipur.

--- Respondent

MA No. 51 of 2025

Suryakant Tiwari S/o Lt. Sh. Shashibhushan Tiwari Aged About 51 Years R/o I-34 Anupam Nagar Raipur, Chhattisgarh Presently In Judicial Custody

---**Appellant**

Versus

Directorate Of Enforcement Through Assistant Director Zonal Office, Raipur

--- Respondent

MA No. 80 of 2025

Sameer Vishnoi S/o Late Sh. V. K. Vishnoi Aged About 42 Years R/o D-2/29, Officers Colony, Devendra Nagar, Raipur (C.G.)

---**Appellant**

Versus

Deputy Director Directorate Of Enforcement, Government Of India, A-1 Block, Pujari Chambers, Pachpedi Naka, Raipur (C.G.)

--- **Respondent**

For Appellant(s)	:	Mr. Harshwardhan Parganiha, Advocate {MA No. 34/2025, 35/2025 and 37/2025}, Mr. Nikhil Varshney (through Video Conferencing), Ms. Palak Dwivedi and Mr. Sajal Kumar Gupta, Advocates {MA No. 41/2025 and 44/2025}, Mr. Shashank Mishra, Mr. Gagan Tiwari and Mr. Sanjay Kumar Yadav, Advocates {MA No. 48/2025, 49/2025, 50/2025 and 51/2025} Mr. Abhuday Tripathi, Advocate {MA No. 80/2025}
For Respondent(s)	:	Dr. Saurabh Kumar Pande, Special Public Prosecutor
Date of Hearing	:	02/07/2025
Date of Judgment	:	23/07/2025

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

C.A.V. Judgment

Per Ramesh Sinha, Chief Justice

1. Heard Mr. Harshwardhan Parganiha {MA No. 34/2025, 35/2025 and 37/2025}, Mr. Nikhil Varshney (through Video Conferencing), Ms. Palak Dwivedi and Mr. Sajal Kumar Gupta {MA No. 41/2025, 44/2025 and 48/2025}, Mr. Shashank Mishra, Mr. Gagan Tiwari and Mr. Sanjay Kumar Yadav {MA No. 48/2025, 49/2025, 50/2025 and 51/2025} and Mr. Abhuday Tripathi {MA No. 80/2025} learned counsel for the respective appellants. Also heard Dr. Saurabh Kumar Pande, learned counsel for the respondent/Enforcement Directorate (*for short, the ED*).

2. Since all these appeals filed under Section 42 of the Prevention of Money Laundering Act, 2002 (*for short, the PMLA*), arise from a common order passed by the learned Appellate Tribunal under SAFEMA, New Delhi, they were heard together and are being disposed of by this common judgment.

3. The appellant, in MA No. 34/2025, has prayed for the following relief(s):

> *"a. Allow the present Appeal and call for the entire records of the Appeal filed on behalf of the Appellant before the Hon'ble Appellate Tribunal, registered as FPA-PMLA-6158-RP-2023;*
>
> *b. Pass an order setting aside the Impugned Final Order dated 05.12.2024 in FPA-PMLA-6158-RP-2023 whereby the Hon'ble Appellate Tribunal has dismissed the Appeal filed on behalf of the Appellant and has consequently upheld the Order dated 01.06.2023 passed by the learned Adjudicating Authority (PMLA) in O.C. No. 1874/2023 filed on behalf of the Directorate of Enforcement;*
>
> *c. Pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case."*

4. The appellant, in MA No. 35/2025, has prayed for the following relief(s):

> "*a. Allow the present Appeal and call for the entire records of the Appeal filed on behalf of the Appellant before the Hon'ble Appellate Tribunal, registered as FPA-PMLA-6157-RP-2023:*
>
> *b. Pass an order setting aside the Impugned Final Order dated 05.12.2024 in FPA-PMLA-6157-RP-2023 whereby the Hon'ble Appellate Tribunal has dismissed the Appeal filed on behalf of the Appellant and has consequently upheld the Order dated 01.06.2023 passed by the learned Adjudicating Authority (PMLA) in O.C. No. 1874/2023 filed on behalf of the Directorate of Enforcement;*
>
> *c. Pass such other and further orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.* "

5. The appellant, in MA No. 37/2025, has prayed for the following relief(s):

> "*a. Allow the present Application;*
>
> *b. Pass an Order directing that the effect and operation of the Impugned Order dated 05.12.2024 passed by the Hon'ble*

Appellate Tribunal (SAFEMA) in FPA-PMLA-6159/RP/2023 and the Confirming Order dated 01.06.2023 passed by the learned Adjudicating Authority under the PMLA in O.C. No. 1874 of 2023 be stayed during the pendency of the accompanying appeal;

c. Pass such orders and directions as this Hon'ble Court may deem fit in the light and circumstances of the present case. "

6. The appellant, in MA No. 41/2025, has prayed for the following relief(s):

"*a) allow the present appeal and may kindly set aside the order dated 05.12.2024 passed by the learned Appellate Tribunal in Appeal No. FPA-PMLA-6266/RP/2023 and order passed in Original Complaint No. 1874 of 2023 dated 01.06.2023 passed by the adjudicating authority qua the Appellant; and/or*

b) pass such other order(s) and directions as this Hon'ble High Court may deem fit, proper, and necessary for the interest of justice."

7. The appellant, in MA No. 44/2025, has prayed for the following relief(s):

"*a) allow the present appeal and may kindly set aside the order dated 05.12.2024 passed by the learned Appellate Tribunal in Appeal No. FPA-PMLA-6266/RP/2023 and order passed in Original Complaint No. 1874 of 2023 order dated 01.06/2023 by the adjudicating authority qua the Appellant; and/or*

b) pass such other order(s) and directions as this Hon'ble High Court may deem fit, proper and necessary for the interest of justice"

8. The appellant, in MA No. 48/2025, has prayed for the following relief(s):

"*It is therefore prayed that this Hon'ble Court may be pleased to set aside the Impugned Order dated 05.12.2024 passed by the learned Appellate Tribunal under the PMLA in FPA-PMLA No. 6228 of 2023 and the Order dated 01.06.2023 passed by the learned Adjudicating Authority in OC No 1874/2023 dt 05.01.2023 in ECIR/RPZO/09/2022 dt. 29.09.2022, and*

Pass such further Orders as this Hon'ble Court may deem fit and necessary in the interest of justice."

9. The appellant, in MA No. 49/2025, has prayed for the following relief(s):

"*It is therefore prayed that this Hon'ble Court may be pleased to set aside the Impugned Order dated 05 12.2024 passed by the learned Appellate Tribunal under the PMLA in FPA-PMLA No. 6227 of 2023 and the Order dated 01.06.2023 passed by the learned Adjudicating Authority in OC No. 1874/2023 ECIR/RPZO/09/2022 dt. 29.09.2022; and dt 05.01 2023 in*

Pass such further Orders as this Hon'ble Court may deem fit and necessary in the interest of justice."

10. The appellant, in MA No. 50/2025, has prayed for the following relief(s):

"*It is therefore prayed that this Hon'ble Court may be pleased to set aside the Impugned Order dated 05.12. 2024 passed by the learned Appellate Tribunal under the PMLA in FPA-PMLA No. 6315 of 2023 and the Order dated 01.06.2023 passed by the learned Adjudicating Authority in OC No 1874/2023 dt. 05.01.2023 in ECIR/RPZO/09/2022 dt. 29.09.2022; and*

Pass such further Orders as this Hon'ble Court may deem fit and necessary in the interest of justice. "

11. The appellant, in MA No. 51/2025, has prayed for the following relief(s):

"*It is therefore prayed that this Hon'ble Court may be pleased to set aside the Impugned Order dated 05 12 2024 passed by the learned Appellate Tribunal under the PMLA in FPA-PMLA No. 6275 of 2023 and the Order dated 01.06.2023 passed by the learned Adjudicating Authority in OC No 1874/2023 dt. 05.01.2023 in ECIR/RPZO/09/2022 dt. 29 09 2022, and*

Pass such further Orders as this Hon'ble Court may deem fit and necessary in the interest of justice."

12. The appellant, in MA No. 80/2025, has prayed for the following relief(s):

"*It is therefore prayed that the Hon'ble Court be pleased to quash order dated 05/12/2024 passed by Appellate Tribunal under section 26 of the Prevention of Money Laundering Act, 2005 and also order dated 01/06/2023 passed by Adjudicating Authority under section 6 of the Prevention of Money Laundering Act, 2005, and release the properties of the Appellant that has been attached by the Enforcement Directorate*."

13. Challenge in these appeals filed under Section 42 of the PMLA is to the common final order dated 05.12.2024 (*hereinafter referred to as 'the*

impugned order) passed by the Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 {*for short, the SAFEMA*} at New Delhi (*for short, the Appellate Tribunal*), in FPA-PMLA-6157/RP/2023 and other connected appeals by which the learned Appellate Tribunal has dismissed the appeal filed by the appellants challenging the order dated 01.06.2023 (*for short, the Confirmation Order*) passed by the learned Adjudicating Authority (for short, the AA) in Original Complaint No. 1874/2023 by which the Provisional Attachment Order dated 09.12.2022 (*for short, the PAO*), against the appellants, has been confirmed.

14. The facts, in brief, as projected by the learned counsel for the parties is that on 12.07.2022 an FIR bearing Crime No. 129/2022 was registered by the Kadugodi Police station Whitefield, Bengaluru, Karnataka, for the offences under Section 186, 204, 353 and 120B of the Indian Penal Code (*for short, the IPC*). Suryakant Tiwari, a resident of Raipur, Chhattisgarh, was alleged to be the main accused. The offence under Section 384 IPC was thereupon added by the Karnataka State Police on 03.09.2022. The Central Board of Direct Taxes (*for short, the CBDT*) issued an Office Memorandum (*for short, the OM*) on 13.09.2022 titled as “sharing of information with ED in the case of M/s Jai Ambey Group of Raipur (Suryakant Tiwari Group)” based on the report of DGIT, Investigation, Bhopal. As per the said OM, Suryakant Tiwari in connivance with the Government officials of the State of Chhattisgarh carried out the offences of large scale illegal extortion punishable under Section 384 read with 120B of the IPC. The CBDT disclosed the need of ED to investigate the matter for contravention of Section 3 of the PMLA. According to the FIR and the documents received by the Income Tax Department, a search and seizure operation was conducted on the

premises of Suryakant Tiwari and his associates. Various evidences in the form of handwritten diaries, papers and digital evidences were collected which revealed cash transaction by a syndicate operated and coordinated by Mr. Suryakant Tiwari along with his associates and other individuals. The syndicate was collecting unauthorized cash over and above the legal amount fixed against the Coal Delivery Order issued by the South Eastern Coalfields Ltd. for various entities carrying out lifting and transportation of coal throughout the State of Chhattisgarh. The syndicate operated by Suryakant Tiwari and his associates was involved in illegal collection of Rs.25/- per every ton of coal transportation from mines with the active involvement of State Mining Officials/District Officials and network agents stationed in the coal belt. The syndicate operated in a well planned conspiracy, with delivery of orders only after illegal payment to the syndicate. Surya Kant Tiwari was assisted by the Government official like Smt. Saumya Chaurasia, Deputy Secretary, CMO (Chhattisgarh Administrative Officer), Sameer Vishnoi, Indian Administrative Services Officer and associates like Rajnikant Tiwari, Roshan Singh, Nikhil Chandrakar, Sheikh Moiunudeen Qureshi, Hemant Jaiswal, Joginder Singh etc. The collected money was to be distributed amongst the accused and even to settle the bribe money to the Government Officers and politicians to fund election expenditures. The investigation revealed that large portion of money has been channelized into layered transactions to project it as untainted money and brought into the main stream by investing in the properties, coal washeries and other assets.

15. In terms of the permission received from the learned Court of Metropolitan Magistrate, Bangalore, Section 384 IPC was added in the FIR but while filing the charge-sheet on 08.06.2023, it was not for the

offence under Section 384 IPC and thereby cognizance of offence was taken for offence under Section 204 and 353 of IPC only. The ECIR was registered on 29.09.2022 when the offence under Section 384 IPC was existing with its addition in the FIR though while filing the charge sheet much later on 08.06.2023, it was not filed for the offence under Section 384 IPC. However, it was with the endorsement that Suryakant Tiwari and its syndicate were operating in the State of Chhattisgarh. Thus, the offence under Section 384 IPC be taken up by Chhattisgarh State Police. An FIR was thus registered by the Chhattisgarh State Police on 17.01.2024 vide FIR number 03/2024 which was for the offence transferred to the State Police of Chhattisgarh was coupled with the offence under Section 7A and 12 of Prevention of Corruption Act, 1988 and Section 420/120 B of IPC against Suryakant Tiwari and others. It is also a fact that on 26.06.2023, the offences and facts disclosed by the Income Tax Department were incorporated in the ECIR by issuing an addendum.

16. The ED filed prosecution complaints under Sections 44 and 45 of the PMLA against the accused persons in the ECIR and proceeded to attach the properties vide the PAO dated 09.12.2022 in exercise of its power under Section 384 of the IPC. The appellants tried to offer explanation, however, their respective properties were attached. Following the PAO, the ED on 05.01.2023 filed a complaint under Section 5(5) of the PMLA before the learned AA seeking confirmation of the PAO No. 2/2022 dated 09.12.2022, against Suryakant Tiwari, Rajnikant Tiwari, Laxmikant Tiwari, Sunil Kumar Agrawal, M/s. Indermani Minerals India Pvt. Ltd (*for short, the IMIPL*), M/s. KJSL Coal & Power Pvt. Ltd., Sameer Vishnoi, Smt. Preeti Godara, M/s. Sri Preeti Trimula Agro Farm, M/s. Tejaswi Sunshine Pvt. Ltd. Smt. Saumya

Chaurasia, Smt. Shanti Devi Chaurasia, Anurag Chaurasia, Sourabh Modi and Anil Agrawal. A supplementary complaint was also filed by the ED before the learned trial Court arraigning some of the appellants as accused person therein.

17. On 12.01.2023, the learned AA issued show cause notices to the appellants under Section 8(1) of the MPLA. The appellants filed their respective replies to the said notices. Rejoinder was also filed by the ED to the reply filed by the appellants. Thereafter, the learned trial Court, took cognizance of the first prosecution complaint and the first supplementary prosecution complaint on 30.05.2023 and thereafter, the learned AA, vide Confirmation Order dated 01.06.2023, confirmed the attachment of properties provisionally attached by the respondent/ED vide PAO No. 2/2022, dated 09.12.2022.

18. After passing of the confirmation order by the learned AA, the Karnataka Police filed its charge sheet under Section 173 of the Cr.P.C. before the Chief Judicial Magistrate, Bengaluru, Rural in respect of the predicate FIR which forms the substratum of the ECIR and consequent proceedings under the PMLA. However, Section 384 IPC which was the only scheduled offence in the predicate FIR was not included in the charge sheet. Based on the charge sheet submitted, the learned Chief Judicial Magistrate, took cognizance of the offences under Sections 204 and 353 of IPC on 16.06.2023. The ED had also sent possession notice under Section 8(4) of the PMLA as well as eviction notice under Rule 5(2) of the Prevention of Money Laundering (Taking Possession of Attached Properties Confirmed by the Adjudicating Authority) Rules, 2013 for some of the properties attached by the AA in the subject OC.. Aggrieved by the Confirmation Order and Possession Notice issued on

the strength of the Confirmation Order, the appellants filed an appeal before the learned Appellate Tribunal under Section 26 of the PMLA which were dismissed vide final order dated 05.12.2024 which is sought to be challenged herein this batch of appeals.

19. Mr. Harshwardhan Parganiya, learned counsel appearing for the appellants {*in MA No. 34/2025-Sourabh Modi, 35/2025-Shanti Devi Chourasia and 37/2025-Anurag Chourasia*}, in nutshell, makes the following submissions:

(i) foundational facts for presumption under Section 24 of the PMLA has not been established;

(ii) the attachment in the present cases are bad for the want of a predicate offence;

(iii) ED has failed to show 'reasons to believe' that the properties attached vide the PAO were proceeds of crime (*for short, PoC*) as defined under Section 2(u) of the PMLA;

(iv) the manner in which the provisional attachment orders were confirmed was contrary to the principles of natural justice.

20. Mr. Parghania submitted that the foundational facts for presumption under Section 24 of the PMLA has not been established. The learned Appellate Tribunal overlooked the fact that the PAO had been confirmed by the Confirming Order solely based on the presumption under Section 24 of the PMLA has not been rebutted. However, the presumption under Section 24 can be pressed into service only when the following foundational aspects are established namely, (i) the criminal activity relating to a scheduled offence has been committed, (ii) the property in question has been derived or obtained, directly or indirectly, by any

person as a result of that criminal activity and; (iii) the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being PoC. On establishing the fact that there existed PoC and the person concerned was involved in any process or activity connected therewith, itself, constitutes offence of money laundering. In the present case none of the three foundational facts have been established by the ED. In fact, neither the appellate order nor the Confirmation Order record any reasons on the aforesaid aspects and the PAO stood confirmed by the learned AA purely on the strength of the presumption under Section 24 of the PMLA.

21. Mr. Parghaniya submitted the Karnataka Police filed its charge sheet in relation to the Karnataka FIR on 08.06.2023 in which the offence under Section 384 of the IPC was dropped because the alleged act of extortion was not committed within the territorial jurisdiction. Following the submission of the charge sheet, the Karnataka Police in relation to the FIR registered at Karnataka, the learned Chief Judicial Magistrate passed an order taking cognizance of only Sections 204 and 353 of IPC. Cognizance of the scheduled offence was not taken in relation to the Karnataka FIR which forms the basis of the ECIR. In order to revive the scheduled offence, in sheer abuse of process, addressed a reference under Section 66(2) of the PMLA to the EOW/ACB, Chhattisgarh on 11.01.2024 pursuant to which a separate FIR being Crime No. 3/2024 was registered on 17.01.2024. On 17.05.2024, the Hon'ble Supreme Court, taking note of the fact that there was no live investigation into the Scheduled Offence, granted interim bail to one Sunil Kumar Agrawal in the ECIR. Section 384 of the IPC as regards EOW FIR emerged for the first time in the charge sheet filed by the EOW/ACB before the learned Special Court (PC Act) at Raipur on 19.07.2024.

22. Mr. Parghania further submitted that the ED cannot be said to having fulfilled the burden. It is well settled that a presumption can be drawn only on the basis of facts that are duly proven and not on the basis of other presumptions or assumptions or surmises. The receipt of cash by the Appellant-Anurag Chaurasia or his cousin Saumya Chaurasia (through Manish Upadhyay or otherwise) has not been definitively proven through cogent evidence. The entire case of the ED is based on uncorroborated diary entries which have no sanctity in law. Further, the ED has, against the Appellant-Anurag Chaurasia, has relied on statements of co-accused under Section 50 of the PMLA such as Manish Upadhyay, Laxmikant Tiwari, etc. and it is well settled that statements of co-accused cannot be relied on as substantive evidence without any corroboration by reliable evidence. Further statements of Deepesh Taunk and Laxmikant Tiwari have been recorded after the said co-accused were taken into custody (on 13.10.2022 and 23.01.2023 respectively) and are therefore, hit by Section 25 of the Indian Evidence Act, 1872.

23. So far as the appellant-Shanti Devi Chaurasia is concerned, she is not charged with the offence of money laundering and arrayed as an accused before the learned Special Court in the complaint under Section 44 of the PMLA filed by the ED. There are no criminal proceedings pending against her under the PMLA. She is therefore entitled to benefit of Section 8(3)(a) of the PMLA. The Confirmation Order is also wanting in respect of cogent reasons for applying a discretionary presumption against her. The ED has attached a land in Thakuraintola, Chhattisgarh in the PAO which cannot possibly constitute PoC because it was purchased prior to the scheduled offences. The property was acquired by Ms. Ashamani Modi in 2019 which pre-dates the notification dated

15.07.2020 which was allegedly the fountainhead for generation of the PoC.

24. Mr. Parghania further submitted that the attachment of the properties in the present case is bad for want of predicate offence. The PAO and the consequent proceedings initiated by the ED stand vitiated for want of a scheduled offence. The reasoning of the learned Appellate Tribunal in this regard cannot be sustained since any action under the PMLA can be justified only if the complaint for the scheduled offence is either registered with the jurisdictional police or pending enquiry before the Competent Court. In the present cases, the Karnataka FIR which forms the basis of the ECIR has not resulted in any charge-sheet/report being filed for the scheduled offence before the competent court. The Court of the learned Chief Judicial Magistrate, Bengaluru Rural has not included any scheduled offence in his cognizance order dated 16.06.2023 in respect of the Karnataka FIR. The act of taking cognizance by a judicial magistrate under Section 190 of the Code of Criminal Procedure, 1973 is not an empty formality but implies an active step of application of mind by the Judicial Magistrate for the purposes of proceeding further and taking judicial notice of the offence. The learned Chief Judicial Magistrate, having reviewed the material placed before him, has neither taken judicial notice of the scheduled offence ie, Section 384 of the IPC nor directed further investigation into the same Therefore, no scheduled offence can be said to exist in the present case. Pertinently, the Hon'ble Supreme Court has also taken notice of the lack of a schedule offence in two separate orders (Sunil Kumar Agrawal v. Directorate of Enforcement and Laxmikant Tiwari Directorate of Enforcement) passed by it in relation to the ECIR. Finally, the ED cannot be permitted to substitute the predicate offence after the registration of the ECIR and more so when

the cognizance of the Prosecution Complaints have been taken by a judicial officer. A subsequent FIR registered after the ECIR following a reference from the ED would not cure the inherent defect of want of a scheduled offence in the prosecution initiated under the PMLA.

25. Mr. Parghania further submitted that the ED has failed to show *reasons to believe* that the properties attached vide the PAO were PoC as defined as Section 2(u) of the PMLA. The appellants proffered cogent explanations for the acquisition of the properties attached. Further none of the properties was acquired through cash transactions as alleged by the ED. The payments for the purchase of the attached properties were through proper and legitimate banking channels thereby discharging the burden under Section 8(2) of the PMLA which has been overlooked in the Impugned order. The appellant have given a detailed and plausible explanation qua source of funds in their respective replies filed in response to the OC before the AA. The impugned order and the Confirmation Order do not record any reasons for rejecting the explanation provided by the appellants. Despite the ED having the power to verify the entries in the bank statements provided by the Appellant, the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, the explanation provided by the appellants have not been rebutted or disproven. The said aspects was brought to the attention of the learned Appellate Tribunal in the written submissions filed on behalf of the appellants, but have not been considered in the impugned order. The ED cannot resort to any action on the assumption that the property attached constitutes PoC without establishing the criminal provenance or source of the properties in question. Both Sections 5 and 8 of the PMLA make it incumbent on the ED to show there were reasons to believe that the attached properties constitute PoC.

26. Mr. Parghania next submitted that there is no live link between the Karnataka FIR and the properties of the appellant attached by the ED either in the reasons recorded by the ED or the OC filed by the ED before the learned AA. In the absence of any such live link to show that the properties are derived from criminal activity relating to the scheduled offence, the ED cannot be permitted to attach any property. Such live link is also not borne out from a bare reading of the reasoning in the impugned order or the Confirmation Order. The reasoning of the learned Appellate Tribunal in the impugned order is in fact a reproduction of the allegations in the PAO and the complaint filed before the learned AA without juxtaposing the same with the explanation given in the reply filed by the appellants. Instead, the learned Appellate Tribunal has, in the impugned order held that the cash received from the alleged coal cartel was deposited in the bank which were subsequently used for purchasing immovable properties through banking channels. However, neither the PAO nor the show cause notice issued by the learned AA refers to any such deposit of large sums of cash into the bank accounts of the appellants. In absence any such allegations, the learned Appellate Authority ought not to have permitted the ED to improve on its allegations and sustain the Confirmation Order on grounds which were not communicated in the show cause notice.

27. It is next submitted by Mr. Parghania that the manner in which the PAO was confirmed is contrary to the principles of natural justice. The learned Appellate Tribunal also overlooked the fact that the procedure adopted by the learned AA was contrary to the principles of natural justice. Section 6(15) of the PMLA clearly mandates that the learned AA is bound by the principles of natural justice.

28. So far as the appellant Sourabh Modi is concerned, in the PAO and the OC, the ED has referred to deposits made in the bank account of a co-accused, Deepesh Taunk as well as the statement of Manoj Kumar Sinha. However, the underlying documents such as the bank accounts statements and other underlying documents were not supplied to the appellant as part of the relied upon documents. The learned AA could not have passed any order attaching the Appellant's property without supplying the underlying material. It is further well settled that the principles of natural justice cannot be ignored or done away with under the pretext that their compliance would not have yielded any result. The show cause notice issued by the learned AA does not disclose any cogent ground for concluding that the properties attached are derived from PoC . It is trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before the competent authority The requirement of showing the source of income under Section 8(2) of the PMLA arises only when the show cause notice issued under Section 8(1) of the PMLA meets the statutory requirement setting out cogent reasons to believe warranting/justifying the attachment of the property. In the present case, the show cause notice issued on 12.01.2023 itself is wanting in this respect.

29. With respect to appellant-Shanti Devi Chaurasia, similar submission as above is made by Mr. Parghania. He further adds that the applications filed by Anurag Chaurasia and Shanti Devi Chaurasia for cross examining Deepesh Taunk, Chandrashekhar Sinha and Manoj Kumar Sinha was rejected on specious grounds by the learned AA that the same would be unlikely to yield any result. Disproving the evidence given by them was a necessary part of their defence and in the exercise of

discharging the burden under Section 8(1) of the PMLA. As such, an opportunity ought to have been granted to them.

30. In support of his contentions, Mr. Parghania relies on the decisions rendered in ***Prem Prakash v. Union of India {2024 9 SCC 787}*** read with ***Vijay Madanlal Choudhary v. Union of India {(2023) 12 SCC 1}, Sarla Gupta & Another v. Directorate of Enforcement {Cr.A. No. 1622/2022, decided on 07.05.2025}, State of A.P. v. V. Vasudeva Rao {(2004) 9 SCC 319}, CBI v. V.C.Shukla {(1998) 3 SCC 410}, Subramanian Swamy v. Manmohan Singh {(2012) 3 SCC 64}, Tula Ram v. Kishore Singh {(1977) 4 SCC 459}, Yash Tuteja v. Union of India {2024 INSC 301}, S.L.Kapoor v. Jagmohan {(1980) 4 SCC 379}, Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. v. Secretary (Food & Agriculture) Govt. of A.P. {(1997) 4 SCC 337}, Aslam Mohammad Merchant v. Competent Authority {(2008) 14 SCC 186}, Kothari Filaments v. Commissioner of Customs {(2009) 2 SCC 193},*** decision of Madras High Court in ***K. Govindraj v. Union of India {2024 SCC OnLine Mad 3500},*** decision of the Punjab & Haryana High Court in ***Seema Garg v. Deputy Director, Directorate of Enforcement {2020 SCC OnLine P&H 738},*** decision of Delhi High Court in ***Rajiv Channa v. Union of India {2024 SCC OnLine Del 2535}, J. Sekar v. Union of India {2018 SCC OnLine Del 6523 : (2018) 246 DLT 610},*** and ***Harish Fabianai & Others v. Enforcement Directorate & Others {2022 SCC OnLine Del 3121}, Raman Bhuraria v. Directorate of Enforcement {2023 SCC OnLine Del 657}*** decision of High Court for the State of Telangana in ***M/s. Smartcoin Financial Pvt. Ltd. v. The Deputy Director & Another {Criminal Petition No. 2090/2023, dated 06.11.2024}*** and ***VANPIC Ports Pvt. Ltd. v. Directorate of***

Enforcement {2022 SCC OnLine TS 1793}, decision of the Karnataka High Court in ***Deputy Commissioner of Income Tax v. Sunil Kumar Sharma {2024 159 Taxmann.com 179 (Karnataka)}.***

31. Mr. Nikhil Varshney, learned counsel appearing for the appellants-IMIPL in MA No. 41/2025} and KJSL Coal and Power Pvt. Ltd. (*for short, the KSJL*) in MA No. 44/2025} submitted that these cases raise fundamental question regarding the distinction between victims and perpetrators of extortion syndicates, the temporal requirements for establishing nexus between properties and PoC , and the standards required for attachment of property under the PMLA in absence of a predicate scheduled offence. In nutshell, his submissions with respect to the appellant-KSJL are:

(i) not even a single allegation is made in the impugned order with respect to the alleged role of the appellants;

(ii) the learned Appellate Tribunal has failed to consider that the appellant cannot be said to be the *Benamidar* of accused-Suryakant Tiwari as the money was paid by the appellant through proper banking channel and it is not holding the properties ostensibly on behalf of Suryakant Tiwari;

(iii) the learned Appellate Tribunal has failed to appreciate that the appellant is the bonafide purchaser and had purchased the properties using its accounted money through banking channel;

(iv) the learned Appellate Tribunal has failed to appreciate the profit and loss statement of the appellant to show the source of income and has arbitrarily made observation that the appellant could not disclose source of funds;

(v) the learned Tribunal has passed an unreasoned order without application of mind to the facts of each appellant separately;

(vi) the learned Appellate Tribunal has failed to appreciate that there are no reason to believe against the appellant to justify attachments of its properties

(vii) the learned Appellate Tribunal has erred in passing a common order in the appeals based on completely different facts.

32. In addition to the above, the submissions of Mr. Varshney with respect to the appellant-IMIPL, are that the learned Appellate Tribunal failed to appreciate that 29 out of 52 properties have been acquired by Suryakant Tiwari, main accused before the commission of the alleged offence and cannot be attached as it does not amount to PoC.

33. So far as appellant-M/s. IMIPL is concerned, Mr. Varshney submitted that the appellant is a Company engaged in coal mining and coal washeries business and seek to set aside the impugned order which upholds the confirmation of PAO in respect of 52 properties out of which 29 properties were acquired before the commission of the alleged scheduled offence i.e. prior to 15.07.2020. He submitted that the other properties (other than the 29 properties acquired prior to 15.07.2020, i.e the commission of alleged offence) were also acquired bona fide with use of accounted money paid through proper banking channel and above the prevailing market rates. The learned Appellate Tribunal has failed to consider the facts and circumstances that are germane to the appellant and has mechanically passed the order without appreciating the arguments. The appellant had no nexus with the offence of extortion alleged against Suryakant Tiwari, main accused and his associates.

The appellant, vide Board Resolution dated 01.05.2022 resolved to acquire more properties as the appellant was venturing into new avenues for which it needed source of additional funds/guarantees from bankers which were demanding for additional collateral securities in form of immovable assets. In pursuance of the Board Resolution dated 01.05.2022, the appellant acquired 52 properties from Suryakant Tiwari and his associates and made the advance payment in May 2022. On 30.06.2022, the Income Tax Department conducted search and seizure operations under Section 132 of the Income Tax Act, 1961 on the premises of Suryakant Tiwari and associates. A large number of incriminating materials were found against Suryakant Tiwari and his associates, notably, nothing that incriminated the appellant was found during the search and seizure operations. No such search and seizure operations were conducted on the premises of the appellant. On 11.10.2022, the respondent/ED conducted a search on the premises of the appellant's promoter Sunil Kumar Agrawal and no incriminating material including cash was found in the search operation. On 09.12.2022, the respondent vide PAO No. 2/2022, attached properties, including 52 properties owned by the appellant. Subsequently, OC No. 1874/2023 dated 06.01.2023 was filed by the respondent/ED under Section 5(5) of the PMLA. Later, on 12.01.2023, a show cause notice in the OC No. 1874/2023 was issued by the learned AA under Section 8 of the PMLA directing the appellant to disclose source of income for acquisition of properties and explanation for exemption from attachment of properties as per the PAO. On 01.06 2023, the learned AA without application of mind mechanically pronounced the Confirmation Order for attachment of fifty-two (52) properties in the PAO.

34. As per Mr. Varshney, the learned Appellate Tribunal while passing the impugned order has made following observations against the appellant:

(a) Appellant purchased properties from Suryakant Tiwari and his associates including 29 properties purchased prior to 15.07.2020 after the Income Tax raids to prevent attachment of these properties.

(b) The appellant has not narrated the facts pertaining to 52 properties while filing the appeal to enable the Appellate Tribunal to analyze the issue.

(c) Even considering financial status as a company, it is not clarified that why the income was used to purchase immovable properties instead of using it as a capital for the industries.

(d) Ignorance of the period of crime while stating that 29 properties have been purchased before the commission of crime, the period of crime has been taken from the date of registration of FIR, i.e. 12.07.2022 whereas commission offence started much prior to the date of registration of the FIR Therefore, even these 29 properties were purchased during the period of commission of offence.

(e) The appellant has failed to disclose the source to acquire the properties. The appellant has merely referred to its financial status without disclosing and accounting as to how the cash involved to purchase the property came to them.

(f) The huge amount to purchase property was paid in cash and it is corroborated by witnesses in their statement under Section 50 of the PMLA.

(g) The appellant has purchased properties without showing the source and document to prove it.

(h) The appellant did not disclose ITRs filed by them for the financial year 2022-2023 and further, the ITR for financial year 2022-23 would not justify the properties attached prior to the financial year 2022 2023.

35. Mr. Varshney submitted that the learned Appellate Tribunal failed to consider that the Appellant-M/s. IMIPL cannot be said to be *Benamidar* of Suryakant Tiwari as the money has been paid by the appellant through proper banking channel and it is not holding properties ostensibly on behalf of Suryakant Tiwari. It is settled law that the principle governing the determination of the question whether a transfer is Benami transaction are:

(1) the burden of showing that a transfer is *Benami* transaction lies on the person who asserts that it is such transaction

(2) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is *prima facie* assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary,

(3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money, and;

(4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relation of the

parties, the motive governing their action in bringing about the transaction and their subsequent conduct, etc.

36. In the present case the basic ingredients of the *Benami* transactions i.e. the money for the purchase of the properties shall be paid by a person other than the person in whose favour the property is transferred, is not satisfied As mentioned above the payment for the purchase of the properties has flowed from the appellant to Suryakant Tiwari through proper banking channel Furthermore, the Respondent has not been able to discharge the burden of proof to establish that the appellant is Benamidar of Suryakant Tiwari, as it does not have any corroboratory evidence rather than baseless assumptions and surmises) to prove the allegations. The properties in the hands of the appellant have been attached merely on the ground that appellant is Benamidar of Suryakant Tiwari, therefore, properties are attached as value thereof under Section 2(1)(u) of the PMLA In absence any proof that appellant is Benamidar of Suryakant Tiwari, the properties in the hands of the appellant which have been purchased through proper banking channel by use of money which has no connection with the scheduled offence, cannot be attached The attached properties therefore, by no stretch can fall in the definition of PoC . The learned Appellate Tribunal has failed to appreciate that 29 out of 52 properties have been acquired by Suryakant Tiwari, main accused, before the commission of the alleged offence and cannot be attached as it does not amount as PoC. 29 of the attached properties were purchased by the appellant from Suryakant Tiwari and his associates which were acquired by them prior to the commission of criminal activity, i.e. before 15.07.2020. It is alleged in the OC that the extortion of illegal levy was started from 30.07 2020 *i.e.* only after the notification was issued on 15.07.2020. In light of this, the learned

Appellate Tribunal ought not to have confirmed the attachment of properties which were acquired by Suryakant Tiwari prior to the commission of the offence and further transferred to the appellant by proper legal means. It is trite law that property acquired prior to the commission of offence and having no connection with the offence cannot be attached under PMLA. The learned Appellate Tribunal has wrongly observed that the appellant may have acquired the 29 (twenty nine) properties before the registration of FIR dated 12.07.2022. however, observed that the properties were acquired during the period of commission of offence, *i.e*. post 15.07.2022. The observation of the learned Appellate Authority is completely contradictory to the established facts and admissions made by the respondent/ED as well.

37. Mr. Varshney next submitted that it is settled principle of law that for PoC the property associated with the scheduled offence must be derived or obtained by a person "as a result of criminal activity relating to the concerned scheduled offence. Placing reliance on the judgment of the Apex Court in ***Vijay Madanlal*** (supra). Mr. Varshney submitted that this distinction shall be borne in mind while reckoning any property referred to in the scheduled offence as PoC for the purpose of PMLA. There is a clear demarcation between the three limbs of PoC, any property attached as PoC ought to be derived directly or indirectly as a result of criminal activity. Further, the properties acquired prior to the commission of the scheduled offence cannot be attached under PMLA. The property of equivalent value can be attached only if the property derived or obtained from scheduled offence is taken or held outside India. This position of law that a property cannot be said to be in connection with PoC if the scheduled offence is committed after the acquisition of the property, has also been upheld by Supreme Court in ***Pavana Dibbur v.***

Directorate of Enforcement {(2023) 15 SCC 91 at Para 31.1.} Furthermore, the Hon'ble High Court of Kerala has held that to include properties which were acquired prior to commission of offence in the definition of PoC is too far fetched. The authorities under PMLA cannot be allowed to proceed against properties that are unconnected with any criminal activity in question.

38. Mr. Varshney further submitted that the learned Appellate Tribunal has failed to appreciate that the appellant is a bona fide purchaser and has purchased the properties using its accounted money. It is well settled that where a person is able to satisfy the AA by relevant material and evidence having a probative value that his acquisition is bona fide, legitimate and for fair market value paid therefor, the AA must carefully consider the material and evidence on record, and if satisfied to the bona fide acquisition of the property, relieve such property from provisional attachment. The appellant maintains its status as a bona fide third party purchaser with the financial wherewithal to purchase the properties. The appellant had a tangible net worth of Rs.287,42,00,000/- as of 31.03.2023 and profit after tax of Rs.70,14,00,000/- for FY 2022-23. Furthermore, the appellant paid more than the prevailing circle rates and acquired the properties by making payment through banking channels using legitimately hard earned money. All properties were duly registered with necessary registration and stamp duty charges paid to the Government of Chhattisgarh. The advance consideration for all 52 properties was paid in May 2022, before the Income Tax raid on Suryakant Tiwari on 30.06.2022. The appellant disclosed the source of funds to acquire the properties and made payments through banking channels at markup rates on market value. The appellant disclosed the ITR of 2022-23 before the learned Appellate Tribunal, however, the

Appellate Tribunal erred in noting that profit of sum of Rs.70,14,00,000/- and tangible net worth of Rs.287,42,00,000/- does not justify properties purchased prior to financial year 2022-23. The learned Appellate Tribunal failed to consider that none of the attached properties have been purchased prior to the said financial year. Advance consideration for all the properties was paid in May 2022, which was even antecedent to the Income Tax raid conducted on the premises of Suryakant Tiwari, main accused, *i.e.* 30.06.2022. The same fact is also reflected in the sale deeds of the attached properties. In terms of the above submission, it is submitted that the appellant could not have foreseen that a raid would be conducted on Suryakant Tiwari main accused, and therefore, cannot be said to have hatched this plan to prevent the attachment of properties in the hands of Suryakant Tiwari. The motive of the acquiring the properties can be adduced from the Board Resolution dated 01.05.2022 passed by the Board of Directors of the appellant, which resolved to acquire more properties as a collateral securities for banks for purposes of business expansion.

39. Mr. Varshney submitted that the learned Appellate Tribunal failed to appreciate the profit and loss statements of the appellant to show the source of income and has arbitrarily made observation that appellant could not disclose source of funds. The Appellate Tribunal has wrongly held that "the appellant has not purchased one or two properties, rather purchased as many as 52 properties without showing the source and document to prove it in the appeal filed by them, even the Income Tax Return for the financial year 2022-2023 was not enclosed. It was submitted later without showing its relevance for purchase of properties prior to it. The learned Appellate Tribunal has erred in noting that the appellant was not able to show source and document to prove the

purchase when the appellant submitted sale deeds and ITR statements for the financial year 2022-2023. The learned Appellate Tribunal further failed to appreciate that the appellant had wherewithal and financial capability to purchase the said properties, in fact the appellant paid more than the prevailing circle rate of the properties for the acquisition. The learned Appellate Tribunal has wrongly noted without application of mind that "In the appeal filed by them, even the Income Tax Return for the FY 2022-2023 was not enclosed It was submitted later without showing its relevant for purchase of properties prior to it" Notably, not even a single property out of the 52 attached properties were acquired by the appellant prior to 2022 which has also been admitted by the respondent/ED. The appellant had disclosed its source of funds to acquire the properties and thereby could not have been alleged to have been involved in concealment to the proceeds acquired by the syndicate of Suryakant Tiwari. A bare perusal of the impugned order indicates that there is no allegation of payment in cash or through non legitimate sources qua the appellant. Any allegation of cash consideration having been made is only qua Suryakant Tiwari and not against the appellant. The learned Appellate Tribunal has further failed to consider that the appellant had no role in the commission of the scheduled offence and mere allegations against Sunil Kumar Agrawal is not enough to attach properties of the appellant which have been acquired through proper channel in pursuance of a Board Resolution duly passed on 01.05.2022. The learned Appellate Authority has failed to appreciate the distinction between Sunil Kumar Agrawal and the appellant. The appellant is an independent Company which has purchased the properties under Board Resolution dated 01.05.2022 which has been duly passed by all the Directors of the Company and not only by Sunil Kumar Agrawal.

40. Apart from the above factual circumstances, Mr. Varshney submitted that the learned Appellate Tribunal has passed an unreasoned order without application of mind to the facts of each appellant separately. The learned Appellate Tribunal passed a non speaking order in a mechanical manner failing to consider facts and circumstances germane to the appellant and failed to apply its mind to the specific facts of the appellant and dismissed the following grounds without any reasoning. The appellant has no connection with the commission of the offence, no negative parity should fall on the appellant because of the clubbing of the matter. It is unjust to let the appellant suffer for the wrongs of Suryakant Tiwari. The impugned order relies on surmises and conjectures without cogent proof The learned Appellate Tribunal has not relied on any evidence to come to its finding against the appellant, it has merely referred to the statements of the co accused under Section 50 of the PMLA, in absence of any corroboratory evidence. Therefore, the learned AA's belief was based on suspicion and incorrect facts. The impugned order has erroneously relied and attributed on the fact that the properties are purchased from the alleged *Benamidars* of Suryakant Tiwari at lower than market rates and the said properties are still in the syndicate's control for all practical purposes, without any relevant and admissible evidence, simply on basis of surmises and conjectures. The learned Appellate Tribunal presumed that the information of raid on the accused would be common knowledge to the appellant (who was based in a State different from where the raid was undertaken). The learned Appellate Tribunal has dismissed the contention that the appellant was a victim of extortion syndicate by merely stating that it should have registered a first information report against Suryakant Tiwari and that the the political connections and affiliations of Suryakant Tiwari and that the

appellant could not have registered an FIR in view of the influence of Suryakant Tiwari in the State as approaching the Police would have been viewed as serious retaliation. The learned Appellate Tribunal failed to appreciate that there are no "reasons to believe" against the appellant to justify attachment of its properties. It is trite law that reasons to believe cannot be a rubber stamping of opinion already formed by someone else. The officer who is supposed to write down his reasons to believe must independently apply his mind It cannot be mechanical production of the words in the statute. Accordingly, when an authority judicially reviewing such a decision peruses such a reason to believe the process of thinking of the officer must be discernible. Basis the statement of reasons under Section 8(1) of the PMLA, there is no reason to be believe which makes it explicit as to the role of the appellant or as to why the appellant's properties are PoC and hence ought to be attached. The impugned order suffers from the vice of placing all the affected parties at the same position and treating them similarly. By passing a common order for all the affected parties, the learned Appellate Tribunal has blurred the distinction between the extortionist and the victims of the extortion syndicate and has failed to consider that the appellant is a bona fide purchaser. The superficial assessment of arguments of the appellant is evidenced by lack of cogency in the specific observations dealing with the appellant. The appellant as indicated above is a different class of other affected parties and by combining all the affected parties in the same order, the learned Appellate Tribunal has failed to appreciate the distinct nature of the appellant's arguments.

41. Mr. Varshney has drawn attention to the reply filed by the respondent/ED in its reply dated 11.04.2025 stating that the respondent / ED has raised the following baseless contentions without any corroboratory evidence

only on a figment of imagination; namely - (a) The appellant became a member of the syndicate and assisted Suryakant Tiwari in alienating his PoC . In response, it is submitted that the appellant is a victim of the extortion syndicate and never became a member of the syndicate and had no connection with the commission of the scheduled offence of extortion. (b) Post the payment of consideration by the appellant for the purchase of properties, Suryakant Tiwari and his associates withdrew that amount from bank and returned it the appellant in cash. In response to this contention, Mr. Varshney submitted that there is not even a single corroboratory evidence for the allegation and no cash was ever recovered from the premises of the appellant in the search and seizure operations conducted by the respondent. (c) The appellant has purchased some of the properties only on paper and in reality, these properties are still beneficially owned by Suryakant Tiwari. In response to this allegation, it has been submitted that the appellant acquired the properties in furtherance of its business interest in pursuance of the Board Resolution, the averment made by the respondent/ED that one Dinesh Choudhary has entered into an agreement with Smt Kailash Tiwari for running Dhaba on one of the attached properties is without any substance. Sunil Kumar Agrawal, Director of the appellant was arrested on 13.10.2022 i.e. immediately after acquiring the said property. Therefore, the appellant and its Directors could not take care of the physical transfer of the possession of the attached properties. (d) The appellant is holding the properties as *Benamidar* of Suryakant Tiwari. In response, it has been submitted that the main ingredients of '*Benamidar*', i.e, the payment for the purchase of property shall be made by a third party is not fulfilled. Further, the respondent has not been able to provide any corroboratory evidence for the allegation of *benami*. (e)

The Board Resolution dated 01.05.2022 passed by the Director of the appellant to acquire the properties is manufactured. In response to it, it is submitted that the respondent has made this contention without any basis. The Board Resolution dated 01.05.2022 was duly passed by all the Directors of the Company and the meeting was called vide notice dated 19.04.2022 in terms of Section 173(3) of the Companies Act, 2013.

42. Further, the respondent/ED in its reply has admitted certain facts which proves the bonafide of the appellant namely - (a) the appellant is not named as an accused in the charge-sheet or the supplementary charge-sheet filed by ACB/EOW, Chhattisgarh, on 18.07.2024 and 09.10.2024. (b) The 29 properties of the attached properties purchased by the appellant, were acquired prior to 15.07.2020, i.e. the date on which scheduled offence was allegedly committed. (c) Appellant had no role in he offence of extortion being done by syndicate of Suryakant Tiwari. (d) While purchasing the attached properties, the appellant has paid only sale deed consideration and no payment over and above that has been paid by the appellant in cash or by any other mode.

43. Mr. Varshney lastly submitted that In view of the above facts and submissions, the appellants submit that the impugned order passed by the learned Appellate Authority qua the appellants is liable to be set aside as the properties of the appellant does not amount to "PoC " under PMLA. It is further submitted that the impugned order has caused grave prejudice to the appellant's business activities.

44. So far as the appellant-M/s. KSJL Coal & Power Private Ltd. are concerned, Mr. Varshney submitted that it is also engaged in coal washery business since 2010 with substantial financial capacity and

legitimate business operations. The company has been operating seven coal washeries and took a commercial decision to expand its operation by acquiring two additional Coal Washeries from Maa Madwarani Coal Benefication Pvt. Ltd (*for short, the MMCBPL*)

45. Mr. Varshney submitted that the appellant has no nexus with the offence of extortion alleged against Suryakant Tiwari, main accused and his associates. On 15.06 2022, the Board of Directors of the appellant, ie, Satyanarayan Yadav and Ajay Kumar Sahu, passed a Board resolution to acquire additional Coal Washeries from MMCHPL for locational and strategic advantages. In furtherance of the Board Resolution, an agreement for sale dated 20.06.2022 was entered between MMCBPL and the appellant for Rs.35,28,84,000/- with advance payment of Rs.2,50,00,000/ and issued post-dated cheques. On 30.06.2022, the ITD conducted search and seizure operations under Section 132 of the IT Act on the premises of Suryakant Tiwari and associates. A large number of incriminating materials were found against Suryakant Tiwari and his associates, notably, nothing that incriminated the appellant was found during the search and seizure operations. No such search and seizure operations were conducted on the premises of the appellant. Therefore, it cannot be said that the appellant purchased the Coal Washeries subsequent to the raid as the agreement for sale is prior to the raids by the ITD. Furthermore, the appellant could not have foreseen that raid would be conducted on Suryakant Tiwari. The properties acquired by the appellant-Company was not out of the tainted money. Not even single allegation has been made against the appellant. All the allegations are in relation to the role of Sunil Kumar Agrawal without appreciating that appellant is a separate legal entity which has acquired properties vide Board Resolution dated 15.06.2022 duly passed by its

Board of Directors. The learned Appellate Tribunal while passing the impugned Order has made following observations against the appellant-Company, namely (a) Sunil Kumar Agrawal helped Suryakant Tiwari in acquiring Coal Washeries of M/s Indus Udyog Private Limited (for short, the Indus Udyog) and M/s Satya Power Private Limited (for short, the Satya Power). (b)The Coal Washeries were acquired by MMCBPL from Indus Udyog and Satya Power for a sum of Rs.96,00,00,000/- out of which Rs.34,00,00,000/- was the registered value and rest of the amount was paid in cash by Suryakant Tiwari to Indus Udyog and Satya Power. (c) After the IT raids, Sunil Kumar Agrawal made sham paper transaction to show that he was the owner of the Coal Washeries and registered the same in the name of the Appellant. (d) Sunil Kumar Agrawal, promoter of the Appellant, purchased the Coal Washeries from MMCBPL for a consideration amount of Rs.34,00,00,000 to conceal PoC. (e) Sunil Kumar Agrawal is acting as *Benami* of Suryakant Tiwari and has assisted in money laundering. (f) All the properties were purchased in the year 2020 and appellant did not bring cogent evidence to prove source to acquire all the properties.

46. Mr. Varshney submitted that the factual grounds are that not even a single allegation made in the impugned order with respect to the alleged role of the appellant. Bare perusal of the impugned order or the PAO would suggest that the learned Appellate Tribunal has not appreciated the fact that no role was assigned to the appellant in order attach its properties under PMLA. The learned Appellate Tribunal also failed to appreciate the appellant had no role in the commission of the scheduled offence nor properties in the hands of the appellant have any direct or indirect relation with the alleged criminal activity. The learned Appellate Tribunal has further failed to consider that mere allegations against Sunil

Kumar Agrawal is not enough to attach properties of the appellant which has acquired the Properties through proper channel in pursuance of the Board Resolution duly passed on 15.06.2022. Further, the learned Appellate Authority has further failed to appreciate the distinction between Sunil Kumar Agrawal and the appellant. The appellant is an independent Company which has purchased the properties vide Board Resolution dated 16.06.2022 which has been duly passed by the Directors of the Company, i.e. Satyanarayan Yadav and Ajay Kumar Sahu and not by Sunil Kumar Agrawal. The learned Appellate Tribunal has further failed to consider the appellant cannot be said to be *Benamidar* of Suryakant Tiwari as the money has been paid by the appellant through proper banking channel and it is not holding properties ostensibly on behalf of Suryakant Tiwari. With respect to the allegation of the appellant being *Benamidar* of Suryakant Tiwari, similar submission as has been made in respect of appellant-IMIPL. have been advanced. The learned appellate Tribunal has failed to appreciate that the appellant is *bona fide* purchaser and had purchased the properties using its accounted money through proper banking channel. The appellant-Company had all the wherewithal to purchase the properties. The appellant maintains its status as a *bona fide* third party purchaser with the financial wherewithal to purchase the properties. The appellant, as of 31.03.2023, had a tangible net worth of Rs.38,97,00,000/- and profit after tax deduction for the financial years 2022-23 of Rs.25,09,00,000/-. It suggests that the appellant had wherewithal to purchase the Coal Washeries. Further, the appellant Company had paid more than the valuation of the said Coal Washeries as per the certificates issued by Chartered Accountants NDSKA and Associates dated 04.03.2020, Rishabh Agrawal and Associates dated 09.11.2021,

and Ashish Gupta and Associates dated 08.08.2017. In line with the valuation reports by the Chartered Accountants, the total market value of the Coal Washeries was determined to be Rs.12,96,68,000/-. However, it is an undisputed fact that the appellant acquired these Coal Washeries from MMCBPL for approximately Rs.35,28,84,000/- (inclusive of TDS). The agreement for sale of the Coal Washeries was executed pursuant to the Board Resolution passed by the Directors of the appellant on 15.06.2022. The appellant could not have foreseen that income tax raids would be conducted on the premises of Suryakant Tiwari. Further, the appellant-Company purchased the Coal Washeries only after the grant of permission by the Collector of Korba District vide order bearing No. RP.No 202207050400027/A-21/202122 for the sale of land by MMCBPL in favour of the appellant. The advance payment for both the Coal Washeries was made through accounted income via cheque dated 20.06.2022 and the post dated cheques for the balance consideration were also issued by the appellant on the same date. The Board Resolution dated 15.06.2022 was passed by the Board of Directors of the appellant, *i.e*, Satyanarayan Yadav and Ajay Kumar Sahu, for expanding its business to various coal mining areas and to cater to the needs of respective customers for which it needed to acquire/build additional capacities along with a private railway siding to gain location and other strategic advantage.

47. Mr. Varshney submitted that the learned Appellate Tribunal has failed to appreciate that the 11 properties of the appellant are not PoC as it has no connection with the scheduled offence. It has further failed to appreciate the profit and loss statements of the appellant to show the source of income and has arbitrarily made observation that appellant could not disclose source of funds. The learned Appellate Tribunal has

wrongly held that appellant did not bring cogent evidence to prove source to acquire all the properties. The learned Appellate Tribunal has erred in noting that the appellant was not able to show source and document to prove the purchase when the appellant submitted sale deeds and ITR statements for the financial year 2022-2023. The learned Appellate Tribunal further failed to appreciate that the appellant had wherewithal and financial capability to purchase the said properties. In fact the appellant paid more than the prevailing circle rate of the properties for the acquisition. The appellant had disclosed its source of funds to acquire the properties and thereby could not have been alleged to have been involved in concealment to the proceeds acquired by the syndicate of Suryakant Tiwari. There is no allegation of payment in cash or through non legitimate sources qua the appellant. Any allegation of cash consideration having been made is only quo Suryakant Tiwari and not against the appellant.

48. It is further submitted that the learned Appellate Tribunal has passed an unreasoned order without application of mind to the facts of each appellant separately. There are no reason to believe against the appellant-Company to justify attachments of its properties. The learned Appellate Tribunal has erred in passing a common order in the appeals based on completely different facts. Mr. Varshney reiterates similar submissions as advanced in respect of M/s. IMIPL.

49. Mr. Varshney submitted that the respondent/ED in its reply dated 11.04.2025 has raised baseless contentions against the appellant which is only a figment of imagination. It has been asserted that the appellant has acquired the the Coal Washeries from PoC generated from the commission of scheduled offence. In response, it is submitted by Mr.

Varshney that the payment for the purchase of the Coal Washeries has been made through proper banking channel and duly registered sale deed Furthermore, the Respondent has failed to provide any evidence to suggest that PoC or cash was used in the transaction, and it has completely ignored the fact that the appellant has the wherewithal to acquire the Coal Washeries. It has also been asserted by the respondent/Ed that the Coal Washeries were sold to the appellant by MMCBPL after the search and seizure by the Income Tax Department on 30.06.2022. In response, it is submitted that the Coal Washeries were purchased prior to the search and seizure of the Income Tax Department. The agreement for sale of the Coal Washeries was executed pursuant to the Board Resolution passed by the Directors of the appellant on 15.06 2022. The appellant could not have foreseen that income tax raids would be conducted on the premises of Suryakant Tiwari. The respondent/ED further asserts that the appellant has purchased some of the properties only on paper and in reality, these properties are still beneficially owned by Suryakant Tiwari in response to which, it is stated by the Mr. Varshney that the appellant acquired the properties in furtherance of its business interest, the averment made by the respondent/ED that one Dinesh Choudhary has entered into agreement with Smt. Kailash Tiwari for running Dhabha on one of the attached properties is without any substance. Sunil Kumar Agrawal, Director of the Appellant, was arrested on 13.10.2022, i.e, immediately after acquiring the said property. Therefore, the appellant and its Directors could not take care of the physical transfer of the possession of the attached properties. It has further been averred by the respondent/ED that 13% percent of shares in MMCBPL have been transferred to Indermani Mineral India Private Limited (IMIPL), however,

there is no corroboratory evidence of this allegation. It is submitted that the respondent cannot rely on the statements of Anup Bansal to contend the transfer of shares from MMCBPL to IMIPL in absence of any corroboratory evidence. It is trite law that the statements made under Section 50 of the PMLA are not 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. The respondent/ED has further averred that the fact of the Board Resolution dated 15.06.2022 to acquire additional Coal Washeries and the agreement for sale of the Coal Washeries dated 20.06.2022 are manufactured as Sunil Kumar Agrawal never divulged these facts before any legal forum till date. In response, it is submitted that the meeting of the Board of Directors of the appellant was duly called vide notice dated 03.06.2022 in terms of Section 173(3) of the Companies Act, 2013 and in furtherance of the same, the meeting of the Board of Directors was conducted wherein Board Resolution dated 15.06.2022 was duly passed approving the purchase of the Coal Washeries. It is further submitted that in the special leave petition filed by Sunil Kumar Agrawal before Hon'ble Supreme Court in the matter ***Sunil Kumar Agrawal v. Directorate of Enforcement***, ***{Special Leave to Appeal No. 5890/2024}*** the facts of existence of the Board Resolution and Agreement for Sale for purchase of the Coal Washeries were brought on record before the Hon'ble Supreme Court. It is also the allegation of the respondent/ED that the appellant-Company is the *Benamidar* of Suryakant Tiwari, however, the respondent/ED has not been able to provide any corroboratory evidence in support of its allegation.

50. Further, the respondent/ED has admitted that the appellant-Company was not named in as an accused in the charge-sheet or the

supplementary charge-sheet filed by ACB/EOW on 18.07.2024 and 09.10.2024. The appellant purchased two Coal Washeries situated at Korba and Bilaspur from MMCBPL for a consideration (excluding TDS) amount of Rs.34,93,67,390/- and no cash was paid by the appellant to MMCBPL for the purchase of the coal washeries.

51. In support of his contentions, in addition to the reliance placed on the decisions by Mr. Parghaniya, Mr. Varshney, learned counsel for the appellants-Sourabh Modi, Anurag Chourasia and Shanti Devi Chourasia, places reliance on the judgments in ***Thakur Bhim Singh (Dead) by LRs & Another v. Thakur Kan Singh {(1980) 3 SCC 72}, B. Rama Raju v. Union of India {(2011) 4 ALD 383}, Abdullah AH Balsharaf v. Enforcement Directorate*** {2019 SCC OnLine Del 6428}, ***Satish Motilal v. Union of India {2024 SCC OnLine Ker 3410}.***

52. Mr. Shashank Mishra, learned counsel appearing for the appellants {in MA No. 48/2025-Divya Tiwari, 49/2025-Kailash Tiwari, 50/2025-Rajnikant Tiwari and 51/2025-Suryakant Tiwari} submitted that (i) the principles of natural justice have been violated. (ii) there is no underlying scheduled offence on which the said ECIR is premised and the proceedings in the subject OC were carried out by the respondent completely without jurisdiction; (iii) there is no offence of money laundering involved in these petitions; (iv) the composition of Hon'ble AA suffers from the vice of coram non-judice, and; (v) all the administrative assistance in case of this Hon'ble Authority comes from the ministry of finance.

53. It is submitted by Mr. Mishra that so far as the properties mentioned *inter alia* at Sl.Nos. 15-16, 44-46, and 63-64, though were purchased and owned by Divya Tiwari, have been attached on the basis that these are

allegedly the properties in relation to PoC acquired by Suryakant Tiwari. Pertinently, even though the appellant was the recorded purchaser and owner of the said properties, she was *mala fidedly* not made party to the subject OC, and no show cause notice was issued to her by the learned AA, thereby violating principles of natural justice and her right to be heard and represented before the learned AA. It is stoutly denied that any of the aforesaid properties are properties in relation to PoC acquired by Suryakant Tiwari. Suryakant Tiwari has no connection with any of the aforesaid properties. On the contrary, these are properties which had been acquired by the appellant out of her own untainted, legitimate and duly disclosed sources of income and were also duly reflected in the relevant books of accounts/ITRs. Further, to the best of the appellant's knowledge, no legal proceeding under the Prohibition of Benami Property Transactions Act, 1988 has been initiated by the competent authority against Suryakant Tiwari or the appellant. As such, the action of attaching properties on the ground that they are allegedly beneficially owned by Suryakant Tiwari is wholly without jurisdiction and untenable, apart from being devoid of any merit or substance. Even otherwise, and as per the ED's own case, all these properties are presently (and even prior to the passing of the PAO and filing of the subject OC) held by M/s IMIPL. As such, the appellant has no concern with these properties, and they are being wrongly attached in relation to alleged PoC acquired by Suryakant Tiwari.

54. Mr. Mishra further submitted that the proceedings before the AA qua the legitimate immovable properties, previously owned by the appellant herein (now sold and not in her possession) herein are completely contrary to and violative of the principles of natural justice, *audi alteram partem*. The appellant herein was never served a notice or supplied a

copy of the OC (along with relied upon documents) or given an opportunity to file her reply to the same or given an opportunity of being heard by the AA or given an opportunity to cross-examine the persons whose statements were allegedly recorded by the Respondent herein before the PAO was confirmed and the eviction notices were issued by the Respondent herein. Thus, the PAO, the AO and the eviction notices are arbitrary, unjust and bad and vitiated in law. the eviction notices served to the appellant herein by the ED is in complete violation of the principles of natural justice. As per Section 6 (15), PMLA, the learned AA is statutorily guided by the principles of natural justice even if it has the power to regulate its own procedure, which the learned AA has lost sight of. In the instant case there is no underlying scheduled offence, thus there cannot be any PoC derived from the scheduled offences. The said ECIR was registered by the ED on the basis of the Bengaluru FIR treating Section 120-B IPC and Section 384 IPC (added later) as the alleged scheduled offence. Pertinently, in the final report dated 08.06.2023 filed by PS Kadugodi in relation to the Bengaluru FIR, Sections 384 and 120B IPC were dropped and the charge-sheet was filed only under Section 353 and 204 IPC, thereafter, cognizance was taken by concerned Court in Bengaluru for offences under 353 and 204 IPC (neither of which are scheduled offences under the PMLA) vide its order dated 15.06.2023. Even in the Chhattisgarh FIR registered by the EOW, Raipur on 17.01.2024, no offence under Section 384 IPC was registered. This is against the settled position of law as the existence of a scheduled offence is a sine qua non for an offence under PMLA to be made out. In fact, to initiate prosecution for offence under Section 3 of the Act, registration of scheduled offence is a prerequisite Further, the belated addition of Section 384 IPC in the Chhattisgarh FIR on

22.05.2024 is of no consequence as it was done only after and in order to bypass the above order dated 17.05.2024, Even after the addition of the Section 384 IPC, the Hon'ble Supreme Court granted interim bail to two other co-accused namely Deepesh Taunk and Ranu Sahu, vide order dated 08.07.2024 in SLP (Crl.) No. 3403/2024 and SLP (Crl.) No. 6963/2024 respectively. Vide Order dated 07.08.2024, the interim bails granted to all 3 co-accused viz. Sunil Kumar Agrawal, Deepesh Taunk and Ranu Sahu were made absolute by the Hon'ble Supreme Court. This sequence of events, and the fact that on the date of filing of the prosecution complaint, no scheduled offence was in existence, was also recorded by the Hon'ble Supreme Court in the Order dated 04.10.2024 in SLP(Crl.) No. 11141/2024. Reliance placed by the learned Appellate Tribunal on the decision of the Hon'ble Supreme Court in ***Saumya Chaurasia v. Directorate of Enforcement***, Criminal Appeal No. 3840 of 2023 is entirely misplaced, for the reason that there are subsequent orders, viz. order dated 17.05.2024 passed in SLP (Crl.) No. 5890/2024 titled ***Sunil Kumar Agrawal v. ED*** and order dated 04.10.2024 passed in SLP (Crl.) No. 11141/2024 titled ***Laxmikant Tiwari v. Directorate of Enforcement*** which affirm that there is no scheduled offence. Pertinently, the above mentioned order dated 17.05.2024 passed in SLP (Crl.) No. 5890/2024 has been affirmed by a three-judge Bench of the Hon'ble Supreme Court on 07.08.2024 (as against the two-judge Bench in ***Saumya Chaurasia*** (supra). The crux of the ED's case is that Suryakant Tiwari was involved in running an alleged extortion racket wherein an amount of Rs. 25/- was extorted per metric tonne of coal for its transportation out of the coal mine fields. However, as stated above the offence of extortion i.e. Section 384 of IPC, was dropped by the Bengaluru Police after due investigation. Even the EOW, Raipur did not

include S.384 IPC in its FIR registered on 17.01.2024. The ED alleged that the total PoC in this case is about 540 Crores, whereas the ACB/EOW, Raipur has alleged that this amount is about Rs. 318 Crores. These figures do not have any basis in fact or law. The investigating agency, at best, could have made an allegation only to the extent of the material in their possession *i.e.* the amount mentioned by persons in their statements recorded by the agency, which is, not more than Rs. 25-30 Crores. As per the statements made by Suryakant Tiwari, he was in the business of carrying coal since 2004-2005. In 2013 got a contract of carrying coal from PKCL, controlled by the Adani Group and has been working with the Adani Group since 2013. The appellant used to maintain a diary and made imaginary/fake and some real entries in the same to use in situation where someone would try to harm his business. After change in the Government in the State of Chhattisgarh in 2018, he contacted the MLAs and other officers and wrote their names and other details in that diary entry, which he would have used if someone tried to harm his business, but the appellant never actually used it. The alleged material being relied upon by the ED against Suryakant Tiwari, either in the form of statement of co-accused persons or alleged diary entries, is not admissible in evidence.

55. Mr. Mishra further submitted that there is no material to corroborate the false statements made by the co-accused persons under Section 50 of the PMLA, in the instant case. The statement of a co-accused person is an extremely weak piece of evidence and cannot be treated as substantive evidence as against the other co-accused persons. Therefore, all the statements under Section 50 of the PMLA sought to be relied upon by the ED to substantiate its allegations against Suryakant Tiwari are inadmissible. The ED has claimed that the said statements

are admissible as the proceedings under Section 50 of the PMLA are judicial proceedings. However, the respondent has nowhere responded to the appellant's submission that, as the Section 50 statements being relied on by the ED are of co-accused persons, they are not substantive evidence. Moreover, the ED has not adduced any material to corroborate these statements. Further, mere diary entries cannot be read into evidence and the same are inadmissible in law, especially without independent evidence of their trustworthiness. Whilst the ED has admitted that diary entries have no meaning till they are independently corroborated, it has merely stated/averred that ED has analyzed the diary entries against WhatsApp chats, Section 50 PMLA statements, sale deed documents, bank transactions. However, the respondent/ED has nowhere elucidated or explained how or which diary entries have been corroborated with the said documents.

56. Mr. Mishra further submitted that as per the Section 2(1)(a) of the PMLA, which defines AA, read with Section 6(1) and (2) PMLA, the AA must necessarily consist of a Chairperson and 2 other members, where one, member each shall be a person having experience in the field of law, administration, finance or accountancy. Thus, in total, there must be 3 persons to constitute the AA. At present, the AA constituted under Section 6 of the PMLA comprises of only a single Member from outside the field of law, who is also the acting Chairperson. Therefore, the conduct of proceedings by or before the AA is completely devoid of jurisdiction and illegal for the reason of *coram non-judice*. Since the Member (Finance) alone as a Single Member has conducted the proceedings in the subject OC, the mandatory provisions of Section 6 stand violated. It is well-settled that if the person who made the order did not have the authority to do so, then such an order would only be a

nullity. The adjudication of the subject OC required consideration of pure questions of law especially as to the interpretation of various provisions under PMLA. It is well settled in law that in a case where an interpretation of a statutory provision or rule arises before a tribunal, the matter must be heard and adjudicated by a bench comprising of at least one judicial member. The AA constituted under the PMLA is not an independent and impartial forum. The administrative control of the AA vests with the Department of Revenue, Ministry of Finance, which is the same Department/ Ministry that also has direct administrative control over the ED, which was one of the contesting parties/ litigants before the AA. Article 50 of the Constitution of India, requires the State to take effective steps in ensuring that there is a separation of powers between the executive and the judiciary.

57. In addition to the above, with respect to appellant-Kailash Tiwari, Mr. Mishra submitted that the properties mentioned inter alia at Sl.Nos. 9, 52, 67 and 68, though were purchased and owned by the Appellant, have been attached on the basis that these are allegedly the properties in relation to PoC acquired by Suryakant Tiwari. The concerned immovable properties, which have been maliciously and malafidely provisionally attached by the Respondent herein and thereafter confirmed by the AA had been acquired by the appellant herein through untainted and legitimate funds, which do not have any nexus with the alleged “scheduled offence” or the alleged “PoC ”, and thereafter legally sold to a third party. The payments of the said properties were made through proper banking channels duly disclosed to all the concerned authorities and hence, there cannot be any element of illegality in the same. The payments for the said properties were also received through proper banking channels on being sold vide duly executed instruments.

The appellant herein, who is not a Defendant in the OC, was not given any opportunity to file a Reply to the said OC / object to the same and produce any documents before the AA, which establishes the legality of the source of funds for the purchase of the said properties and receipt of funds on sale of the same. the said properties have already been sold by the appellant herein to M/s. IMIPL and thus, the appellant herein is no longer in the possession of the said properties.

58. So far as appellant-Rajnikant Tiwari is concerned, the properties mentioned, inter alia, at sl. Nos. 14, 22-23, 28, 40-43, and 70 and the properties at sl. No. 18-19, and 27 were owned by M/s. Riddhi Siddhi Buildcon of which Rajnikant Tiwari was a partner and property at serial No. 26 was owned by M/s. Maharaj Mordhwaj Megha Projects of which the appellant was apartner, though were purchased and owned by Rajnikant Tiwari, have been attached on the basis that these are allegedly the properties in relation to PoC acquired by Suryakant Tiwari.

59. So far as appellant-Suryakant Tiwari is concerned, the properties mentioned at Sl. Nos. 6-70 have been attached on the basis that these are allegedly the properties in relation to PoC acquired by the appellant. It is stoutly denied that any of the aforesaid properties are properties in relation to PoC acquired by the appellant. It is further stoutly denied that the appellant has derived, obtained or acquired any POC, as alleged or otherwise. As is evident from the description of these properties contained in the subject OC itself, several of these properties are not even owned by the appellant and are in fact, owned and duly registered in the names of other persons, who are separate legal entities/ persons. For instance, (a). Properties at Sl.Nos. 6 and 66 were owned by Navneet Tiwari (b). Property at Sl.Nos. 7 was owned by Navneet Tiwari and

Aabhika Tiwari (c). Property at Sl.No. 8 was owned by Sonali Dubey (d). Properties at SI.Nos. 9, 52, and 67-68 were owned by Kailash Tiwari (e). Properties at Sl.Nos. 10-12 were owned by Shesh Charan Tiwari (f). Property at Sl.No.13 was owned by M/s A.A. Buildcon (Partner Avinash Pandey) (g). Properties at Sl.Nos. 14, 22-23, 28, 40-43 and 70 were owned by Rajnikant Tiwari (h). Properties at Sl.Nos. 15-16, 44-46, and 63-64 were owned by Divya Tiwari (i). Properties at Sl.Nos. 17 and 25 were owned by Laxmikant Tiwari (j). Properties at Sl.Nos. 18-19, and 27 were owned by M/s Riddhi Siddhi Buildcon, of which, Rajnikant Tiwari was a partner. (k). Property at Sl.Nos. 24 was owned by Utkarsh Tiwari (l). Property at Sl.No.26 was owned by M/s Maharaj Mordhwaj Megha Projects, of which, Rajnikant Tiwari was a partner. (m). Properties at Sl.Nos. 47-48 were owned by Mukut Dubey (n). Properties at SI.Nos. 50-51 were owned by Phool Dubey.

60. Therefore, the appellant-Suryakant Tiwari has no connection with any of the aforesaid properties and as such, the source of funds or the means, mode or manner of purchase/acquisition of these properties can only be explained by such third parties, and not by the appellant. The appellant is only concerned with the remaining properties all of which have been purchased much prior to the alleged period of the offence and as such, could not have been acquired or derived out of the alleged PoC: *viz*. (a). Properties at Sl.Nos. 49, 56-62 and 69 were owned by the appellant. (b). Property at SI.No. 53 was owned by Aryan Tiwari (Minor s/o Suryakant Tiwari) (c). Properties at Sl.Nos. 54-55 were owned by Aanvi Tiwari (Minor d/o Suryakant Tiwari) (d). Properties at Sl.Nos. 20-21 were owned by M/s S.S. Builder Developers, of which, the appellant is a partner. (e). Properties at Sl. Nos. 29-39 were owned by M/s Maa Madwarani Coal Benification Pvt. Ltd. of which, the appellant is a

Director. (f). Property at Sl.No. 65 was owned by Adilaxmi Infrastructure Pvt. Ltd., of which, the appellant is a Director.

61. As regards the property at SI.No. 69, it is pertinent to point out that the said property was sold to M/s IMIPL vide sale deed registered on 04.08.2022. Despite the said property having been sold prior to the Subject PAO dated 09.12.2022, the ED has wrongly attached this property in the hands of the Appellant. To the best of the appellant's knowledge, the same is the case with the property at Sl.No. 70 also, i.e., sold to M/s IMIPL vide sale deed registered on 22.08.2022. Even otherwise, and as per the ED's own case, all these properties (viz. S.No.6-70) are presently (and even prior to the passing of the PAO and filing of the subject OC) held by M/s Indermani Minerals India Pvt. Ltd. (at Sl. Nos. 6-28, 40-70) or M/s KJSL Coal & Power Pvt. Ltd. (at Sl. Nos. 29-39). As such, the appellant has no concern with these properties, and they are being wrongly attached in relation to alleged PoC acquired by the appellant. Further, to the best of the Appellant's knowledge, no legal proceeding under the Prohibition of Benami Property Transactions Act, 1988 has been initiated by the competent authority against the appellant or any of his alleged 'Benamidar'. As such, the action of attaching properties on the ground that they are allegedly beneficially owned by the appellant are wholly without jurisdiction and untenable, apart from being devoid of any merit or substance. Rest of the submissions remains the same as has been advanced above.

62. In support of his contentions, in addition to what has been relied by other counsel for the appellants, Mr. Mishra relies on the decisions rendered in ***Haricharan Kurmi v. State of Bihar {AIR 1964 SC 1184} Sanjay Jain v. ED {2024 SCC OnLine SC 656}, Hygro Chemicals***

Pharmtek Pvt. Ltd. v. Union of India & Another {WP 34238/2022}, L. Chandra Kumar v. Union of India {(1997) 3 SCC 261}, Union of India v. Madras Bar Association {(2010) 11 SCC 1}, Swiss Ribbons (P) Ltd. v. Union of India {(2019) 4 SCC 17}.

63. Mr. Abhuday Tripathi, learned counsel appearing for the appellant {in MA No. 80/2025-Sameer Vishnoi} submitted that on 11.10.2022 search and seizure under Section 17 of PMLA were conducted at the residential premises of the appellant which went on till 12.10.2022 that during the search operation various items and properties were seized which includes cash amounting to Rs. 47,03,900/-, gold amounting to nearly Rs. 2,50,00,000/- and lands/immovable properties were also seized and attached. Mr. Tripathi submitted that the reason to believe has not been recorded by the ED under Section 5 of the PMLA, properly. The reason to believe was also to be recorded by the AA separately and independently under Section 8 of the PMLA. Further, the reason to believe recorded by the Investigating Authority / AA was to be communicated to the appellant alongwith show cause notice which is missing in this case. No proper opportunity of hearing was granted to the appellant and there is a delay of around 60 days in issuance of PAO. Even the appellate Tribunal failed to appreciate that the seized properties are legitimate properties as no PoC are involved.

64. It is submitted by Mr. Tripathi that the appellant-Sameer Vishnoi is a reputed IAS officer and does not have any criminal or disciplinary antecedents. The appellant has already declared the properties including gold to the Department when he joined the service training at LBSNAA, way back in year 2009. The appellant has no connection with alleged cartel of Suryakant Tiwari. Further, it is respectfully submitted

that the appellant is the owner of the movable property *i.e.*, gold jewellery amounting 500 gms. (approx.) and the same is already on records of Department of Personnel & Training, Government of India. The remaining movable and immovable properties belong to the appellant's wife and family members/relatives of the appellant, and she has already explained the source of the same. Despite appellant having above 500 gms. gold declared while joining service in 2009 to LBSNAA which was illegally regarded as 'PoC ' by investigation authority, and the Appellate Tribunal also confirmed that without assigning any valid reason for this in impugned order. The property/properties attached by the investigating authority have been purchased by the appellant's wife through her legitimate earnings and are neither PoC nor associated with any criminal activity much less than the predicate offences. Further, it is the case of the investigating authority that the said property/properties being attached belongs to the appellant and further the appellant has not been able to explain the source of said property/properties. However, in connection to the said property/ properties, it is submitted that the appellant does not have any connection to said property/properties as the same belongs to his wife and family members / relatives of the appellant, obtained through a legitimate source of income from various family businesses. The manner in which the attachment has been shown in the name of the appellant clearly shows the premeditated mindset of the investigating authority to build the case against the appellant to make an arrest which they achieved by arresting the appellant on 12.10.2022. Furthermore, the Appellate Tribunal has miserably failed to appreciate the fact that the ED has also attached the 500 gms of gold of the appellant which has already been declared/disclosed by the appellant before LBSNAA in the year 2009

thus it cannot be in any way be considered or classified as "Proceeds of Crime" under Section 3 of PMLA. Ignoring the aforesaid facts the impugned order has been passed by the Appellate Tribunal dismissing the appeal and without making any observation upon the aforesaid submissions made by the appellant before it passed mechanical order identical to Adjudicating Authority. It is submitted that the properties acquired prior to commission of the alleged offence, is not PoC under Section 3 of the PMLA. The learned Appellate Tribunal has wrongly applied the concept of equivalent value beyond its statutory limits. The phrase "equivalent value" in the definition of "PoC " applies only when the actual PoC have been taken or held outside India. If no such transfer has occurred, the attachment of an unrelated property is legally untenable.

65. In support of his contentions, in addition to what has been submitted by learned counsel for other appellants, Mr. Tripathi relies on the decision of Delhi High Court in ***Axis Bank v. Enforcement Directorate {(2019) SCC OnLine Del 8254}, Prakash Industries Ltd. v. Enforcement Directorate {(2020 SCC OnLine Delhi 2450}, J.K.Tyre & Industries Ltd. v. Directorate of Enforcement {2021 SCC OnLine Del 4836}***, decision of the Andhra Pradesh High Court in ***Kumar Pappu Singh v. Union of India {(2021) SCC OnLine AP 983}***, and a decision of the Patna High Court in ***HDFC Bank Ltd. v. Union of India {2021 SCC OnLine Pat 4222}.***

66. On the other hand, Dr. Sourabh Kumar Pande, learned Special Prosecutor appearing for the respondent/ED opposes these appeals and submitted that the order passed by the learned Appellate Tribunal is just and proper and warrants no interference. During search and seizure of

Income Tax Department conducted at the premises of Suryakant Tiwari and his associates and investigation of the Income Tax Department, various evidences were gathered in the form of handwritten diaries, loose papers and also the digital evidences. These evidences are of cash transactions related to a syndicate being operated and coordinated by Suryakant Tiwari along with his associates and other persons wherein additional unauthorized cash was being collected over and above the legal amount fixed against the delivery order issued by SECL from various entities who were lifting and transporting the coal throughout the State of Chhattisgarh. An FIR No. 129/2022 dated 12.07.2022 was registered by Karnataka State Police, Kadugodi Police Station, Whitefield, Bengaluru invoking therein Section 186, 204, 353, 384 and 120B of the Indian Penal Code, 1860 against Suryakant Tiwari Sto Late Shri Shashi Bhushan Tiwari, resident of 102 and 103, Exotica Grand, in front of TV Tower, Raipur-492001 and others. It is to be mentioned here that Section 384 of the IPC was added in the FIR by the Karnataka State Police vide application dated 03.09.2022. Thereafter, on 17.01.2024, ACB/EOW, Raipur, Chhattisgarh police has registered an FIR bearing Crime Number 03/2024 dated 17.01.2024 under Sections 420, 120B of IPC and 7, 7A and 12 of PC Act, 1988 (as amended) against the appellants and other accused person in the same matter. As the Sections 420, 120B of IPC and 7, 7A and 12 of PC Act, 1988 invoked in the FIR are scheduled offence under PMLA, hence, the said FIR is also included in the ECIR by issuing an addendum. Further, the CBDT's Office Memorandum in F.No.289/ED/36/2022-IT(Inv.II) dated 13.09.2022 with the subject as 'Sharing of Information with ED in the case of M/s Jai Ambey Group of Raipur (Suryakant Tiwari Group) has been received based on the report of DGIT Investigation Bhopal.

The OM enclosed an FIR registered on the complaint of DDIT FAIU Unit-1 Bengaluru by Bengaluru Police. As per the CBDT's OM, it is informed that Suryakant Tiwari in collusion with Chhattisgarh State Government Officials was carrying out the offences of large-scale illegal extortion punishable under Section 384 and 120B of IPC and there is a need for ED to investigate this matter for contravention of Section 3 of PMLA. Accordingly, ECIR was recorded vide No. ECIR/RPZO/09/2022 dated 29.09.2022. As per the information on record, it was revealed that collection of illegal levy of Rs. 25 per every ton of Coal which was transported from mines like SECL. etc. and other places was being done. This illegal extortion of levy was being done with the active connivance of State Mining Officials, District Officials, and by using a wide network of agents who are stationed in the Coal belt and maintained a close liaison with the administration. The Delivery Orders (DO) were issued only after the illegal levy was paid. This extortion syndicate was being run in a well-planned conspiracy. Mr Suryakant Tiwari was assisted by State Government officials like Saumya Chaurasia, Chhattisgarh Administrative Service Officer, Sameer Vishnoi IAS, and associates like Rajnikant Tiwari, Roshan Singh, Nikhil Chandrakar, Sheikh Moinudeen Qureshi, Hemant Jaiswal, Joginder Singh etc. The money so collected was being used to make bribe payments to the government servants as well as politicians. Part of the proceeds was also being used to funding for election expenditure. Investigation done so far also revealed that the large part of such money has been channeled into layered transactions in order to project it as untainted money and brought into the main stream by investing the same to acquire the properties and Coal Washeries etc. ED investigation revealed that Sameer Vishnoi, the then Director, Directorate of Mining

and Geology, Chhattisgarh issued a letter dated 15.07.2020 vide which DO for coal transportation was required to be verified manually from the concerned Mining Office and under the guise of the said letter and instruction for manual verification of DO, Suryakant Tiwari through his associates started to extort Rs.25 per tonne against the coal transportation. Suryakant Tiwari deployed several of his associates in the Districts from which coal was mined by SECL in the State of Chhattisgarh and these persons developed liaisons with Collectorate Office and other agencies. Unless cash of Rs.25/tonne of coal transported was paid to associates of Suryakant Tiwari, the concerned Mining Officer in the office of Collectorate would not issue the requisite transit pass. All of this was facilitated/coordinated by Suryakant Tiwari with clout of Smt. Saumya Chaurasia and other government officials. Once these associates of Shri Suryakant Tiwari received the additional charge of Rs. 25 per tonne of coal to be transported, message was then communicated to the Mining Officer and thereafter the delivery orders were cleared for transport. Thereafter, associates (collection agents deployed at difference places) of Suryakant Tiwari used to maintain data of Coal DO and payment of illegal levy of Rs. 25 per tonne on coal and after collection of levy, they used to hand over such cash amount along with collection data to Rajnikant Tiwari, Nikhil Chandrakar and Roshan Kumar Singh. Searches were conducted under PMLA at multiple premises of Suryakant Tiwari, Saumya Chaurasia and their associates and several incriminating documents/digital devices and valuables *i.e.* cash, jewellery, gold etc. were recovered. From the analysis of the seized documents/digital devices and statement recorded under Section 50 of PMLA, 2002, it is evident that this coal cartel accumulated PoC to

the tune of Rs. 540 Crore during the period from July 2020 to June, 2022 out of extortion from coal transportation and other levies.

67. Dr. Pande submitted that the learned AA as well as learned Appellate Tribunal had carefully considered the facts submitted by both the parties and then considered the contentions raised by them. Thereafter, the learned AA had passed the order to confirm the PAO against the appellants. Hence, the confirmation order is well reasoned, speaking which as been passed by Appellate Tribunal only after due application of mind and in accordance with the provisions of PMLA. It is submitted by Dr.Pande that investigation under PMLA was initiated only after registration of FIR in the schedule offence. An FIR No. 129/2022 dated 12.07.2022 was registered by Karnataka State Police, invoking therein Sections 186, 204, 353, 384 and 120B of the Indian Penal Code, 1860 against Suryakant Tiwari and Others. It is to be mentioned here that Section 384 of the IPC was added in the FIR by the Karnataka State Police vide application dated 03.09.2022. Hence, on the basis of the said FIR the respondent herein had recorded an ECIR for investigation against the commission of offence of Money Laundering under the provisions of PMLA. Further, in the charge sheet filed in FIR No. 129/23 by Karnataka Police, although the offence under Section 120B IPC has been dropped but the offence under Section 384 of IPC had not been closed/dropped. In the charge sheet filed before the Jurisdictional Court on 15.06.2023, the Karnataka Police has categorically mentioned that the offence under Section 384 of IPC was found to have taken place in the State of Chhattisgarh and that they would be referring the matter to Chhattisgarh police. The act of referring the matter to Chhattisgarh has in no way affected the party(s) and has in no way occasioned a failure of justice. Thereafter, on 17.01.2024, ACB/EOW, Raipur, Chhattisgarh

Police has registered an FIR bearing number 03/2024 dated 17.01.2024 under Sections 420, 120B of IPC and 7, 7A and 12 of PC Act, 1988 (as amended) against the appellants and other accused person in the same matter. Also, Section 384 IPC has been added by the State EOW in the said FIR which also is a scheduled offence under PMLA. As the Sections 420, 120B of IPC and 7, 7A and 12 of PC Act, 1988 invoked in the FIR are scheduled offence under PMLA hence the said FIR is also included in the ECIR by issuing an addendum. It is also submitted that the State EOW has filed charge-sheet in the same matter on 18.07.2024, cognizance of which was taken on 19.07.2024. Further, a supplementary charge-sheet in the same matter was also filed by ACB/EOW on 09.10.2024.

68. Mr. Pande submitted that the Hon'ble Supreme Court in ***Soumya Chaurasia v. Directorate of Enforcement Special Leave Petition (Crl.) No. 8847/2023*** has also upheld the above understanding of the charge-sheet and current status of the scheduled offence vide its judgment dated 14.12.2023 at paragraphs 26 and 27.

69. Hence, the claim of appellants about absence of scheduled offence is without merit. Further, the appellant herein is giving reference of two orders of the Apex Court in the case of Sunil Kumar Agrawal dated 17.05.2024 and Laxmikant Tiwari dated 04.10.2024, thus, trying to mislead the court as both the accused(s) were given bail on the ground of long period of incarceration not because of absence of schedule offence.

70. Mr. Pande further submitted that this Court in its order passed in Cr.M.P No. 721/2024 in the matter of ***Anil Tuteja & Ors. v. Union of India & Ors***. upheld that ED was legally mandated to share information of

commission of offences to concerned agencies under Section 66 of PMLA and police upon receiving information about commission of cognizable offence has no option but to mandatory register FIR. Thereafter, based on the information shared by ED under Section 66 of PMLA, on 17.01.2024, ACB/EOW, Raipur, Chhattisgarh police has registered an FIR bearing number 03/2024 dated 17.01.2024 under Sections 420, 120B of IPC and 7, 7A and 12 of PC Act, 1988 (as amended) against the appellant and other accused person in the same matter. Also, Section 384 IPC has been added by the State EOW in the said FIR which also is a scheduled offence under PMLA. It is further submitted that Section 66(2) of the PMLA, 2002 is *pari materia* with Section 158(1) and Section 158(3) of the Central Goods and Services Tax Act, 2017, and similarly, with Section 138(1)(a)(ii) of the Income Tax Act, 1961. These provisions, found across these respective Acts, impose an obligation to share information with other officers, authorities, or bodies for the purpose of enabling them to perform their functions under the respective law. The legislative intent across these provisions remains consistent: i.e., to allow for the effective flow of information between authorities in furtherance of law enforcement. A five-Judge Bench of the Apex Court, in ***A.R. Antulay v. Ramdas Sriniwas Nayak***, ***{(1984) 2 SCC 500}*** had observed that anyone can set or put the criminal law in motion except where the statute indicates to the contrary. It is further submitted that the object of Section 66(2) of PMLA 2002 is in consonance with the observations of the Constitutional Bench.

71. With respect to aspect of legality of sharing of information by ED to the predicate agencies under Section 66 of PMLA, it is submitted that during course of investigation in the instant case, ED had come across of many cognizable offences which fall within the jurisdiction of ACB and EOW

Chhattisgarh and then the same was being disclosed by this Directorate under Section 66 (2) of PMLA to ACB and EOW. Thereafter, ACB and EOW has conducted independent verification of the disclosure and since a *prima facie* cognizable offence was disclosed, ACB and EOW registered an FIR No. 03/2024 under its statutory duty. It is reiterated that this Court in its order passed in CRMP No. 721/2024 (supra) upheld that ED was legally mandated to share information of commission of offences to concerned agencies under Section 66 of PMLA and police upon receiving information about commission of cognizable offence has no option but to mandatory register FIR. There is no violation of order of any Court of law; instead, the action of the State is complete compliance of the law.

72. It is further submitted that the learned AA had formed reasons to believe collectively for all the defendants. On receipt of complaint from ED, the AA has to form reasons to believe in a broad manner and it cannot be expected from the learned Authority to express its view in respect of each and every defendant by weighing all the material produced against them individually at that stage of issuing show cause notice. The learned AA had appreciated the offence committed as a whole and formed its reasons to believe collectively in respect of all the defendants of the OC. Moreover, the the learned Appellate Tribunal in its impugned order dated 05.12.2024 has clearly stated that it is not necessary to give reasons to believe separately but can be for the notice together. The appellants are either the accused or in possession of PoC and has been indicated in the show cause notice. The property attached belonging the appellants has links and is connected to the PoC derived from the commission of the scheduled offence. Appellant-Sourabh Modi {in MA No. 34/2025}, is the husband of Saumya Chaurasia, one of the most

powerful bureaucrats in the State of Chhattisgarh and also the master-mind behind the entire illegal coal levy scam running in the State of Chhattisgarh. Further the PoC received by Saumya Chaurasia and co-accused Suryakant Tiwari had been laundered at various levels and had been used for purchasing several immovable properties in the name of *Benamidars* which include the properties held by Sourabh Modi, the appellant herein, as benamidar for Saumya Chaurasia. Further, the specific role-played by Soumya Chaurasia is described below:

- The appellant Sourabh Modi is husband of main accused Saumya Chaurasia.

- Saumya Chaurasia is an officer of the Chhattisgarh State Civil Services who was last posted as the Deputy Secretary in the Office of Chief Minister of Chhattisgarh and was working as an OSD to CM. Saumya Chaurasia enjoyed powerful command over the entire State bureaucracy and could give extra-legal directions to the officer. She was actively associated with Mr Suryakant Tiwari. ED has found Suryakant Tiwari was in contact with various senior bureaucrats. From scrutiny of the conversations, it appears that most of the bureaucrats were reporting to Suryakant Tiwari regarding the incidents information of their Jurisdiction. This was happening because of the fact that Saumya Chaurasia was the real power behind Suryakant. She was the source of the influence enjoyed by Shri Suryakant Tiwari over other bureaucrats. Mr Suryakant Tiwari was acting as a middleman and receiving and conveying unofficial instructions from Saumya Chaurasia to the District level IAS/IPS officers. Suryakant Tiwari was the layer of security between her and the state bureaucrats. These IAS/IPS

Officers were providing essential environment for extortion of illegal levies by Coal Cartel. This illegal authority was essential for him to control the district machinery and enabled him to extort illegal levy of Rs 25 per tonne from coal transportation. Without his concurrence, no NOC was issued by the district machinery. He was employed by her to safeguard herself from consequences of unofficial dealings and actions conducted on her behalf.

- For the aforementioned acts done by Saumya Chaurasia for coal cartel, a part of PoC for Saumya Chaurasia was being transferred by Suryakant Tiwari through one Manish Upadhyay. Manish Upadhyay is a relative of Suryakant Tiwari and a close associate of both Saumya Chaurasia and Suryakant Tiwari. ED investigation has established that Manish Upadhayay was planted in a flat right opposite to the flat of Saumya Chaurasia and he acted as a conduit & courier by looking after all the logistics regarding the movement of PoC in the form of cash for the benefit of Saumya Chaurasia.

- Manish Upadhayay collected cash more than 30 Crores from Suryakant Tiwari on behalf of Mrs. Saumya Chaurasia. Shri Manish Upadhayay also used to handle all kinds of cash movements for Mrs. Saumya Chaurasia be it for purchase of lands, or to hand over the same to DeepeshTaunk for the farm house of Saumya Chaurasia, or any other kind of illegal work. Even Suryakant's team would record all payments to Saumya Chaurasia mostly in the name of Manish Upadhyay by code name of MU. There are multiple whatsapp chats between Manish Upadhyay and the employees of Suryakant Tiwari which

discussed about money being transferred to him for Saumya Chaurasia.

- Fund trail investigation and the land deals done in the name of the family members of Saumya Chaurasia during the same matching period and recorded statements, seized diaries, WhatsApp chats have conclusively established that the ill-gotten cash that moved from Suryakant Tiwari to Saumya Chaurasia via Manish Upadhayay has been layered with small cheque amounts and such funds were used to acquire immovable properties by Saumya Chaurasia in the name of appellant- Sourabh Modi, husband of Saumya Chaurasia, Smt. Shanti Devi Chaurasia, mother of Saumya Chaurasia and Shri Anurag Chaurasia, cousin of Saumya Chaurasia and other *Benamidars*.

73. With regard to property in question here, it is submitted that the diary entries at page 16 of the diary seized by Income Tax Department named as BS-41 shows a payment of Rs.3 Crore to Manish Upadhayay for purchase of land at Durg. This entry has been explained in the same diary later at page-19 (backside) wherein it is mentioned that Manish Upadhayay has been given a total of Rs. 5 Crore cash to be paid for land deals; Rs. 2 Crore of which is for Sevti land and Rs. 3 Crore is for land at Jevra, i.e. land under discussion here which has been purchased in the name of Shri Sourabh Modi, husband of Smt. Saumya Chaurasia. It is pertinent to mention that registration of land at village Jevra in the name of Saurabh Modi was done on 18.02.2022. The date of registration is found to be identical with the date of cash transfer mentioned in the seized papers.

74. In view of the above, it is clear that the properties held in the name of appellant-Sourabh Modi were being held *benami* for Saumya Chaurasia and were all a result of direct PoC having flown into the immovable properties held by the appellant-Sourabh.

75. So far as appellant-Shanti Devi Chaurasia {in MA No.35/2025}, she is the mother of Saumya Chaurasia. The cash was used at two levels, first the cheque payments made against purchase of these properties were arranged by Anurag Chaurasia in the guise of unsecured loan from the person of "no means" and then cash amount paid over and above the consideration amount to purchase the properties in the name of Chaurasia family. Majority of the real sale consideration was paid in cash form to sellers and the minority portion via cheque. She also claimed that the attached properties were acquired out of from the amount transferred by her daughter Ms. Saurabhi Chaurasia. A few attached properties purchased by the appellant jointly with her relative Anurag Chaurasia. For small cheque amount, Anurag Chaurasia has arranged accommodation entries in the guise of supplying vegetables to Motel Madhuban as well as unsecured loans from one Bablu Saw. The funds received from Motel Madhuban and Bablu Saw were nothing but bank entries arranged by Shri Anurag Chourasia against the illegal cash acquired by Smt. Saumya Chaurasia and transferred to Ranchi by Manish Upadhyay. The funds received as bank entries in the bank account of the family members of Shri Anurag Chourasia was then given as unsecured loan to Shri Anurag Chourasia and to Smt. Shanti Devi Chaurasia (mother of Smt. Saumya Chaurasia) and subsequently utilized in purchase of the properties in the name of Shri Anurag Chourasia and Smt. Shanti Devi Chaurasia. Investigation revealed that Sunil Agrawal, one of main accused in the case, managed a dubious

transaction of a land registered in the name of instant appellant Smt. Shanti Devi Chaurasia in order to create bank balance for her so that she could be disposed the Proceeds of Crime received by her daughter Saumya Chaurasia in further land deals and arranged to transfer it in the name of his relative Anil Agrwal. In the deal, though the registration of the land purchase had been carried out on 02.12.2021, only meager amount of Rs.2.27 lakhs had been paid on 02.12.2021 at the time of registration and almost the entire amount had been paid post the registration of the said sale of land. The amounts had been paid at later dates as and when the amounts had been received by the defendant from Sunil Agarwal, Indermani Group the amounts transferred being PoC . Moreover, it would be pertinent to mention that the original sale deeds of this property were found in the premises of Suryakant Tiwari by Income Tax Department during its searches on 30.06.2022. Thus, it is again crystal clear that the instant appellant was working as *Benamidars* of her daughter Saumya Chaurasia for disposing the PoC generated by her. Deepesh Taunk in his statement under Section 50 stated that he sold immovable properties to instant appellant and he did not receive any cash over and above the consideration value of the lands sold by him to the family members of Smt. Saumya Chaurasia. The bank accounts of Deepesh Taunk however revealed that huge cash deposits were made just prior to the registry of the land. Deepesh Taunk claimed that the deposits were on account of selling of fruits and vegetables by him but he could not produce the invoice/sale bill against this sale. Instead he provided a sale book containing name of buyers and quantity sold but did not have their contact details except one, Shri Chandrashekhar Sinha. He further claimed that all these buyers paid him only in cash. It is further submitted that ED has analyzed the source

of fund transferred by Mrs. Saurabhi Chaurasia to her mother Smt. Shanti Devi Chaurasia and it is revealed that the source of fund transferred by Smt. Saurabhi Chaurasia were from different persons including Coal Transporters namely M/s RK Transport and Construction Limited (RKTC), M/s Prithivi Realcon and Transportation Private Limited and M/s MS Patel. It is to be mentioned that investigation has revealed that bank accounts of M/s R K Transport and Construction Limited, M/s Prithivi Realcon & Transportation Private Limited were used by the Coal Cartel for accommodation bank entries against the illegal cash. These companies were also paying extortion money at the rate of Rs.25 per tonne on coal to Suryakant Tiwari. Also, Mansukh Lal Patel, Proprietor of M/s. M.S.Patel is acting as *Benamidar* for Saumya Chaurasia and properties registered in his name, have been provisionally attached vide the PAO No. 01/2023 dated 29.01.2023 which has also been confirmed by the learned AA vide order dated 17.07.2023. It is crystal clear that the source of fund transferred by Smt. Saurabhi Chaurasia to her mother. Shanti Devi Chaurasia is not her genuine income and it was accommodation entries arranged by Saumya Chaurasia against the illegal cash received out of the PoC. In this context, as discussed above and in the OC as well, small cheque amounts were arranged by Anurag Chaurasia paying cash to various entities and transferred to Shanti Devi Chaurasia in the guise of unsecured loans which were subsequently utilized in purchasing properties.

76. Funds have been received from various entities *viz*. Motel Madhuban, Bablu Saw, Udyog HP Gas Agency etc. in the bank accounts of Shri Anurag Chaurasia and his family members and then these funds have been utilized to purchase the properties purchased in the name of Smt. Shanti Devi Chaurasia and Shri Anurag Chaurasia. Investigation in

respect of the above money trail has revealed that approx. Rs. 3.50 Crores out of the Proceed of Crime was transferred to Anurag Chaurasia in Ranchi through Manish Upadhyay. This illegal cash was layered in the guise of unsecured loans from Bablu Saw & Udyog Jyoti HP Gas Agency and selling of vegetables to Motel Madhuban by his family members. Statements of Manoj Kumar Sinha, Owner of Motel Madhuban & Udhyog Jyoti HP Gas Agency and Bablu Saw revealed that the transactions with Anurag Chaurasia and his family members/relatives are not genuine and these transactions were manipulated by Anurag Chaurasia for arranging accommodation entries against the cash received by him from the Coal Cartel. Apart from the above, evidence of cash infused out of the Proceed of Crime in acquisition of the properties by the instant appellant and her joint partner Anurag Chaurasia have been explained in the OC. In view of the same, it is clear that the properties held in the name of Shanti Devi Chaurasia were being held benami for Smt. Saumya Chaurasia and were all a result of direct Proceeds of Crime having flown into the immovable properties held by the appellant Smt. Shanti Devi Chaurasia. In light of submissions made in the preceding paragraphs the properties held by the present appellant as *Benamidar* for Saumya Chaurasia are liable to be attached, being PoC .

77. So far as appellant-Anurag Chaurasia {MA No. 37/2025} is concerned, he is the cousin of Saumya Chaurasia. The cash was used at two levels, first the cheque payments made against purchase of these properties were arranged by Anurag Chaurasia in the guise of unsecured loan from the person of "no means" and then cash amount paid over and above the consideration amount to purchase the properties in the name of Chaurasia family. Majority of the real sale consideration was paid in

cash form to sellers and the minority portion via cheque. She also claimed that the attached properties were acquired out of from the amount transferred by her daughter Ms. Saurabhi Chaurasia. A few attached properties purchased by the appellant jointly with her relative Anurag Chaurasia. For small cheque amount, Anurag Chaurasia has arranged accommodation entries in the guise of supplying vegetables to Motel Madhuban as well as unsecured loans from one Bablu Saw. The funds received from Motel Madhuban and Bablu Saw were nothing but bank entries arranged by Anurag Chourasia against the illegal cash acquired by Saumya Chaurasia and transferred to Ranchi by Manish Upadhyay. The funds received as bank entries in the bank account of the family members of Anurag Chourasia was then given as unsecured loan to Anurag Chaurasia and to Smt. Shanti Devi Chaurasia (mother of Smt. Saumya Chaurasia) and subsequently utilized in purchase of the properties in the name of Shri Anurag Chourasia and Shanti Devi Chaurasia. Shri Deepesh Taunk in his statement under Section 50 stated that he sold immovable properties to instant appellant and he did not receive any cash over and above the consideration value of the lands sold by him to the family members of Smt. Saumya Chaurasia. The bank accounts of Deepesh Taunk however revealed that huge cash deposits were made just prior to the registry of the land. Deepesh Taunk claimed that the deposits were on account of selling of fruits and vegetables by him but he could not produce the invoice/sale bill against this sale. Instead he provided a sale book containing name of buyers and quantity sold but did not have their contact details except one, Chandrashekhar Sinha. He further claimed that all these buyers paid him only in cash. In this context, as discussed above and in the OC as well, small cheque amounts were arranged by Anurag Chaurasia paying

cash to various entities and transferred to Shanti Devi Chaurasia in the guise of unsecured loans which were subsequently utilized in purchasing properties. it can be seen that funds have been received from various entities viz. Motel Madhuban, Bablu Saw, Udyog HP Gas Agency etc. in the bank accounts of Shri Anurag Chaurasia and his family members and then these funds have been utilized to purchase the properties purchased in the name of Shri Anurag Chaurasia and Smt. Shanti Devi Chaurasia. Investigation in respect of the above money trail has revealed that approx. Rs. 3.50 Crores out of the PoC was transferred to Anurag Chaurasia in Ranchi through Manish Upadhyay. This illegal cash was layered in the guise of unsecured loans from Bablu Saw and Udyog, Jyoti HP Gas Agency and selling of vegetables to Motel Madhuban by his family members. Statements of Manoj Kumar Sinha, owner of Motel Madhuban and Udhyog Jyoti HP Gas Agency and Bablu Saw revealed that the transactions with Anurag Chaurasia and his family members/relatives are not genuine and these transactions were manipulated by Anurag Chaurasia for arranging accommodation entries against the cash received by him from the Coal cartel. Apart from the above, evidence of cash infused out of the PoC in acquisition of the properties by the instant appellant and his joint partner Shanti Devi Chaurasia have been explained in the OC. In view of the above, it is clear that the properties held in the name of Anurag Chaurasia were being held *benami* for Saumya Chaurasia and were all a result of direct PoC having flown into the immovable properties held by the appellant-Anurag Chaurasia.

78. So far as the appellant-IMIPL is concerned, the role of Sunil Kumar Agrawal, who is the promoter of the said company has a close relationship with Suryakant Tiwari and investigation has revealed that

Sunil Kumar Agrawal had knowingly and willingly helped Suryakant Tiwari in layering the PoC and obfuscate the real ownership of tainted properties of Suryakant Tiwari and his Benamidars. Despite being a man of means and business standing, he knowingly acted as a Benami for Suryakant Tiwari and has assisted in the money laundering process.

79. Dr. Pande submitted that though the appellant-IMIPL was not named in the charge-sheet of law enforcement agency, it is settled law that even persons not accused under the charge-sheet can be investigated under PMLA and can be made liable to attachment proceedings under PMLA. It is submitted that any property in the name of any person can be attached, irrespective of the fact whether such person was accused in predicate offence, if such property was found to have been acquired from PoC generated from the commission of scheduled offence. The Hon'ble High Court of Andhra Pradesh, in judgment dated 04.03.2011, in the matter of ***B.Rama Raju*** (supra) also held the same. The sweep of Section 5 of the PMLA is not restricted to only persons accused of the offence of money laundering. Reliance in this regard is placed on ***Vijay Madanlal Choudhary v. Union of India & Others*** {2022 SCC OnLine 929, paragraphs 269 and 295}, paragraph 52 and 53 of ***J. Sekar (supra),*** a decision of the Bombay High Court in ***Radha Mohan Lakhotia v. The Deputy Director, PMLA, Directorate of Enforcement*** {2010 SCC OnLine Bom 1116, paragraph 13}

80. Further, it is worth mentioning here that on 17.05.2024, the Hon'ble Supreme Court before granting interim bail to Sunil Kumar Agrawal in SLP No. 5890/2024 could not be apprised of the fact that on the basis of charge sheet in FIR 129/2022 of Karnataka Police, ACB and EOW had already added Section 384 of IPC in their ongoing investigation in FIR

03/2024 dated 17.01.2024. Even, at that point of time ED was not aware about the inclusion of Section 384 of IPC in the ongoing investigation by ACB and EOW in the said FIR. That's why on the request of Counsel of Directorate of Enforcement, the Hon'ble Supreme court provided time to ED for finding out the status of the investigation and its outcome, if any, conducted by the Chhattisgarh police. After that, ED enquired the inclusion of Section 384 of IPC in the FIR No. 03/2024 and vide revert letter ACB and EOW informed this Directorate that in the light of the charge sheet filed by Kadugodi Police Station, Karnataka Police in FIR No. 129/2022, Section 384 of IPC is added in the ongoing investigation in FIR No. 03/2024 after obtaining due permission from the Government of Chhattisgarh. It is further submitted that the Hon'ble Supreme Court in its order 07.08.2024 has granted regular bail to Sunil Kumar Agrawal not on the merit of non-existence of scheduled offence. The Hon'ble Supreme Court has granted bail to Sunil Kumar Agrawal only after hearing the relevant facts of the case at length which was specific to Sunil Kumar Agrawal.

81. Dr. Pande further submitted that all the 29 properties mentioned in above mentioned table ‘A’ was initially purchased by Suryakant Tiwari in the name of his *Benamidars* prior to crime period i.e. prior to 15.07.2020 and all these properties were beneficially owned by Suryakant Tiwari. These properties were attached by ED under clause 'value thereof as per Section 2(1)(u) of PMLA as total value of PoC in this case collected by Suryakant Tiwari and his syndicate is about 540 crore rupees and due to non-co-operation of Suryakant Tiwari only part amount of such PoC could be traced by ED. Later, after searches of Income Tax Department and initiation of PMLA investigation into instant extortion racket, Suryakant Tiwari alienated the aforesaid properties to M/s Indermani

Mineral Pvt. Ltd. to evade legal attachment of such properties. The appellant herein is wrongfully portraying itself as a victim of extortion syndicate. During investigation, it is revealed that Sunil Kumar Agrawal "the promoter of the appellant herein" has assisted Suryakant Tiwari in placement, layering of PoC generated by coal syndicate and projecting it as an untainted property. It is worth mentioning herein that initially Sunil Agarwal had started as a Coal user who made payments to the syndicate of Suryakant Tiwari. But subsequently, with the growing need of accounted money by the syndicate for layering their ever-increasing cash amounts and for holding their properties to prevent attachment by IT, Sunil Agarwal was roped in as a member of the syndicate. He became a willing participant to enrich himself by getting a share in the prime Washeries and for getting closer to the government of the day for sundry benefits. Thus, from the above, it is established that Sunil Agrawal is not the victim of the extortionist syndicate rather he has actively and knowingly assisted Suryakant Tiwari by getting properties in his name as well in the name of his associates and *Benamidars* transferred in his (or his company's) own name and thus helped in projection of properties acquired from PoC as untainted which falls under definition of money laundering.

82. Sunil Kumar Agrawal was actively working in connivance with Suryakant Tiwari and actively assisted him in making an attempt to safeguard the PoC acquired by Suryakant Tiwari by letting resources of his company be used for entering into sham transactions which existed only on paper for transfer of ownership of properties of Suryakant Tiwari, the main accused of the scam with intention to safeguard them from clutches of law. The Purpose of rapidly purchasing these properties were nothing but to try to alienate them from PoC . This is the reason that when Sunil

Kumar Agrawal was asked during investigation about what purpose purchase of properties in question would serve for his company, he wasn't able to answer. The purported board resolution dated 01.05.2022 which the appellant is referring to has been manufactured in the aftermath of investigation. Further, it is submitted that appellant is falsely trying to project that he was pressured by Suryakant Tiwari to purchase his properties, whereas the investigation has revealed that appellant had willingly cooperated with Suryakant Tiwari in transfer of properties from hands of Suryakant Tiwari. The appellant has not claimed this fact that he was forced to purchase these properties from Suryakant Tiwari during investigation till date where he had ample opportunity for doing so. The same findings against Sunil Kumar Agrawal and the appellant herein are recorded by the learned Appellate Tribunal in its order dated 05.12.2024 and upheld the Order dated 01.06.2023 of the learned AA in concerned OC.

83. While it is true that appellant had no role in the offence of extortion being made by coal cartel however, he certainly assisted the main accused Suryakant Tiwari in alienating his properties acquired with PoC or deemed as PoC as equivalent value and projecting the same as untainted. For this, he purchased those properties from Suryakant Tiwari and his associates on paper by paying sale consideration amount through banking channel which was later return to him in cash by the associates of Suryakant Tiwari. Thus, it is established that the appellant knowingly entered into sham transactions with Suryakant Tiwari and his associates to transfer PoC in his (his company's) own name. Therefore, Sunil Kumar Agrawal came into possession of PoC in the form of 52 properties belonging to Suryakant Tiwari and his associates which was later attached under PMLA. With regard to claim that the appellant was

not arraigned as accused in the charge sheet, it is submitted that investigation under PMLA has wider scope and a person not named as accused in the LEA charge sheet can be investigated and prosecuted under PMLA, 2002 if such person is found to have involved in the process of laundering the PoC or any activity connected to it.

84. It is further submitted that during investigation, statement of various sellers of properties of Suryakant Tiwari has been recorded and in their statement, they had admitted receiving money in cash above the deed consideration amount. However, while purchasing the same properties in the name of his (his Company's) own name, Sunil Kumar Agrawal has paid only sale deed amount to Suryakant Tiwari and even immediately after the receipt of funds for transfer of property, the same had been withdrawn in cash mostly through self-cheques by associates of Suryakant Tiwari and handed over to Sunil Kumar Agrawal.

85. In addition to this, it was also found that Sunil Kumar Agrawal has purchased some properties of Suryakant Tiwari and his *Benamidars* only on paper and in reality, those which are purchased by Sunil Kumar Agrawal only on paper, and those properties are still beneficially owned by Suryakant Tiwari and his *Benamidars*. One such instance is a property on which a dhaba was running and the *dhaba* owner had taken this land on rent from Suryakant Tiwari; the land was sold to M/s Indramani Minerals private limited on 22.08.2022. However, upon enquiry, the owner of the said *Dhaba*, Dinesh Chaudhry submitted a notarised agreement dated 30.12.2022 vide which Smt. Kailash Tiwari had entered into agreement with Dinesh Chaudhry for running the *Dhaba* at the abovementioned property in lieu of monthly rent amount payable to Smt. Kailash Tiwari.

86. With respect to appellant-KGSL {MA No. 44/2025}, Dr. Pande submitted that Shri Sunil Agrawal, promoter of M/s KJSL Coal & Power Pvt. Ltd. is having a close relationship with Shri Suryakant Tiwari. Investigation revealed that Shri Sunil Agrawal had helped Shri Surykant Tiwari in acquiring Coal Washeries from M/s Indus Udyog & Infrastructure Pvt Ltd. and Ms. Satya Power and Ispat Ltd. These Coal Washeries were acquired for an amount of Rs. 96 Crore, out of which Rs. 34 Crore was the registered value and was paid through banking channel and rest of the amount was to be paid in cash. Thus, large amount of illegally acquired cash was layered in these transactions. After the IT raids, he made sham paper transactions to show that he was the owner of these two Washeries. These transactions were nothing but a futile attempt to alienate the ill-gotten PoC and take them far away from the arms of IT and ED departments and to prevent their attachment and to claim them as untainted assets. Clearly, Sunil Agarwal knowingly and willingly participated in these transactions to layer and obfuscate the real ownership of these tainted properties. Despite being a man of means and business standing, he knowingly acted as a *Benami* for Suryakant Tiwari and has assisted in the money laundering process. He has drawn attention to the details of attachment with regard to the appellant in PAO No. 2/2022 in the form of Table A of the written submission.

87. The investigation has clearly established that Suryakant Tiwari had infused PoC i.e. cash into purchase of Coal Washeries. The deal of the two Coal Washeries was done for Rs. 96 Crores out of which Rs. 34 Crores was the registered value and was paid through banking channel and rest of the amount was to be paid in cash. These were forcibly purchased by Suryakant Tiwari from M/s Indus Udyog and Infrastructure Private Limited and Satya power and Ispat Limited in approximately

Rs.96 Crores which is much more than whatever book value was shown during their purchase by Suryakant Tiwari. Later on, these coal washeries were transferred in the name of appellant herein by a sham transaction in an attempt to project is as untainted in the hands of appellant herein. Even, Sunil Kumar Agrwal in his statement recorded under Section 50 of PMLA, 2002 wherein he inter-alia stated that he had purchased the Coal Washeries against cheque payment of Rs.34 Crore amount against the said purchase. Moreover, Sunil Kumar failed to understand that when Suryakant Tiwari had infused PoC *i.e.* cash into purchase of Coal Washeries, the PoC changed its form and the Coal Washeries in the hands of Suryakant Tiwari became the PoC which was later transferred in the name of appellant by a sham transaction in an attempt to project it as untainted in the hands of appellant. Further, Sunil Kumar Agrawal had not mentioned about any board of resolution dated 15.06.2022 to acquire additional Coal Washeries and about any agreement dated 20.06.2022 executed between MMCBPL and KJSL for the sale of two coal washeries or about payment of token amount of Rs.2.5 crore to MMCBPL. despite granting several opportunities during investigation. He also never divulged about these facts before any legal forum till date. This clearly means that these facts and documents are manufactured in aftermath and are false. Suryakant Tiwari had pressurized Rupesh Garg and Ashish Kumar Agrawal to sell the Washeries off to him and that, Sunil Kumar Agrawal was actively involved in the purchase of these Washeries by Suryakant Tiwari in name of his firm M/s Maa Madwarani. These Coal Washeries were acquired for an amount of Rs.96 Crore, out of which Rs.34 Crore was the registered value and was paid through banking channel and rest of the amount was to be paid in cash. After Income Tax search and seizure

dated 30.06.2022, both the Coal Washeries were sold buy M/s Maa Madwarani Coal Beneficiation Pvt. Ltd. to M/s KJSL Coal and Power Private Limited, group company of Sunil Kumar Agrawal who was anyways involved in the deal of Washeries since beginning with total registered amount of Rs.35,28,84,000 on 02.08.2022. It was felt expedient to transfer the Washeries to appellant herein on paper so as to evade the same from being labelled as a tainted property. Moreover, apart from these 2 Washeries, after the Income Tax raids on Suryakant Tiwari and his associates, Sunil Kumar Agrawal had purchased all the *Benami* properties of Shri Suryakant Tiwari to safeguard the ill-gotten PoC and to frustrate the efforts of ED to attach the PoC in future. All these transactions are sham transactions and in effect Sunil Agarwal's Indermani Group is holding these assets for Suryakant Tiwari and his benamis. With regard to sale of 13% share in MMCBPL to IMIPL, it is stated that regardless of the fact whether transfer of share was reported to MCA or not, Anup Bansal clearly stated in his statement recorded under Section 50 of PMLA that he had received Rs.3,00,00,000/- from Sunil Kumar Agrawal and the remaining amount was adjusted to him by Suryakant Tiwari and in contrast of statements recorded under Section 161 of CrPC the statement under Section 50 of PMLA are deemed as judicial proceeding and carries evidentiary value.

88. With respect to the appellants-Divya Tiwari {MA No. 48/2025}, Kailash Tiwari {MA No. 49/2025}, Rajanikant Tiwari {MA No. 50/2025} and Suryakant Tiwari {MA No. 51/2025}, are concerned, they all are close relatives. Smt. Divya Tiwari, Smt. Kailash Tiwari and Rajnikant Tiwari are wife, mother and elder brother, respectively of appellant-Suryakant Tiwari.

89. Suryakant Tiwari is the key person and main coordinator of the syndicate on the ground to collect illegal levy from the transportation of Coal and other minerals. He has access to the highest political offices of the State of Chhattisgarh and has personal and financial dealings with Ms. Saumya Chaurasia who was a powerful bureaucrat working in the Chief Minister's Office. He was part of the wider conspiracy from day one and is main perpetrator on the ground although he is not the ultimate beneficiary of the total amount of extortion done in the last 2 years. It was his job to coordinate with District level or even lower level officials to coordinate their working as per the mandate of extortion and to interact with individual businessmen for actual recovery of the agreed amount of 'facilitation fee'. The concept note recovered from his possession establishes his linkage with the Order dated 15.07.2020 issued by Shri Sameer Vishnoi IAS, the then Director, Geology and Mining, which became the starting point for the extortion business. He created a network of employees, stationed them at various places, financed their needs like regular change of mobile handsets etc., interacted with large businessmen, maintained proper records of the extorted amount. Even during his custodial interrogation, he was evasive and non-cooperative and has not explained large amount of outgoing payments which have been made to hitherto unconfirmed beneficiaries. He has been the hand which has been acting on the ground, and is involved in acquisition of PoC, their layering, their use, their alienation, their enjoyment and has made all out efforts to continue to hide the large parts of untraced PoC. He hatched a conspiracy with large number of associates to generate accommodation entries and to layer cash to buy *Benami* assets to claim them as untainted assets. When he noticed that IT/ED department will see through his plan, he used Sunil Agarwal and made further attempts

to sell the lands and to claim them as untainted assets in the hands of Sunil Agarwal. This is also established from the admissions of the co-accused Shri Sunil Kumar Agrawal wherein it has been stated that the illegally levy collection started after the issuance of the letter dated 15.07.2020 of the Director, Geology & Mining. Witnesses after witnesses have named Suryakant Tiwari and his associates as the perpetrators to whom the extortion amount was paid. He ran the entire extortion racket with the support of higher powers for more than 2 years without any interruption or FIRs. Such was the fear created by him with the active support of the State machinery that no one dared to make a formal complaint against him. Suryakant Tiwari absconded from his residence during the ED search operation and returned back only after hiding his mobile phone and other personal devices. On his return he gave very vague explanations about his whereabouts of the last 10 days. He has also made sure that all his employees have gone into hiding and are not responding to the summons of ED.

90. Smt. Kailash Tiwari is the mother of Suryakant Tiwari and actively participated in his illegal business as far as handling of the illegal cash is concerned. As per the offence of money laundering defined under 3 of the PMLA, she has knowingly assisted in the process of concealment, possession, use and projection of PoC as untainted property. She lives at Shankar Nagar, where majority of the illegal cash was kept for safe custody. There are various cash transaction entries written by Rajnikant Tiwari in the name of Smt. Kailash Tiwari in the seized BS. Kailash Tiwari knew that her son was involved in the illegal levy business. She utilized parts of the PoC and also lent her name for purchase of tainted properties and handled cash for her son in various instances. During course of investigation, it has been revealed that Suryakant Tiwari has

purchased many properties in the name of his family members and *Benamidars*. After Income Tax Searches conducted at the premises of his and his associates, he made sham transactions of the properties beneficially owned by him and transferred to M/s IMIPL and others to prevent the same from attachment by ED or other LEA. By the same token, Smt. Kailash Tiwari with the help of Suryakant Tiwari deliberately sold her properties in question in the name of M/s. Indermani Group of Companies and diverted the sale proceeds by withdrawing the cash amounts. This was done to avoid attachment of tainted assets by Income Tax/Directorate of Enforcement department.

91. Appellant-Divya Tiwari is the wife of Suryakant Tiwari who fabricated coal syndicate and coordinated on the ground to collect illegal levy from the transportation of Coal and other minerals. In the course of two years from July, 2020 to June, 2022, the coal cartel run by Suryakant Tiwari has extorted total Proceeds of Crime of value Rs. 540 Crores approx. This PoC generated by the coal cartel were utilized by Suryakant Tiwari for purchasing properties, funding election and paying bribery to bureaucrats and politicians. During course of investigation, it has been revealed that Suryakant Tiwari has purchased many properties in the name of his family members and *Benamidars* from Proceeds of Crime. After Income Tax Searches conducted at the premises of his and his associates, he made sham transactions of the properties beneficially owned by him and transferred to M/s IMIPL and others to prevent the same from attachment by ED or other LEA. By the same token, he transferred the properties in the name of Divya Tiwari to M/s IMIPL. Further, during the investigation under PMLA in the instant case, various summonses were issued to Divya Tiwari, however, in response to these summonses, she willfully and deliberately neither appeared before

authorized authority nor submitted written reply on one pretext or the other.

92. Appellant-Rajnikant Tiwari, elder brother of Suryakant Tiwari is the main associate and confidant of Suryakant Tiwari. As per the findings of the investigation, he was the keeper of the accounts for the entire scam. He used to handle and store all the cash generated out of extortion activity. He is responsible and party to this conspiracy and is involved in projecting the tainted money as untainted money. By setting up various partnership firms and companies, he has helped Suryakant Tiwari in layering the PoC with unsecured loans, and creation of *Benami* assets and is projecting them as untainted asset. During course of investigation statements by various associates of Suryakant Tiwari such as Nikhil Chandrakar, Laxmikant Tiwari and other have shown that apart from Suryakant Tiwari, only Rajnikant Tiwari could verify the bills relating to expenditure for various projects like construction activities etc being carried out under the supervision of Suryakant Tiwari. Employees of Suryakant Tiwari used to message Rajnikant Tiwari about the expenses done by them as well as the money spent in the projects of Suryakant Tiwari for payments/reimbursements. During the course of IT search at the residence of Rajnikant Tiwari, Rs.48,38,600/- were seized from his possession. Further, during the statement under Section 50 of the PMLA many of the sellers of properties purchased by the coal syndicate accepted that they finalized the deals of sale of their properties with Rajnikant Tiwari only and he only gave them cash over and above the consideration mentioned in the sale deeds. Land broker such as Ved Praskash Sahu and Watan Chandrakar also accepted in their statements recorded under Section 50 of the PMLA that they used to search for properties on sale and deal was finalised by Rajnikant Tiwari.

And cash was given to the sellers of the properties by Rajnikant Tiwari only. Rajnikant Tiwari used to handle cash payments for getting accommodation entries from various persons also.

93. So far as appellant-Sameer Vishnoi {MA No.80/2025} is concerned, Sameer Vishnoi being the Director of Geology and Mining. Department of the Government issued an Order dated 15.07.2020 which proved to be the genesis of coal syndicate. He knowingly participated in this conspiracy for personal enrichment. this Coal syndicate had extorted illegal levy of an amount of Rs.540 Crores approx. from Coal Businessmen/Transporters and other Sectors during the period from July, 2020 to June, 2022. This system of collection of illegal cash was facilitated/coordinated by Suryakant Tiwari on the ground, and the system ran with impunity and without any interruption because Suryakant Tiwari had the backing of the Highest powers in the state and due to his close association with Saumya Chaurasia, Sameer Vishnoi and in turn with other senior IAS/IPS officers as well as politicians. The investigation conducted under PMLA, 2002 revealed that Sameer Vishnoi has been receiving his share out of the PoC collected by Suryakant Tiwari. Thus, he has involved himself in the acquisition of the PoC. There is evidence to show that he has acquired at least 3 assets worth Rs.7.84 Crore approx. Thus, Sameer Vishnoi is also involved in concealment, use, claiming and projecting assets acquired out of extortion racket to the extent of Rs.7.84 Crore *approx*. as untainted assets. The respondent herein has also filed a Prosecution Complaint under Section 45 of PMLA before the Hon'ble Special PMLA Court, Raipur on 09.12.2022 against the appellant herein, inter alia, for committing the offence of money laundering and the learned PMLA Court has taken cognizance of the complaint, vide order dated

30.05.2023. So far as the contention of the learned counsel for the appellants that he was not granted opportunity to cross examine the witnesses, at the stage of adjudication or even Appellate Tribunal is not a proper platform for cross examining the witnesses of the case. This opportunity is granted by law to the appellant at the trial stage in Special PMLA Court which is the competent authority to judge the evidences and witnesses of this case on merit and decide on final confiscation of attached properties. However, though cross-examination would be an integral part of the process of adjudication and would not be alien to Section 8 proceedings, allowing such grounds at the stage of adjudicating in every case would result in delay and defeat the purpose of the said adjudication. The request for cross-examination must be examined seriously and not in a routine manner. The proceedings before this learned AA have to proceed in a speedy manner as they need to be completed within 180 days. A Division Bench of the Hon'ble Delhi High Court in LPA 99/2014 titled ***Arun Kumar Mishra v. Union of India and Another***, was dealing with a similar situation of rejection of right to cross-examination, and therein, the learned Division Bench observed that the petitioners herein would be capable of availing their statutory remedies, once the final order of the AA is passed. The learned Appellate Tribunal, in case of ***Abbeys Realcon LLP versus Directorate of Enforcement PMLA, New Delhi*** in FPA-PMLA-5226/ DLI/2022 dated 19.12.2022, observed that cross examination of the witness is a part of natural justice, however, the principle of natural justice cannot be an unruly horse and thereby, there can be an exception of it. It is no doubt that a chance of cross examination is part of the principle of natural justice and it should be given in an appropriate case but there are exception and it would be when no reason exists for cross

examination of if the intention of the parties is to make the proceedings infructuous by calling the witnesses for cross examination for the sake of it. Dr. Pande further submitted that cash, jewellery, digital devices and incriminating documents in question were seized from the premises of Sameer Vishnoi and Preeti Godara during the search operation conducted by ED, which were in their possession. During their statements under the provisions of the PMLA, 2002 they could not give any satisfactory reason regarding possession of the said cash as well as jewellery. Also, at the time of searches conducted by ED, Sameer Vishnoi stated in his statement under Section 17 of PMLA, 2002 that all the seized cash and jewellery pertains to his wife Preeti Godara who could not explain the source of the seized cash and valuables. In her statement under Section 17 of the PMLA, Preeti Godara stated that the said jewellery recovered from their possession pertains to her, however in her statement under Section 50 of the PMLA, she stated the names of various false owners of the said seized cash and jewellery, which clearly was an afterthought to attempt the projection of tainted money as untainted money. PMLA investigation has revealed that Sameer Vishnoi has accrued illegal income by abusing his official positions in the Government of Chhattisgarh. Moreover, it is submitted that since the questioned property was in the possession of Sameer Vishnoi, the burden of proof under Section 24 of the PMLA lie upon him. The accused persons were disposing off their properties acquired from PoC by indulging third party or destroying/tampering the evidences and influencing the witnesses. There were ample of evidence which clearly shows these illegal attempts made by accused persons in disposing off, alienating and concealing the PoC from clutch of respondent herein. In nutshell, all these illegal activities of accused persons were hindering the

process of unearthing PoC and providing opportunities to accused persons to conceal, transfer and alienate the POC. Both the authorities i.e. the AA and the Appellate Tribunal have ventured into determining whether the concerned appellant is involved in committing the offence of money laundering or not. At the time of searches conducted by ED, Sameer Vishnoi stated in his statement under Section 17 of PMLA, 2002 that all the seized cash and jewellery pertains to his wife Preeti Godara who could not explain the source of the seized cash and valuables. In her statement under Section 17 of the PMLA, Preeti Godara stated that the said jewellery recovered from their possession pertains to her, however in her statement under Section 50 of the PMLA, she stated the names of various false owners of the said seized cash and jewellery, which clearly was an afterthought to attempt the projection of tainted money as untainted money. PMLA investigation has revealed that Sameer Vishnoi has accrued illegal income by abusing his official positions in the Government of Chhattisgarh. Furthermore, in order to create false legal ownership of the properties in question, family members of appellant herein and his wife have filed appeal and claim themselves as the legal owner the properties in question. Hence, the attachment of properties is in accordance with law and subsequently confirmed by both the learned AA and learned Appellate Tribunal. The understanding of the appellant of the term ‘Proceeds of Crime’ is flawed and alleging baseless allegation on the proceeding of the learned Appellate Tribunal. Once proceeds are generated from any activity related to scheduled offence and acquired by any person, the property itself or value of such property held by that person becomes POC. Further, with regard to attachment of property under "equivalent value thereof" is concerned, it is submitted that the attachment of equivalent

value of property is lawful. Section 2(1)(u) of PMLA defines "PoC " to include not just the direct property obtained from the crime but also any property of equivalent value. If the tainted property is not available, substituted attachment is legally valid.

94. Dr. Pande lastly submitted that the AA, PMLA acts as the 1st Appellate Authority or the Executive Appellate Authority and being an Executive Appellate Authority is rightly under the Ministry of Finance, the jurisdictional Ministry for the Directorate. Further the system of the 1st statutory appellate authority being an executive appellate authority has long been accepted and approved by the courts in India. Legislation pertaining to the Income Tax Act, Customs Act and Central Excise Act have long incorporated such provisions/practice in the implementation of the provisions of the respective Acts and the same has received the approval by the courts. In support of his contentions, he places reliance on the decision of the High Court of Madras in the matter of ***Pay Performa India P. Ltd. v. Union of India*** {W.P No. 12925/2023 judgment dated 31.01.2024}.

95. With respect to the claim of 45-day statutory period, it is humbly submitted that respondent was well within its right to proceed with the issuance of Eviction Notice. It is nowhere mentioned in the PMLA, 2002 and in the Prevention of Money Laundering (Taking Possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2013 that the said eviction notice should wait for the exhausting of the 45 Days appeal period. The moment the attachment has been confirmed, the authorized officer is well equipped with the power to issue Eviction Notice. It is humbly submitted before the Hon'ble High Court that the whole process has been done as per the procedure prescribed.

The Hon'ble Supreme Court in the case of ***OPTO Circuit India Ltd. v. AXIS Bank & others***, Criminal Appeal No. 102 of 2021 has addressed the issue regarding the procedure to be followed while exercising the powers under PMLA, and held that the said procedure is to be followed strictly and if followed as per the law, then there will be no procedural lacunae.

96. We have heard learned counsel appearing for the parties, perused the pleadings and materials available on record.

97. We have also carefully gone through the Confirmation Order dated 01.06.2023 passed by the learned AA and the order passed by the learned Appellate Tribunal on 05.12.2024 and also the statements of the witnesses recorded under Section 50 of the PMLA.

98. It would be beneficial to quote some of the relevant provisions of the PMLA for better understanding of the issues. The offence of money laundering has been defined under Section 3 of the PMLA, which reads as under:

> *"**3. 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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*
>
> *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."

99. Attachment, adjudication and confiscation of property involved in money-laundering is provided in Section 5 under Chapter III of the PMLA which reads as under:

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

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

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

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

offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer notbelow the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

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

(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, along with 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 3[sub-section (3)] 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."

100. The AA, under Section 5(1) read with Section 8(1) of the PMLA is only required to form a reason to believe, based on the material in possession, that the property is involved in money laundering. Such belief need not be based on direct evidence but can be drawn from circumstantial indicators. The OC filed by the ED is quite exhaustive and contains relevant materials which appear to be sufficient to form a reason to believe.

101. In the present case, the chain of events, including financial transactions, lack of legitimate sources of income, and links to the scheduled offence, establishes a *prima facie* case that the attached property represents proceeds of crime. The purpose of attachment under the PMLA is a preventive measure to ensure that the property is not alienated or disposed of during the course of investigation and trial. It is not a final determination of guilt but a step to preserve the property suspected to be involved in money laundering. It is well-settled that offences under the PMLA are of a distinct nature where the PoC are often concealed through layered transactions and indirect modes. Direct evidence is seldom available in such cases, and the determination of the proceeds of crime often rests on circumstantial evidence and the analysis of financial trails.

102. Section 24 of the PMLA is with regard to burden of proof. It states that in any proceeding related 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.

Once the property is identified as involved in money laundering, the burden shifts on the accused to prove that the property is not proceeds of crime. In the present case, the appellants have not discharged this burden satisfactorily.

103. There is no dispute with regard to the fact that search and seizure was conducted at the premises of appellant-Suryakant Tiwari and associates in which various evidences were gathered in the form of handwritten diaries, loose papers and also digital evidences of cash transactions related to a syndicate being operated and coordinated by Surayakant Tiwari and his associates. Suryakant Tiwari, Divya Tiwari, Kailash Tiwari and Rajanikant Tiwari are all related to each other. Similarly, Sourabh Modi is the husband of Soumya Chourasia and Shanti Devi Chourasia is the mother of Soumya Chourasia and Anurag Chourasia is the cousin of Soumya Chourasia. The allegations levelled against the appellants are very serious in nature and the entire offence is an example of organized crime. Sameer Vishnoi was the then Director, Directorate of Geology and Mining, Chhattisgarh who had issued letter dated 15.07.2020 by which delivery order for coal transportation was required to be verified manually from the concerned Mining Office and under the guise of the said letter and instruction for manual verification of DO, Suryakant Tiwari through his associates started extorting Rs. 25 per tonne of coal against the coal transportation. Saumya Chaurasia and other government officials assisted in the said offence. From the PoC, all the appellants have been benefited and the appellants have acquired properties and when the ITD conducted the raid, the appellants became alert and started disposing of their properties through sham transactions. The respondent/ED filed the OC before the learned AA and the learned AA after issuance of notice to the appellants, and after considering the

replies to the show cause notices, passed the Confirmation Order dated 01.06.2023 confirming the PAO passed by the ED vide order dated 09.12.2022.

104. Though submissions were advanced by learned counsel appearing for the parties in quite detail, however, in essence, the arguments advanced before the learned Appellate Tribunal has been reiterated before this Court. The gist of the argument of learned counsel for the appellants is that firstly, the AA has not applied its mind while dealing with the factual and legal issues, there was absence of predicate offence, the connection between the alleged PoC and the appellants have not been established as the appellants are the *bonafide* purchasers of the properties sought to be attached, there was absolutely no reason to believe in the show cause notice, appellants are victims of extortion by syndicate of Suryakant Tiwari.

105. The contention of the learned counsel appearing for the appellants is that the learned AA as well as the learned Appellate Tribunal have not applied their mind and case of each appellant should have been dealt with individually. When all the appellants are accused in one offence, then there was no reason to segregate their cases. It has been *prima facie* established that the properties acquired by the appellants were out of the PoC earned through the syndicate. The submissions advanced before this Court were also advanced before the learned AA as well as the learned Appellate Tribunal and the said submissions have been discussed by the AA as well as the learned Appellate Tribunal and as such, it cannot be said that the orders were passed without application of mind. The order passed by the learned AA is quite detailed one and so is the order passed by the Appellate Tribunal. The details with regard

to the incriminating materials have been discussed and only after that, the orders impugned herein, has been passed. An AA forms his opinion to proceed with adjudication proceedings based on the materials adduced by the complainant and the same is communicated to the appellants by way of show cause notice alongwith the reasons to form such opinion.

106. The offence of money laundering basically involves three things, namely the placement layering and integration. Placement is the initial stage where illicit money (often called “dirty money”) is introduced into the financial system. The goal is to move the money away from its source without raising suspicion. The most common techniques include depositing small amounts into bank accounts (smurfing), using cash to buy valuable assets like jewelry, art, or real estate and mixing illegal proceeds with legitimate business income (e.g., cash-intensive businesses). The second stage i.e. layering involves complex layers of financial transactions to obscure the origin of the money. The purpose is to make the money trail hard to trace, such as transferring funds between multiple accounts (often across borders), using shell companies and offshore accounts, purchasing and selling financial instruments. The third stage is the integration and in this final stage, the laundered money is reintroduced into the legitimate economy, appearing as clean, legitimate income which includes investing in legal businesses, buying high-value goods or property and creating fake invoices and business transactions. These stages are often interlinked and may overlap depending on the complexity of the laundering scheme.

107. With regard to the issue of quorum of learned AA, the said issue is no longer *res integra*. The Madras High Court in ***G.Gopalakrishnan v.***

Deputy Director W.P.(MD) Nos. 11454 of 2018, has in unequivocal terms held that even a single member Bench of the Adjudicating Authority could adjudicate the disputes under PMLA. In fact, in the decision of the Delhi High Court in "***J. Sekar*** (supra) it was held that less than three Member Adjudicating Authority is permissible under PMLA. The Hon'ble Madras High Court has also clearly held that it is not mandatory that such Single Member Benches should comprise of Judicial members and even administrative members constituting single member benches of the Tribunal would amount to sufficient compliance of the law.

108. It is not important that the accused person should be directly involved and commit the crime but an offence under the PMLA is also made out if the person is accused of layering and integration of the PoC.

109. The learned appellant Tribunal has separately analysed every allegation made by and against each accused at greater length and consequent upon that passed its order dated 05.12.2024. The learned Appellate Tribunal has discussed at length about each property in question of respective appellant and rebutted all fabricated allegation made by them. After that only, the learned Appellate Tribunal dismissed the appeals of the appellants citing they do not find a case to cause interference in the impugned order of the learned Adjudicating Authority. The AA forms his opinion to proceed with adjudication proceedings based on the material adduced by the complaint and the same was communicated to the appellants by way of show cause notices along with reasons to form such opinion and same were also provided to the appellant. It is further submitted that mere forming of opinion does not mean that the matter is decided by the AA. The AA decided the matter

by passing a speaking order under Section 8(3) of PMLA only after hearing both the sides and after taking consideration, both the oral and written submissions. This is in view of the fact that the mere fact that learned AA had issued show cause notice in terms of Section 8 of the PMLA would imply that the AA had recorded reasons to believe and applied its mind to the OC submitted by the Directorate. The Hon'ble Bombay High Court, in ***Brizo Reality Company Pvt. Ltd. v. Aditya Birla Finance {MANU/MH/0845/2014}*** has affirmed the above stated proposition. The relevant observation of the said judgment reads s under:

> "7. The contention that the show cause notice does not state that the Adjudicating Authority has reason to believe that the petitioner has committed an offence under section 3 of the Act or is in possession of proceeds of crime is not well founded. The notice has, for all practical purposes, adopted, incorporated the complaint in toto. The notice, fairly read, indicates that the Adjudicating Authority, on the basis of the material in the complaint had reason to believe that the ingredients necessary for the attachment order existed. So read, it follows that the Adjudicating Authority stated in the show cause notice that he had reason to believe that there existed the factors necessary to serve the notice. The reasons, in turn, stand incorporated in the notice from the complaint. It is apparent that the notice has been issued based on the reasons to be found in the complaint and the documents which have been expressly referred to in the contention. The complaint itself expressly sets out the reason to believe. If, on the basis of the facts disclosed in the enclosures, the Adjudicating Authority had formed the opinion that there was no reason to believe the existence of the factors mentioned in section 8, he would not have issued the show cause notice. That he did indicates that he had reason to believe the existence of the said factors. In the facts and circumstances of the case this is sufficient compliance."

110. The allegation with regard to absence of predicate offence is noticed to be rejected as similar submission was raised in case of ***Saumya Chaurasia v. Directorate of Enforcement*** in Cr.A. No. 2840/2023

decided on 14.12.2023. The learned Appellate Tribunal has quoted paragraphs 26 to 30 wherein the Hon'ble Apex Court has dismissed the appeal. The Hon'ble Apex Court did not consider it to be a case of dropping of the offence under Section 384 IPC. The Special Court of Karnataka had made a reference to request the State Police to transfer the offence under Section 384 of the IPC to the Chhattisgarh State Police upon which the FIR was registered by the Chhattisgarh Police which was not only for the offence referred in the FIR but was with the addition of the offences under the PC Act and other scheduled offences. The observations made by the learned Appellate Tribunal vide paragraphs 30 and 31 are reasoned one and we concur with the same.

111. The nexus between the appellant and the alleged PoC is also well established. It is the say of the appellants that they had duly informed the source for acquisition of the property in question and as such, the orders passed by the AA as well as the Appellate Tribunal is erroneous. In the case in hand, the FIR was lodged after prima facie disclosure of commission of offence, but the offence was committed much earlier to registration of the ECIR and the FIR. The syndicate could not have extorted the money in a day or two but was a continuous process and it is a matter of investigation as to on which date the said extortion started. Further, even if any properties were acquired by the appellants prior to the date of commission of the crime, those properties can also be made the subject matter of attachment if the proceeds are not available or vanished. The learned Appellate Tribunal has cited its own order passed in ***Shri Sadanand Nayak v. The Deputy Director, Directorate of Enforcement,*** {FPA-PMLA-5612/BBS/2023 decided on 14.10.2024}. At the cost of repetition, it would be beneficial to quote the relevant paragraphs which reads as under:

"22. It has already been clarified by us that if the definition of "proceeds of crime" is given interpretation by dividing it into two parts or by taking only two limbs, then it would be easy for the accused to siphon off or vanish the proceeds immediately after the commission of scheduled offence and in that case none of his properties could be attached to secure the interest of the victim till conclusion of the trial. This would not only frustrate the object of the Act of 2002, but would advance the cause of the accused to promote the crime of money laundering. The Judgment in the case of Vijay Madanlal Chaudhary (supra) is of three judges bench while the judgment in the case of Pavana Dibur (supra) is of two judges bench. The issue has otherwise been dealt with by this Tribunal in the case of FPA-PMLA-2909/CHD/2019 M/s. Besco International FZE vs. The Deputy Director Directorate of Enforcement, Chandigarh dated 31.07.2024. The relevant para of the said judgment is quoted hereunder:

> *"It is not that only those properties which have been were derived or obtained directly or indirectly out of the crime can be attached rather in case of non- availability of the property derived or obtained directly or indirectly rather when it is vanished or siphoned off, the attachment can be of any property of equivalent value.*
>
> *It is necessary to clarify that the proceeds of crime would not only include the property derived or obtained directly or indirectly out of the criminal activity relating to the scheduled offence but any other property of equivalent value. The word "or" has been placed before "the value of any such property" and is of great significance. Any property of equivalent value can be attached when the proceeds directly or indirectly obtained out of the crime has been vanished or siphoned off. Here, the significance would be to the property acquired even prior to commission of crime. It is for the reason that any property acquired subsequent to the commission of crime would be directly or indirectly proceeds of crime and then, it would fall in the first limb of the definition of proceeds of crime. In the second limb, which refers to "the value of any such property" would indicate any other property which was acquired prior to the commission of crime and it would be attached only when the proceeds directly or indirectly obtained or derived out of the criminal activity is not available. It may be on account of siphoning off or vanished by the accused. In those circumstances the property of equivalent value can be attached. The word "the value of any such property" signifies without any embargo that it should be the property purchased after the commission of crime or prior to it rather it would apply in both the eventuality in the given circumstance. Thus, we are not in agreement with the*

counsel for the appellant who has questioned the attachment in reference to the property acquired prior to commission of crime. We are not going even further that the properties have nexus with the proceeds out of the crime but even in given circumstances and scenario that the property was acquired prior to commission of crime then, also under certain circumstances, it can be attached for "the value of any such property."

23. At this stage, it is reiterated that any other interpretation other than the one taken by Delhi High Court in the cases of Axis Bank (supra) and Prakash Industries (supra) for the definition of "proceeds of crime" would defeat the object of the Act of 2002. It is more especially when the arguments raised by the appellant that the property acquired prior to the commission of crime would not fall in the definition of "proceeds of crime". In that case, the task of the accused would become very easy to first commit the scheduled offence and after obtaining or deriving the property out of the criminal activities, immediately siphon off or vanish so that it may not remain available for attachment and otherwise the contingency aforesaid would satisfy only the first limb of definition of "proceeds of crime" leaving the second. We are thus unable to accept the argument raised by the appellant so as to make the middle part of the definition of "proceeds of crime" to be redundant."

112. One of the contentions of the learned counsel for the appellants is that the entire case of the ED is based on uncorroborated diary entries which have no sanctity in law. This Court basically has to see whether the provisions of the PMLA has been complied with or not before passing the PAO. From perusal of the materials available on record, we are fully satisfied that the learned AA as well as the learned Tribunal was justified in passing the Confirmation Order as well as the Impugned Order. This Court cannot do the arithmetic with respect to each single penny received and invested by the appellants but has to see whether the appellants could give any plausible explanation with regard to the transactions and how the finance was made available for the said transactions.

113. A question was raised by this Court as to whether the appellants-Indermani *etc*. have made any complaint with regard to extortion, there is a complete silence and admits that no such complaint was made to any of the authorities nor any recourse has been taken by approaching any competent jurisdictional Court of law.

114. Suryakant Tiwari is the main accused in the case and is directly involved in scheduled offence and all other accused have participated in layering or integration of the PoC. A diary is alleged to be seized by the ITD from the residence of Rajnikant Tiwari, relative of Suryakant Tiwari in a raid. All the accused have played different roles in commission of the offence. In the diary, there are entries with respect to flow of funds which were originating from the collection of illegal Rs. 25 per tonne extortion money from the coal traders on the instructions of the Surayakant Tiwari. The State Government used to issue a DO, then only the coal excavated could be transported within the State or outside the State. Before 2020, the system which was in vogue was that the DO will be issued online. But taking the benefit of Covid-19, the online system was changed to offline system at the behest of Sameer Vishnoi who was at the helm of affairs of the Mining Department. Then started the entire game of extortion. Any coal trade who intended to get the DO, had to pay the extortion money to the people of Suryakant Tiwari and then only green signal was given to the Mining Officer and the DO was granted. These facts have come in the statements recorded in the Section 50 PMLA. Statement recorded under Section 50 PMLA is different from Section 161 Cr.P.C. in such that the statement under Section 50 PMLA has been given the sanctity as if a statement is recorded in the Court. If a witness does not states the truth under Section 50 PMLA, then there are various

Sections of IPC for perjury which can be attracted against the person making false statement.

115. According to Dr. Saurabh Kumar Pande, there are witnesses who have deposed under Section 50 of the PMLA against the appellant-Suryakant Tiwari that until and unless the amount of Rs. 25 per tonne was deposited in cash, the DO was not issued and as such, they were compelled to pay the extortion money. In lieu of Appellant-Sameer Vishnoi got a kick back amounts to the tune of Rs. 10.42 Crores approximately, for changing the issuance of online DO to offline DO and that money was invested for purchasing certain companies in the name of wife of the appellant-Sameer Vishnoi. When the sources of money for purchasing those companies was investigated by the ED, the appellant failed to disclose genuine source of income and if any wrong submission is made, then only the money laundering offence is made out. The appellant failed to give the answer as to from what source they got the money and cash amount of Rs. 22 Lacs was recovered from the Sameer Vishnoi. He failed to explanation as to from where that money came. Therefore, it was implied that it was a kickback amount that was received by him in lieu of what he had done changing online to offline system of issuing DO. Smt. Preeti Godara, wife of Sameer Vishnoi, runs two companies namely Shri Preeti Tiruma Agro Farm Pvt. Ltd. and Tejaswi Sunshine Pvt. Ltd. and holding the position of Managing Director. Similarly, movable properties seized from the premises of Sameer Vishnoi and Preeti Godara which was claimed by their family members, the source of which properties were not disclosed. The learned Appellate Tribunal has taken note of the said fact in its order at paragraph 36(2)(i) and (ii).

116. The submission of the learned counsel for the appellant that no scheduled offence survived at the time of passing of the impugned order and that the proceedings were without jurisdiction, are noticed to be rejected as the Hon'ble Apex Court, in the matter of bail application filed before by one of the co-accused Saumya Chaurasiya wherein the Apex Court, vide judgment dated 14.12.2023 observed as under:

> *"26. The Court also does not find any substance in the submission of the learned Senior Counsel Mr. Siddharth Aggarwal for the Appellant that the scheduled offences i.e. Section 384 and 120 B having been dropped from the chargesheet submitted against the accused Suryakant Tiwari in connection with the FIR No. 129 of 2022 registered at Kadugodi Police Station Bengaluru, and the ACJM Bengaluru vide the order dated 16.06.2023 having taken cognizance for the offence punishable under Section 204 and 353 IPC only, which are not the scheduled offences under the PMLA Act, no scheduled offence survived at the time of passing of the impugned order and that the proceedings were/are without jurisdiction.*
>
> *27. Apart from the fact that neither the Chargesheet dated 08.06.2023 nor the cognizance order 16.06.2023 were placed on record during the course of arguments before the High Court as they never existed at that time, the I.O. in the Chargesheet filed in connection with the said FIR no. 129 of 2022 against Suryakant Tiwari has categorically mentioned that "as the accused (Suryakant Tiwari) found to be committed offence under Section 384 of IPC with his henchmen at Chhattisgarh State for which the report would be prayed to Chhattisgarh Police through proper channel." Hence, the offence under Section 384 could not be said to have been dropped by the I.O. while submitting the chargesheet in respect of the said FIR."*

117. We have also gone through the documents annexed with the OC before the AA wherein statement of the witnesses recorded under Section 50 of the PMLA has also been enclosed. From perusal of the OCs, which is also a detailed one wherein all the incriminating evidences have been annexed, goes to suggest that a case is made out against the appellants for attachment of their properties. The appellants have failed to explain

as to how those properties came to be in their names alongwith other movable assets.

118. Section 50 of the PMLA reads as under:

> ***"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.-*** *(1) The Director shall, for the purposes of section 12, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:*
>
> *xxx xxx xxx*
>
> *(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.*
>
> *(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code , 1860 (45 of 1860)*
>
> xxx xxx xxx"

119. Similarly, in the investigation of the ED, when the diary entries were corroborated by the timing when the properties were purchased/sold it is evident that the same was PoC has been utilized in the said transactions.

120. The Apex Court, in ***Rohit Tandon v. Directorate of Enforcement {(2018) 11 SCC 46},*** observed as under:

> *"19. The sweep of Section 45 of the Act of 2002 is no more res intergra. In a recent decision of this Court in the case of Gautam Kundu v. Directorate of Enforcement {(2015) 16 SCC 1}, this Court has had an occasion to examine it in paragraphs 28 - 30. It will be useful to advert to paragraphs 28 to 30 of this decision which read thus: (SCC pp. 14-15)*

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of the PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and the Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by the Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of the PMLA imposes following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule of the PMLA:

(i) That the prosecutor must be given an opportunity to oppose the application for bail; and

(ii) That the Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30 . The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions

enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

20. In paragraph 34, this Court reiterated as follows:

34. "...We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45 A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure."

The decisions of this Court in the case of Subrata Chattoraj v. Union of India {(2014) 8 SCC 768}, Y.S. Jagan Mohan Reddy v. CBI {(2013) 7 SCC 439}, and Union of India v. Hassan Ali Khan {(2011) 10 SCC 235} have been noticed in the aforesaid decision.

21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of

crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the Act of 2002."

121. It is not essential for the enforcement authority to establish by direct evidence that the property in question is proceeds of crime. In a money laundering case, the *modus operandi* often involves circuitous and opaque financial transactions, making direct evidence inherently difficult to obtain. Based on the material produced, including financial analysis, property acquisition timelines, and the absence of verifiable legitimate income, this Court is satisfied that there exists a prima facie nexus between the property and the PoC. The PAO is therefore in consonance with the statutory scheme under PMLA and is liable to be upheld. There exists a reasonable belief, duly recorded and supported by material evidence, that the attached properties are involved in money laundering and further, the appellants have failed to rebut the statutory presumption under Section 24 of the PMLA. We do not find that any question of law arises in these appeals to be answered.

122. In view of the above discussion, we fully concur with the findings and reasoning given by the learned AA as well as the Appellate Tribunal and as such, these appeals being devoid of merit, are accordingly **dismissed**. However, the appellants are at liberty to take recourse to Section 8(8) of the PMLA, if so advised.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

HEAD NOTE

In a money laundering case, as the *modus operandi* often involves circuitous and opaque financial transactions which makes direct evidence inherently difficult to obtain, the absence of verifiable legitimate income can lead the Court to hold that there exists a nexus between the property sought to be attached and the proceeds of crime.