IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

\+ **WRIT PETITION Nos.34238 & 34627 OF 2022;**

I.A. No.1 OF 2022 in W.P. No.41133 OF 2022 &

I.A. No.1 OF 2022 in 44343 OF 2022

% Delivered on: 13-03-2022

W.P. No.34238 of 2022

Between

M/s. Hygro Chemicals Pharmtek Pvt. Ltd. .. Petitioner

Vs.

$ Union of India & another .. Respondents

WITH

W.P. No.34627 of 2022

Between

M/s. Divija Jewels .. Petitioner

Vs.

$ Union of India & others .. Respondents

I.A. No.1 OF 2022 in W.P. No.41133 OF 2022

Between:

M/s. Karvy Realty (India) Ltd. & others .. Petitioners

Vs.

$ The Adjudicating Authority under PML Act, 2002

& another .. Respondents

I.A. No.1 OF 2022 in 44343 OF 2022

Between:

M/s. Karvy Stock Broking Limited & others .. Petitioners

Vs.

$ The Adjudicating Authority under PML Act, 2002

& another .. Respondents

! For Petitioners : 1. Mr. Dinesh Tiwari;
2. Mr.Vedula Srinivas, ld. Senior Counsel;
3. Mr. T. Niranjan Reddy, ld. Senior Counsel

^ For Respondents : 1. Mr. V. Ramakrishna Reddy

2. Mr. T. Surya Karan Reddy Ld. Addl. Solicitor General of India for Southern Zone.

< Gist :

> Head Note :

? Cases Referred :

1. 2015 SCC OnLineSikk 217
2. (2014) 10 SCC 1
3. (1997) 3 SCC 261
4. (2020) 6 SCC 1
5. (2020) 19 SCC 10
6. (2021) 12 SCC 1
7. 2020 SCC OnLine Del 1732
8. 2021 SCC OnLine Cal 2739
9. MANU/WB/0949/2022
10. 2021 SCC OnLine AP 983
11. 2020 SCC OnLine Kar 4995

12. MANU/DEOR/140156/2022
13. MANU/TN/3622/2019
14. 2018 SCC OnLine Del 6523
15. (2008) 14 SCC 107
16. 2021 SCC OnLine Cal 1525
17. (2010) 8 SCC 110
18. 2014 SCC OnLineHyd 819
19. 2014 SCC OnLine Del 493
20. 2011 SCC OnLine Mad 2909
21. 2012 SCC OnLine J&K 52
22. 2012 SCC OnLine P&H 621
23. 2021 SCC OnLine SC 1044
24. 2018 SCC OnLine Del 6523
25. (1960) 2 SCR 775
26. 1950 SCC 551
27. (1962) 2 SCR 339
28. 2020 SCC OnLine Cal 384
29. MANU/TL/0769/2021
30. 1966 Supp SCR 311
31. (2005) 7 SCC 627
32. (2008) 4 SCC 144
33. (1987)1SCC124
34. 1993 (4) SCC 119
35. (2010) 11 SCC 1
36. (2018) 6 SCC 21
37. 2019 SCC OnLine Del 8032
38. 2021 SCC OnLineGau 1198
39. MANU/TN/6370/2022
40. (2001) 6 SCC 534
41. (2008) 2 SCC 350
42. 1958 SCR 640
43. (2022) 3 SCC 117
44. 2022 SCC OnLine SC 929
45. MANU/TL/2356/2022
46. (2022) 5 SCC 112
47. MANU/TN/8962/2022
48. 2021 SCC OnLine Del 5577
49. 2022 SCC OnLine SC 385

HON'BLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION Nos.34238 & 34627 OF 2022;

I.A. No.1 OF 2022 in W.P. No.41133 OF 2022 &

I.A. No.1 OF 2022 in 44343 OF 2022

I N D E X

COMMON ORDER:

The present matters *viz.*, W.P. No.34238 of 2022, W.P. No.34627 of 2022, I.A. No.1 of 2022 in 41133 of 2022 and I.A.

No.1 of 2022 in W.P. No. 44343 of 2022 involve adjudication of common questions of law. Therefore, the same are being decided *vide* the following common order.

2. In W.P. No. 34238 of 2022, Mr. Dinesh Tiwari learned counsel for the Petitioner was heard along with Mr. V. Ramakrishna Reddy learned standing counsel for the Respondents. In W.P. No. 34627 of 2022, Mr. Vedula Srinivas representing Mrs. Vedula Chitralekha was heard for the Petitioners and Mr. V. Ramakrishna Reddy, learned standing counsel was heard for the Respondents. In I.A. No. 1 of 2022 in 41133 of 2022 and I.A. No. 1 of 2022 in W.P. No. 44343 of 2022, Mr. T. Niranjan Reddy learned senior counsel representing Mr. Avinash Desai was heard for the Petitioners and Mr. T. Surya Karan Reddy learned Additional Solicitor General of India for Southern Zone was heard for the Respondents therein.

3. **Factual Background in W.P. No. 34238 of 2022**:

i) An inquiry was initiated by the Department of Revenue Intelligence, Hyderabad against the Petitioner herein for alleged illegal manufacturing and sale of DPP and HCL. In furtherance of

the said inquiry, the Petitioner was arraigned as an accused in relation to offences committed under the Narcotic Drugs and Psychotropic Substances Act, 1985. Subsequently, Directorate of Enforcement (hereinafter referred as 'ED') initiated investigation under the Prevention of Money Laundering Act, 2002 (hereinafter referred as 'PMLA') *vide* ECIR/03/HYD/2007.

ii) A provisional attachment order bearing PAO No. 04/2022 dated 03.02.2022 under Section 5(1) of the PMLA was passed by Respondent No. 2 (ED) against the Petitioner herein. Subsequently, an original complaint bearing O.C. No. 1633 of 2022 was filed on 28.02.2022 before the Adjudicating Authority mentioning the alleged offences committed by the Petitioner and details of the properties attached.

iii) Pursuant to the original complaint, the Adjudicating Authority after recording its reasons issued a show cause notice dated 17.03.2022 to the Petitioner under Section 8(1) of the PMLA to indicate the source of income out of which the provisionally attached properties were procured and show cause why such properties should not be declared as proceeds of crime.

iv) The Petitioner replied to the show cause notice on 23.03.2022 stating that all the documents relied upon to pass PAO No. 04/2022 were not supplied. However, a hearing was conducted by the Adjudicating Authority on 04.08.2022 and an order dated 22.08.2022 was passed confirming the provisional attachment order PAO No. 04/2022.

v) It is relevant to note that after the completion of hearing by the Adjudicating Authority on 04.08.2022, the Petitioner had filed W.P. No. 33539 of 2022 before this Court on 23.08.2022 challenging the show cause notice dated 17.03.2022. However, the said writ petition was disposed of *vide* order dated 30.08.2022 in view of the order dated 22.08.2022 confirming the provisional attachment.

vi) The Petitioner challenges the order dated 22.08.2022 confirming the provisional attachment order PAO No. 04/2022 on the ground that the same was passed without jurisdiction and in breach of Section 6 of the PMLA. The Petitioner also contends that the order dated 22.08.2022 confirming the provisional attachment was passed beyond the prescribed period of 180 days which is in breach of Section 5 of the PMLA.

4. **Factual Background in W.P. No. 41133 of 2022**:

i) Scheduled offences were registered by the ED against various entities of the Karvy group of companies and its directors *vide* Cr. No 78 of 2021 dated 22.04.2021 and Cr. No. 86 of 2021 dated 01.05.2021 on the complaints lodged by HDFC Bank. Based on the information in the said complaints, investigation was initiated under the PMLA on File No. ECIR/HYZO/14/2021 dated 19.05.2021.

ii) Pursuant to the investigation, a provisional attachment order bearing PAO No. 6 of 2022 dated 08.03.2022 was passed by the ED attaching various moveable and immoveable properties worth Rs. 1984.84 Crores of the Karvy group of companies including its directors under Section 5(1) of the PMLA. Subsequently, an original complaint bearing OC No. 1680 of 2022 dated 06.04.2022 was filed before the Adjudicating Authority.

iii) While the adjudication in OC No. 1680 of 2022 was pending, the ED passed another the provisional attachment order bearing PAO No. 15 of 2022 dated 28.07.2022 attaching moveable and immoveable properties worth Rs.110,70,18,735/- of the

Petitioners herein in relation to the loans obtained by entities forming part of Karvy group of companies from Lakshmi Vilas Bank (now DBS Bank).

iv) Pursuant to PAO No. 15 of 2022, an original complaint bearing OC No. 1799 of 2022 dated 26.08.2022 was filed before the Adjudicating Authority, which in turn, after satisfying itself that an offence of money laundering was committed, issued a show cause notice dated 19.09.2022 seeking to show cause as to why the provisional attachment should not be confirmed.

v) The Petitioners in W.P. No. 41133 of 2022 challenge original complaint bearing OC No. 1799 of 2022, the provisional attachment order bearing PAO No. 15 of 2022 and the subsequent show cause notice dated 19.09.2022. OC No. 1799 of 2022 is challenged, *inter alia*, on the ground that the same was registered in the absence of any scheduled offence as no complaint was filed by Lakshmi Vilas Bank and the said OC No. 1799 of 2022 is not related to ECIR/HYZO/14/2021 registered by the ED. Similarly, PAO No. 15 of 2022 and show cause notice dated 19.09.2022 are challenged on the ground that no scheduled offence was registered.

vi) Further, show cause notice dated 19.09.2022 is also challenged on the ground that the same was issued without jurisdiction by a single member Adjudicating Authority having no experience in the field of law is in breach of Section 6 of the PMLA.

5. **Factual Background in W.P. No. 44343 of 2022**:

i) W.P. No. 44343 of 2022 is connected to W.P. No. 41133 of 2022 and both of them arise out of similar set of facts. Based on registration of scheduled offences *vide* various FIRs as mentioned above in W.P. No. 41133 of 2022, investigation was initiated against the Petitioners under PMLA on File No. ECIR/HYZO/14/2021 dated 19.05.2021. A provisional attachment order bearing PAO No. 6 of 2022 dated 08.03.2022 was passed by the ED attaching various moveable and immoveable properties worth Rs. 1984.84 Crores.

ii) An original complaint bearing OC No. 1680 of 2022 was filed before the Adjudicating Authority. Thereafter, a show cause notice dated 22.04.2022 was issued by the Adjudicating Authority seeking to show cause why the provisional attachment dated

08.03.2022 should not be confirmed. Subsequently, the Petitioners filed their reply and a hearing was conducted on 15.11.2022 by a single member Adjudicating Authority, which passed an order dated 01.12.2022 confirming the provisional attachment order bearing PAO No. 6 of 2022.

iii) The Petitioners challenge the confirmation order dated 01.12.2022 on the ground that same was passed without jurisdiction by a single member Adjudicating Authority having no experience in the field of law and the same is in breach of Section 6 of the PMLA.

6. **Factual Background in W.P. No. 34627 of 2022**:

i) Petitioner No. 1 is a company engaged in the business of supplying gold ornaments and is run by Petitioner No. 2. However, for the sake of convenience, Petitioner No. 2 will be referred to as the Petitioner.

ii) The facts in the case suggest an alleged commission of a scam during the demonetization in November, 2016. A complaint was lodged by the Deputy Director of Income Tax, Hyderabad based on which a first information report bearing FIR No. 75 of

2016 dated 07.12.2016 was registered under Sections 120B, 420, 467, 471, 474, 477A & 109 r/w Section 34 of the IPC by PS Jubilee Hills. Subsequently, the FIR was transferred to CCS Police and a fresh first information report bearing FIR No. 263 of 2016 dated 11.12.2016 was registered against the accused persons including the Petitioner's husband.

iii) Based on FIR No. 263 of 2016, the ED registered a case bearing ECIR/11/HYZO/2016 for investigation into the offence of money laundering which resulted due to the alleged scam. In furtherance of the same a prosecution complaint bearing SC No. 474 of 2018 in ECIR/11/HYZO/2016 was filed before the Metropolitan Sessions Judge cum Special Court under PMLA.

iv) As per the allegations, three companies - M/s Mussadilal Jewellers Pvt. Ltd., M/s Mussadilal Gems and Jewels Pvt. Ltd. and M/s Vaishnavi Bullion Pvt. Ltd. were involved in the scam. The people running the business of the said companies created around 6000 fictitious sale invoices in relation to fake sales and based on such fake sales an amount of Rs.111 crore was deposited in their bank accounts. Fake sale receipts were used to illegally exchange bank notes of Rs. 500 & Rs. 1000.

v) It is also alleged that the Petitioner's husband who ran a company by name M/s Ashta Laxmi Gold was also involved in the alleged scam. Petitioner's husband allegedly facilitated & collected an amount of around Rs.40 crores from the other persons involved in the scam and deposited the same in the bank account of M/s Vaishnavi Bullion Pvt. Ltd. Further, it is also alleged that an amount of Rs.28 crores was transferred by M/s Vaishnavi Bullion Pvt. Ltd. in the bank account of M/s Ashta Laxmi Gold belonging to the Petitioner's husband. Therefore, it is alleged that the Petitioner's husband was directly involved in the scam by converting the illegally demonetized cash to purchase gold.

vi) Based on these allegations, the premises of the Petitioner and her husband were searched and certain records were seized and their bank accounts were also frozen. *Vide* order dated 23.06.2017 in OA No.69 of 2017, the Adjudicating Authority permitted the ED to retain the seized records. An appeal bearing Appeal No. 1889 of 2017 was preferred by the Petitioner's husband against the retention order dated 23.06.2017.

vii) Subsequently, the Petitioner started Petitioner No. 1 company. On 15.04.2019, a search was conducted at the

Petitioner's residence and according to the Petitioner her stock-in-trade was seized. The Petitioner contends that she and her seized property have no connection with the alleged demonetization scam and the seizure of her property is illegal.

viii) Subsequently, after the seizure dated 15.04.2019, the ED arraigned the Petitioner herein as an accused by filing a supplementary prosecution complaint dated 24.09.2020 bearing SC No. 128 of 2020 in SC No. 474 of 2018 in ECIR/11/HYZO/2016. On 01.02.2021, ED passed a provisional attachment order bearing PAO No. 01 of 2021 under Section 5(1) of the PMLA. *Vide* the said order dated 01.02.2021, the ED attached various moveable and immoveable properties of the Petitioner including the properties already seized.

ix) Pursuant to the passing of PAO No. 01 of 2021, the ED filed an original complaint bearing O.C. No. 1410 of 2021 dated 19.02.2021 before the Adjudicating Authority seeking confirmation of the provisional attachment dated 01.02.2021. The Adjudicating Authority issued a show cause notice dated 03.03.2021 to the Petitioner herein and her husband to show cause as to why the provisional attachment of properties should not be

confirmed. The Petitioner submitted her reply to the said show cause notice on 12.06.2021 and thereafter an oral hearing was conducted by the Adjudicating Authority on 05.07.2021. After the hearing, no proceedings have taken place and the provisional attachment order has not been confirmed till date.

x) The Petitioner, *inter alia*, contends that the properties that were attached belong to her and have no connection to the alleged demonetization scam. Her properties cannot be attached as part of proceeds of crime, merely because certain amounts were transferred from the bank account of her husband's company.

xi) Further, the Petitioner contends that the provisional attachment order has not been confirmed even after a lapse of 180 days. Therefore, no confirmation order can be passed and the proceedings arising out of PAO No. 1 of 2021 dated 01.02.2021 have to be set aside.

7. **Contentions of the Petitioners**:

i) The impugned orders were passed by the Adjudicating Authority consisting of a single member. A single member cannot pass an order of attachment under Section 8 of the PMLA as

Section 6 of the PMLA contemplates an Adjudicating Authority consisting of a chairperson and two other members. Therefore, the impugned orders/show cause notices passed by a one-member Adjudicating Authority are illegal and in breach of the PMLA.

ii) Further, the single member of the Adjudicating Authority who issued the impugned show cause notices and passed the impugned orders was not a judicial member who has experience in the field of law. Therefore, passing orders confirming attachment is a quasi-judicial function, such orders can only be passed by members of Adjudicating Authority having experience in the field of law. Reliance was placed on **Eastern Institute for Integrated Learning in Management University v. Govt. of India**[1], **Madras Bar Assn. v. Union of India**[2], **L. Chandra Kumar v. Union of India**[3] and **Rojer Mathew v. South Indian Bank Ltd.**[4]

iii) In W.P. Nos. 32438 of 2022 and 34627 of 2022, it was contended that the orders confirming the provisional attachment are without jurisdiction as the same have been passed beyond the period of 180 days as prescribed under Section 5 of the PMLA.

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1. 2015 SCC OnLineSikk 217
2. (2014) 10 SCC 1
3. (1997) 3 SCC 261
4. (2020) 6 SCC 1

The Adjudicating Authority becomes *functus officio* after a lapse of 180 days, if the provisional attachment of properties is not confirmed within such period.

iv) **In re: Cognizance for Extension of Limitation**[5] (hereinafter referred to as "In re: Limitation") cannot be relied upon by the ED to extend the statutory period of 180 days under Section 5 of the PMLA. Reliance was placed on **S. Kasi v. State**[6], **Vikas WSP Ltd. v. Directorate Enforcement**[7] and **Gobindo Das v. Union of India**[8]**, Hiren Panchal v. Union of India**[9].

v) The present writ petitions are maintainable as the impugned orders confirming provisional attachment and show cause notices were issued by a single member and the same is without jurisdiction. In W.P. Nos. 32438 of 2022 and 34627 of 2022, the confirmation orders were passed after the lapse of 180 days and the same is also without jurisdiction. Therefore, writ petitions are maintainable even where an alternative remedy exists,

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5. (2020) 19 SCC 10
6. (2021) 12 SCC 1
7. 2020 SCC OnLine Del 1732
8. 2021 SCC OnLine Cal 2739
9. MANU/WB/0949/2022

if the authority acts without jurisdiction. Reliance was placed on **Kumar Pappu Singh v. Union of India**[10].

8. Contentions of the Respondent (Directorate of Enforcement:

i) An order can be passed by the Adjudicating Authority consisting of a single member. Under Section 6(5)(b) of the PMLA, discretion is vested with the chairperson to constitute the Adjudicating Authority with one or two members. Therefore, PMLA permits constitution of Adjudicating Authority with a single member. Reliance was placed on **Dyani Antony Paul v. Union of India**[11], **Alaknanda Realtors Pvt. Ltd. v. Deputy Director, Directorate of Enforcement**[12] and **G. Gopalakrishnan v. The Deputy Director, Directorate of Enforcement**[13].

ii) Further, a single member constituting the Adjudicating Authority need not be a judicial member. Petitioners cannot rely upon the decisions in **L. Chandra Kumar (supra)**, **Madras Bar Association (supra)** and **Rojer Mathew (supra)** as the same dealt with tribunals constituted under Article 323B of the Constitution of

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[10]. 2021 SCC OnLine AP 983
[11]. 2020 SCC OnLine Kar 4995
[12]. MANU/DEOR/140156/2022
[13]. MANU/TN/3622/2019

India. In this regard, reliance was placed on **J. Sekar v. Union of India**[14].

iii) The constitutionality of Section 6 of the PMLA as it stands was upheld by the Hon'ble Supreme Court in **Pareena Swarup v. Union of India**[15]. Therefore, a single member Adjudicating Authority can be constituted and the same can pass orders.

iv) The orders confirming provisional attachments in W.P. Nos. 32438 of 2022 and 34627 of 2022 are within the jurisdiction of the Adjudicating Authority as the period from 15.03.2020 to 28.02.2022 shall be excluded while computing the period of 180 days. Reliance was placed on **In re: Limitation (supra)**.

v) The Adjudicating Authority does not become *functus officio* after a lapse of 180 days as prescribed under Section 5(3) of the PMLA. Reliance was placed on **Fairdeal Supplies Limited v. Union of India**[16].

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[14]. 2018 SCC OnLine Del 6523
[15]. (2008) 14 SCC 107
[16]. 2021 SCC OnLine Cal 1525

vi) The present petitions are not maintainable as an efficacious alternative remedy in the form of an appeal under Section 26 of the PMLA is available to the Petitioners. Reliance was placed on **United Bank of India v. SatyawatiTondon**[17], **P. Trivikrama Prasad v. Enforcement Directorate**[18], **Arun Kumar Mishra v. Union of India**[19], G**. Srinivasan v. Chairperson**[20], **Nabla Begum v. Union of India**[21] and **Karampal Goyal v. Directorate of Enforcement**[22].

9. Findings of the Court:

From the facts and contentions raised by the parties, the following issues fall for consideration before this Court:

1. Whether the scheme under the PMLA permits an Adjudicating Authority consisting of a single member?
2. Whether a single member alone who has experience in the field of administration, finance or accountancy and no experience in the field of law can issue a show cause notice under Section 8(1) of the PMLA and pass orders confirming

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17. (2010) 8 SCC 110
18. 2014 SCC OnLineHyd 819
19. 2014 SCC OnLine Del 493
20. 2011 SCC OnLine Mad 2909
21. 2012 SCC OnLine J&K 52
22. 2012 SCC OnLine P&H 621

provisional attachment of properties under Section 8(3) of the PMLA?

3. Whether the period from 15.03.2020 to 28.02.2022 which was excluded by the Apex Court in computation of limitation *vide* **In re: Limitation (supra)** is applicable to orders confirming provisional attachment within 180 days?
4. Whether the Adjudicating Authority becomes *functus officio* after a lapse of 180 days from the date of passing of the provisional attachment order, if such provisional attachment is not confirmed under Section 8(3) of the PMLA?

10. **Issue No.1: Whether the scheme under PMLA permits an Adjudicating Authority consisting of a single member?**

i) Relying on Section 6 (2) of the PMLA, the Petitioners contend that the Adjudicating Authority constituted under the PMLA shall necessarily consist of a Chairperson and two other members. The Petitioners contend that there cannot be an Adjudicating Authority consisting of a single member. To examine the issue at hand, the relevant provisions of the PMLA are extracted below:

2(a). - "Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1)of section 6

6. Adjudicating Authorities, composition, powers, etc.— (1) The Central Government shall, by notification, appoint an Adjudicating Authority] to exercise jurisdiction, powers and authority conferred by or under this Act.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority,—

(a) in the field of law, unless he—

(i) is qualified for appointment as District Judge; or

(ii) has been a member of the Indian Legal Service and has held a post in Grade I of that service;

(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of 1[sixty-five] years.

(9) The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Member shall be varied to his disadvantage after appointment.

(10) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Adjudicating Authority from the stage at which the vacancy is filled.

(11) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(14) When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

(15) The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure.

ii) It is clear from Section 6 (2) of the PMLA that an Adjudicating Authority shall consist of a chairperson and two other members. Though the word ‘shall’ is used in the provision, the said requirement of having a chairperson and two other members is not mandatory in light of Section 6(5) and Section 6(7) of the PMLA. Section 6(5) of the PMLA provides that Benches constituted by the Adjudicating Authority can also exercise jurisdiction under PMLA. Section 6(5)(b) further provides that the chairperson in his discretion can constitute Benches either with one member or with two members.

iii) It is also relevant to note that Section 6(7) of the PMLA provides that if the Chairperson or a Member during the course of hearing feels that a matter should be heard by a Bench of two members, he/she may transfer such matter to a Bench consisting of two members. Section 6(7) of the PMLA contemplates a situation where a matter heard by a Bench consisting of a single member can be transferred to a Bench consisting of two members.

iv) It is trite law that a provision has to be interpreted in light of the entire scheme of the statute. The Court cannot read a provision in part or in isolation. Where the statute expressly

provides jurisdiction to a quasi-judicial body consisting of one member to decide the issue, the Court cannot reach a conclusion or interpretation that such constitution with a single member having the requisite competence/eligibility is bad in law. A full bench of the Apex Court in **Newtech Promoters & Developers (P) Ltd. v. State of U.P.**[23] dealt with a similar issue as to whether the adjudicating authority therein under Section 81 of the Real Estate (Regulation and Development) Act, 2016 could have delegated its powers to a single member of such authority. The Petitioners therein contended that the Real Estate (Regulation and Development) Act, 2016 does not contemplate delegation of powers to hear complaints to a single member which ought to be heard by the authority consisting of two members. Similar to the present case, the Petitioners therein contended that such delegation of power to a single member is illegal and orders passed by such single member are without jurisdiction. The Apex Court negatived the contention of the Petitioners therein and held that where statutory mandate permits delegation of powers by a competent

[23]. 2021 SCC OnLine SC 1044

authority to a single member, such single member can exercise such delegated powers.

v) The relevant paragraphs including the contentions of the parties therein are extracted below:

> 88. Mr. Gopal Sankarnarayanan, learned counsel for the appellants submits that if this Court comes to the conclusion that other than adjudging compensation wherever provided all other elements/components including refund of the amount and interest etc. vests for adjudication by the authority, in that event, such power vests with the authority constituted under Section 21 and is not open to be delegated in exercise of power under Section 81 of the Act to a single member of the authority and such delegation is a complete abuse of power vested with the authority and such orders passed by the single member of the authority in directing refund of the amount with interest are wholly without jurisdiction and is in contravention to the scheme of the Act.
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> 89. Learned counsel further submits that the order passed by the single member of the authority is without jurisdiction and it suffers from coram non-judice. Section 21 of the Act clearly provides that the authority shall consist of a Chairperson and not less than two whole time members to be appointed by the Government. Regulation 24(a) of the Regulations 2019 framed by the authority is in clear contravention to the parent statute that the delegation of power can be of class, category of cases, specific to the member of the authority but a general

delegation of power to the single member of the authority in exercise of power under Section 81 is not contemplated under the Act and delegation to a single member of the authority in adjudicating the disputes under Sections 12, 14, 18 and 19 is without jurisdiction and that is the reason for which the appellants have approached the High Court by filing a writ petition under Article 226 of the Constitution and in furtherance to this Court.

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95. Per contra, Mr. DevadattKamat, learned senior counsel for the respondents submits that the complaint of the appellants has been primarily on the issue that a single member is not competent to exercise power to hear complaints under Section 31 of the Act and the delegation of its power by the authority invoking Section 81 is beyond jurisdiction.

96. Learned counsel submits that as a matter of fact the entire functioning of the authority has not been delegated to the single member. It is only the hearing of complaints under Section 31 that the single member of the authority has been empowered to deal with such complaints, keeping in view the overall object of speedy disposal of such complaints mandated under the law. According to him, it is factually incorrect to say that the other functions of the authority like imposition of penalty under Section 38, revocation of registration under Section 7 or functions of the authority under Sections 32 or 33 have been delegated to a single member of the authority.

97. Learned counsel further submits that the question is not whether the delegation per se to a single member is bad, but the question is whether the power to hear complaints in reference to Sections 12, 14, 18 and 19 delegated to a single member is permissible under the law. It may be noticed that the authority has been vested with several other powers and functions under the Act, which the authority has consciously not delegated to a single member.

98. Learned counsel further submits that pursuant to the delegation of power under Section 81 by the special order dated 5th December, 2018 read with Regulation 24, a single member has been authorized by the authority to hear the matters related to refund of the amount under Section 31 of the Act.

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113. Section 81 of the Act 2016 empowers the authority, by general or special order in writing, to delegate its powers to any member of the authority, subject to conditions as may be specified in the order, such of the powers and functions under the Act. What has been excluded is the power to make regulations under Section 85, rest of the powers exercised by the authority can always be delegated to any of its members obviously for expeditious disposal of the applications/complaints including complaints filed under Section 31 of the Act and exercise of such power by a general and special order to its members is always permissible under the provisions of the Act.

114. In the instant case, the authority by a special order dated 5th December, 2018 has delegated its power to the single member for disposal of complaints filed under Section 31 of the Act. So far as refund of the amount with interest is concerned, it may not be considered strictly to be mechanical in process but the kind of inquiry which has to be undertaken by the authority is of a summary procedure based on the indisputable documentary evidence, indicating the amount which the allottee/home buyer had invested and interest that has been prescribed by the competent authority leaving no discretion with minimal nature of scrutiny of admitted material on record is needed, if has been delegated by the authority, to be exercised by the single member of the authority in exercise of its power under Section 81 of the Act, which explicitly empowers the authority to delegate under its wisdom that cannot be said to be dehors the provisions of the Act.

115. What is being urged by the learned counsel for the appellants in interpreting the scope of Section 29 of the Act is limited only to policy matters and cannot be read in derogation to Section 81 of the Act and the interpretation as argued by learned counsel for the promoters if to be accepted, the very mandate of Section 81 itself will become otiose and nugatory.

116. It is a well-established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such a

manner as to render it to some extent otiose. Section 81 of the Act positively empowers the authority to delegate such of its powers and functions to any member by a general or a special order with an exception to make regulations under Section 85 of the Act. As a consequence, except the power to make regulations under Section 85 of the Act, other powers and functions of the authority, by a general or special order, if delegated to a single member of the authority is indeed within the fold of Section 81 of the Act.

117. The further submission made by learned counsel for the promoters that Section 81 of the Act empowers even delegation to any officer of the authority or any other person, it is true that the authority, by general or special order, can delegate any of its powers and functions to be exercised by any member or officer of the authority or any other person but we are not examining the delegation of power to any third party. To be more specific, this Court is examining the limited question as to whether the power under Section 81 of the Act can be delegated by the authority to any of its member to decide the complaint under Section 31 of the Act. What has been urged by learned counsel for the promoters is hypothetical which does not arise in the facts of the case. If the delegation is made at any point of time which is in contravention to the scheme of the Act or is not going to serve the purpose and object with which power to delegate has been mandated under Section 81 of the Act, it is always open for judicial review.

118. The further submission made by learned counsel for the appellants that Section 81 of the Act permits the authority to delegate such powers and functions to any member of the authority which are mainly administrative or clerical, and cannot possibly encompass any of the core functions which are to be discharged by the authority, the judicial functions are non-delegable, as these are the core functions of the authority. The submission may not hold good for the reason that the power to be exercised by the authority in deciding complaints under Section 31 of the Act is quasi-judicial in nature which is delegable provided there is a provision in the statute. As already observed, Section 81 of the Act empowers the authority to delegate its power and functions to any of its member, by general or special order.

119. In the instant case, by exercising its power under Section 81 of the Act, the authority, by a special order dated 5th December, 2018 has delegated its power to the single member of the authority to exercise and decide complaints under Section 31 of the Act and that being permissible in law, cannot be said to be de hors the mandate of the Act. At the same time, the power to be exercised by the adjudicating officer who has been appointed by the authority in consultation with the appropriate Government under Section 71 of the Act, such powers are non-delegable to any of its members or officers in exercise of power under Section 81 of the Act.

120. That scheme of the Act, 2016 provides an in-built mechanism and any order passed on a complaint by the

> authority under Section 31 is appealable before the tribunal under Section 43(5) and further in appeal to the High Court under Section 58 of the Act on one or more ground specified under Section 100 of the Civil Procedure Code, 1908, if any manifest error is left by the authority either in computation or in the amount refundable to the allottee/home buyer, is open to be considered at the appellate stage on the complaint made by the person aggrieved.
>
> 121. In view of the remedial mechanism provided under the scheme of the Act 2016, in our considered view, the power of delegation under Section 81 of the Act by the authority to one of its member for deciding applications/complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be dehors the mandate of law.

vi) Dealing with the same issue regarding constitution of Adjudicating Authority with a single member, various High Courts have held that such constitution is valid. The Delhi High Court in **J. Sekar v. Union of India**[24] held that constitution of Adjudicating Authority with a single member under PMLA is valid. The relevant paragraphs are extracted below:

> 79. The Court next takes up the question of the composition of the AA on which extensive arguments were advanced by

[24].2018 SCC OnLine Del 6523

the learned counsel for the Petitioners. In this context, it must be noticed that under Section 6 PMLA, the AA is supposed to consist of the Chairperson and two other members - one of whom shall be a person having experience in the field of law. Section 6(3) further sets out what the qualifications for appointment as a member of an AA should be. One of those qualifications is that the person has to be qualified for appointment as a District Judge or a person in the field of law or a member of an Indian Legal Service. The other qualification is possession of a qualification in the field of finance, accountancy or administration as may be prescribed. It is, therefore, not the case that all the members of the AA should be judicial members.

80. It is seen that under Section 5 PMLA, the jurisdiction of the AA "may be exercised by the Benches thereof". Under Section 6(5)(b) PMLA, a Bench may be constituted by the Chairperson of the AA "with one or two members" as the Chairperson may deem fit. Therefore, it is possible to have single-member benches. The word 'bench' therefore does not connote plurality. There could, even under Section 6(5)(b) PMLA, be a 'single member bench'. When Section 6(6) PMLA states that a Chairperson can transfer a member from one bench to another bench, it has to be understood in the above context of there also being single-member benches.

81. The Court is unable to agree with the submission that since the Adjudicating Authority (Procedure) Regulations 2013 requires every order-sheet to have the signatures of the

> Chairperson and members constituting the bench, it necessarily means that every matter has to be heard by a bench comprising the Chairperson and members. This would be an erroneous interpretation which is contrary to the main provision of the PMLA itself, viz., Section 6(5)(b) PMLA. Likewise, under Rule 3 of the Prevention of Money-laundering (Appointment and Conditions of Service of Chairperson and Members of the Adjudicating Authorities) Rules 2007, although it states that the AA should have three members, that has to be read along with Section 6(5)(b) that there can be single-member benches. A contrary interpretation would actually frustrate the working of the AA. The Court, therefore, rejects the contention of the Petitioners that there cannot be any single-member benches of the AA.

vii) The Karnataka High Court in **Dyani Antony Paul (supra)** held that Adjudicating Authority consisting of one member can be constituted under PMLA. The relevant paragraph is extracted below:

> 175. A feeble attempt has been made in W.P. No. 24444/2015 and few other connected matters that adjudication by single member of the adjudicating authority is bad in law by referring to Section 6(2) of PML Act. Said contention would not stand to rhyme or reason for the simple reason that answer lies in Section 6(5)(a) & (b), whereunder it is clearly indicated that jurisdiction of the adjudicating authority may be exercised by benches thereof; and, a bench can be constituted

by the Chairperson of the adjudicating authority with one or two members, as the Chairperson may deem fit. **Hence, this court is of the considered view that constitution of a bench hearing the original complaint or its adjudication thereof consisting of one member cannot be found fault with**. It can be further noticed that under sub-section. (13) of Section 6, if the vacancy arises in the office of the Chairperson by reason of death, resignation or otherwise, the senior most member would act as the Chairperson and such Chairperson would exercise the power as provided under Section 6 of the PML Act.

viii) The Madras High Court in **G. Gopalakrishnan (supra)** expressed a similar view that Adjudicating Authority under PMLA can consist of one member. The relevant paragraphs are extracted below:

78. But looking at the entire scheme of PMLA, Section 6 and other connected provisions of PMLA and regulations as referred to by the learned Senior Counsel, this Court can infer that it is possible to have less than three Member to act as Adjudicating Authority. This inference is not without any definite reasons as the language of Sub Section 7 of Section 6 provides for constitution of Bench even by two Members. Sub Section 7 of Section 6 reads as under:

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81. The above provisions make it very clear that it is possible to have less than Three Members to constitute as Adjudicating Authority.

82. In fact, in the decision of the Delhi High Court in "J. Sekar versus Union of India & others, etc." (cited supra) relied upon by both learned Senior Counsel for the petitioners and learned Addl. Solicitor General for respondents, it was held that less than three Member Adjudicating Authority is permissible under PMLA. The Delhi High Court held that there can be a single Member of Adjudicating Authority and appellate Tribunal under PMLA and such single Member Bench need not mandatorily have judicial members and can be administrative members as well. **This case was relied upon by the learned Addl. Solicitor General for the purpose of contending that the issue of coram non-judice is not a valid argument in the teeth of various provisions which explicitly provide for formation of single Member Bench. This Court is in agreement with the submission made by the learned Addl. Solicitor General that it is not mandatory to have three Member Bench all the time for all adjudication purposes. It is up to the Chairperson of the Adjudicating Authority to form Bench containing one or two Members as it deems fit in order to adjudicate the cases which are placed for consideration before the Authority**.

ix) In the present case, a plain reading of Section 6 of the PMLA negates the contention of the Petitioners that Adjudicating

Authority shall consist of a Chairperson and two members. The word ‘shall’ used in Section 6(2) is not mandatory. This Court agrees with the view expressed in the above decisions that constitution of Adjudicating Authority with one member is permissible under PMLA. Therefore, Issue No. 1 is answered accordingly.

11. **Issue No. 2: Whether a single member alone who has experience in the field of administration, finance or accountancy and no experience in the field of law can issue a show cause notice under Section 8(1) of the PMLA and pass orders confirming provisional attachment of properties under Section 8(3) of the PMLA?**

i) After reaching the conclusion that a single member Adjudicating Authority can be constituted, the question then would be whether such single member should necessarily be a person having experience in law to issue a show cause notice under Section 8(1) of the PMLA and pass an order confirming the provisional attachment of the properties under Section 8(3) of the PMLA. The Petitioners have contended that issuing a show cause notice and confirming the provisional attachment of properties are quasi-judicial functions. Therefore, a member of the Adjudicating

Authority having no experience in the field of law cannot pass a judicial order.

ii) To decide the present issue, it is imperative to decide the following questions:

A. Whether the action of issuing a show cause notice under Section 8(1) of the PMLA by the Adjudicating Authority is quasi-judicial in nature?

B. Whether the action of passing an order confirming provisional attachment under Section 8(3) of the PMLA is quasi-judicial in nature?

iii) Before answering the above questions, it is appropriate to discuss what constitutes a quasi-judicial action. The Apex Court in **Shivji Nathubha v. Union of India**[25]relying on a decision of a Constitution Bench consisting of six judges in **Province of Bombay v. Khushaldas S. Advani**[26] explained the distinction between an administrative act and a quasi-judicial act. The Court therein held that the act will be treated as quasi-judicial act if the body exercising power had legal authority, by exercising such

[25]. (1960) 2 SCR 775
[26]. 1950 SCC 551

power it should decide a *lis* between the parties and while exercising such power it should act judicially. The Court relied on **Khushaldas S. Advani (supra)** to hold that unless the statute provides otherwise, a body is under a duty to act judicially. The relevant paragraphs are extracted below:

> 6. This Court had occasion to consider the nature of the two kinds of acts, namely, judicial which includes quasi-judicial and administrative, a number of times. In *Province of Bombay* v. *Kushaldas S. Advani* [1950 SCC 551 : (1950) SCR 621] it adopted the celebrated definition of a quasi-judicial body given by Atkin, L.J. in *R.* v. *Electricity Commissioners* [(1924) 1 KB 171] which is as follows:
>
> "Whenever anybody of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."
>
> This definition insists on three requisites each of which must be fulfilled in order that the act of the body may be a quasi-judicial act, namely, that the body of persons (*1*) must have legal authority, (*2*) to determine questions affecting the rights of subjects, and (*3*) must have the duty to act judicially. After analysing the various cases, Das, J. (as he then was) laid down the following principles as deducible therefrom in *Khushaldas S. Advani case* [1950 SCC 551 : (1950) SCR 621] at p. 725:

> "(*i*) That, if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by any party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
>
> (*ii*) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

iv) Further, the Apex Court in **Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala**[27] discussed in detail the question as to what constitutes a quasi-judicial action. The Court therein held that actions of authorities will be treated as judicial functions if such an authority conducts proceedings by hearing parties and passes orders thereon and where a right to appeal is available against such orders. Further, the Court noted that where actions of

[27]. (1962) 2 SCR 339

quasi-judicial authorities have trappings of judicial functions, such actions will be treated as quasi-judicial actions. The relevant paragraphs are extracted below:

> 14. The authority of the Central Government entertaining an appeal under Section 111(3) being an alternative remedy to an aggrieved party to a petition under Section 155 the investiture of authority is in the exercise of the judicial power of the State. Clause (7) of Section 111 declares the proceedings in appeal to be confidential, but that does not dispense with a judicial approach to the evidence. Under Section 54 of the Indian Income Tax Act (which is analogous) all particulars contained in any statement made, return furnished or account or documents produced under the provisions of the Act or in any evidence given, or affidavit or deposition made, in the course of any proceedings under the Act are to be treated as confidential; but that does not make the decision of the taxing authorities merely executive. As the dispute between the parties relates to the civil rights and the Act provides for a right of appeal and makes detailed provisions about hearing and disposal according to law, it is impossible to avoid the inference that a duty is imposed upon the Central Government in deciding the appeal to act judicially.
>
> 15. The Attorney-General contended that even if the Central Government was required by the provisions of the Act and the rules to act judicially, the Central Government still not being a tribunal, this Court has no power to entertain an appeal against its order or decision. But the proceedings before the

> Central Government have all the trappings of a judicial tribunal. Pleadings have to be filed, evidence in support of the case of each party has to be furnished and the disputes have to be decided according to law after considering the representations made by the parties. If it be granted that the Central Government exercises judicial power of the State to adjudicate upon rights of the parties in civil matters when there is a lis between the contesting parties, the conclusion is inevitable that it acts as a tribunal and not as an executive body. We therefore overrule the preliminary objection raised on behalf of the Union of India and by the respondents as to the maintainability of the appeals.

v) Therefore, a quasi-judicial act is one which involves deciding a *lis* between two contesting parties. Before deciding the *lis*, the body shall conduct proceedings akin to judicial proceedings and such proceedings shall be adjudicatory in nature. In simple words, the action of the authority shall have trappings of judicial functions.

vi) At this stage and before coming to the questions whether issuance of show cause notice under Section 8(1) of the PMLA and passing an confirmation order under Section 8(3) of the PMLA are quasi-judicial functions, it is relevant to discuss the scope of

Section 8 of the PMLA in relation to the present case. For the sake of convenience, Section 8 of the PMLA is extracted below:

> **8. Adjudication**.—(1) On receipt of a complaint under sub-section (5) of Section 5, or applications made under sub-section (4) of Section 17 or under sub-section (10) of Section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under Section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of Section 5, or, seized or frozen] under Section 17 or Section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:
>
> Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:
>
> Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.
>
> (2) The Adjudicating Authority shall, after—
>
> (*a*) considering the reply, if any, to the notice issued under sub-section (1);
>
> (*b*) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and
>
> (*c*) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

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

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

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

Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (*a*), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.]

(4) Where the provisional order of attachment made under sub-section (1) of Section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1-A) of Section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1-A) of Section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

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

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

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

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good

> faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering :
>
> Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

vii) Section 8 of the PMLA deals with adjudication by the Adjudicating Authority. Under Section 8 (1) of the PMLA, once a complaint is filed under Section 5(5) of the PMLA detailing the nature of offence and the properties involved, the Adjudicating Authority after satisfying itself that reasons to believe exist that a person has committed the offence of money laundering or he/she is in possession of proceeds of crime has to issue a show-cause notice to such person calling upon him to give details of such properties including sources of income involved in purchasing such properties and to show cause why such attachment of properties should not be confirmed.

viii) Section 8(2) of the PMLA provides that the Adjudicating Authority shall consider if any reply to such show cause notice is filed and hear the aggrieved person whose property is sought to be attached. Further, the Adjudicating Authority shall

also consider all the relevant material placed on record. Upon such consideration of reply to the show cause notice, hearing the parties and other material placed on record, the Adjudicating Authority in its order shall record a finding whether the properties provisionally attached are involved in money laundering. If the Adjudicating Authority reaches a conclusion that the provisionally attached properties were involved in money laundering, it shall pass an order confirming such provisional attachment under Section 8(3) of the PMLA.

12. ***Issue A: Whether the action of issuing a show cause notice under Section 8(1) of the PMLA by the Adjudicating Authority is quasi-judicial in nature?***

i) According to this Court, the action of issuing show cause notice under Section 8(1) of the PMLA is quasi-judicial in nature as the same has trappings of judicial functions involving application of mind.

ii) As stated above, before issuing a show cause under Section 8(1) of the PMLA, the Adjudicating Authority has to independently reach a conclusion based on the complaint before it that ‘reasons to believe’ exist regarding the commission of money

laundering. After reaching such conclusion, the Adjudicating Authority shall issue a show cause notice recording its reasons for having a belief that an offence of money laundering was committed and directing the concerned person to show cause why such properties should not be attached. If the Adjudicating Authority on perusal of the complaint reaches a conclusion that no reasons to believe exist, it can refuse to issue a show cause notice. Therefore, the requirement of having ‘reasons to believe’ is pre-requisite to issue a show cause notice under Section 8(1) of the PMLA.

iii) Further, the phrase ‘reasons to believe’ in the said provision assumes importance as the same was incorporated as a procedural safeguard. The show cause notice issued under Section 8(1) of the PMLA shall record such reasons to believe in order to inform the allegations/charges to the party whose properties are provisionally attached. In other words, the purpose of a show cause notice under Section 8(1) of the PMLA is to accord a fair opportunity of adjudication to a party whose property is sought to be attached.

iv) The Calcutta High Court expressed a similar view in **Excel Powmin Ltd. v. Union of India**[28] and the relevant paragraphs are extracted below:

> 26. A perusal of the scope of the cause to be shown by the noticee under Section 8(1) itself reveals that the noticee, in the cause shown by him, has to comprehensively deal with all the aspects as enumerated in Section 8(1) of the PMLA. One of such conditions is the evidence on which he relies and other relevant information and particulars. However, it is well within the scope of such cause to be shown by the noticee to point out that there was no basis for the reasons to believe that the person has committed an offence under Section 3 or is in possession of proceeds of crime, which is the basis of the service of notice by the AA under Section 8(1) of the PMLA.
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> 27. Without an indication as to the reasons to believe for which the AA issued the notice, the noticee would be handicapped, without any fault of his own, from taking appropriate defence on all aspects of the matter. The evidence on which he relies and other relevant information, as indicated in Section 8(1), might also pertain to the absence of any basis of the reasons to believe, on which premise the notice itself was issued, thereby vitiating the notice and the ensuing hearing.
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> 28. As such, although it is not specifically engrafted in Section 8(1) of the PMLA as to there being any requirement

[28]. 2020 SCC OnLine Cal 384

of communicating the reasons to believe arrived at by the AA to the noticee, such requirement has to be read into the provision to attribute a proper meaning to the same. A meaningful and complete show-cause and consequentially hearing, cannot take place without the noticee having a clear idea as to what were the reasons for believing the allegations against him.

29. As far as Section 68 is concerned, the same contemplates mistakes, defects or omissions in the notice and provides that those would not *ipso facto* render a notice invalid, if such notice is in substance and effect in conformity with or according to the intent and purpose of the PMLA.

30. However, as discussed above, the substance and effect of the notice cannot be in conformity with or according to the intent and purpose of the Act, which incorporates the well established principle of natural justice, *audi alteram partem*, which gives the noticee a right to contest the notice, its basis as well as the contents of the notice elaborately, if the basis of the notice under Section 8(1), that is, the “reasons to believe” of the AA are not disclosed in the notice.

31. It has to be noted here that one of the arguments of the respondents is that the AA adopted the reasons to believe attributed while passing the POA, which reasons were allegedly communicated to the noticee.

32. However, such argument is unacceptable in view of the independent provisions of Sections 5 and 8 which, at each of those stages, contemplate independent reasons to believe.

Section 5 stipulates that if the authority concerned has reason to believe, to be recorded in writing, on the basis of material in his possession, that a crime as contemplated therein may have been committed, he may, by an order in writing, provisionally attach the property-in-question.

33. On the other hand, Section 8(1) envisages that, on receipt of a complaint under Section 5(5) of the PMLA or applications made under Section 17(4) or Section 18(10), "if the Adjudicating Authority has reason to believe …" that any person has committed the offences mentioned therein, it may serve a notice as envisaged under Section 8(1) of the PMLA. As such, the exercise of arriving at reasons to believe by the AA prior to issuance of a notice asking the noticee to show-cause on the counts as indicated in the said application, has to be arrived at independently by the AA, irrespective of the reasons to believe attributed for the initial notice under Section 5(1) of the PMLA. Hence, the very fact that the AA merely adopted the reasons to believe attributed at the stage of Section 5(1) of the PMLA, shows that there was a dereliction of duty on the part of the AA, which palpably failed to exercise jurisdiction vested in it by law and to fulfill a necessary pre-condition of the notice under Section 8(1), that is, arriving at independent reasons to believe regarding commission of the offence. Such fact itself vitiates the notice and consequentially further proceedings.

34. Moreover, unless the reasons to believe for the AA to issue the notice under Section 8(1) are communicated to the noticee, the latter would not be in a position to produce the

total evidence on which he relies and other relevant information and particulars, which right also incorporates within its fold the entitlement to show that the reasons to believe the commission of the offence, as given by the AA, were incorrect, factually or legally, which would hit at the very root of the proceeding and vitiate the same in the eye of law. Thus, the ratio laid down in *J. Sekar* (supra) by the division bench of the Delhi High Court is, with due respect, absolutely correct in law and this court concurs fully with such ratio. As per the said judgment, at least at the stage of issuance of notice under Section 8(1), PMLA, the reasons to believe of the AA, as well as the authority issuing the notice under Section 5(1), have to be mandatorily communicated to the noticee to give rise to a proper show-cause and a hearing on the matter. Such a requirement, although not enumerated in so many words in the statute, has to be read into Section 8(1) to attribute a meaningful interpretation to the said provision.

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50. Under such circumstances, since nothing has come before the court to prove that the notice given to the petitioner under Section 8(1) of the PMLA disclosed the reasons to believe as contemplated in such section, which was a prerequisite of the notice and had to be arrived at by the AA independently, the notice itself was illegal, being bad in law.

51. That apart, even as argued by the respondents themselves, the AA apparently adopted the reasons to believe recorded while passing the POA, without arriving at any independent

findings on such reason to believe, let alone communicate the same to the noticee/petitioner. The said inaction on the part of the AA vitiates the notice under Section 8(1) as well.

52. In such view of the matter, no proceeding could be initiated on the basis of the notice under Section 8(1) issued to the present petitioner, thereby rendering the notice under Section 5(1) infructuous, *post facto*, since the notice under Section 5(1) ultimately merged in the notice under Section 8(1) as the latter was a continuation of the process initiated by the former.

v) Therefore, Adjudicating Authority can only issue a show cause notice if it has reasons to believe that an offence of money laundering was committed. The show cause notice should record such reasons to believe.

vi) This raises a question as to what is meant by 'reasons to believe' and when can it be said that such 'reasons to believe' exist.

vii) This Court in **K. Shoba v. The District Collector, (Panchayat Raj Wing)**[29] relying on the decisions of the Apex Court in **Barium Chemicals Ltd. v. Company Law Board**[30], **Hindustan Petroleum Corpn. Ltd. v. Darius Shapur**

[29]. MANU/TL/0769/2021
[30]. 1966 Supp SCR 311

Chennai[31]and **Bhikhubhai Vithlabhai Patel v. State of Gujarat**[32] held that phrases like ‘reasons to believe’ are based on subjective satisfaction. However, the ‘reasons to believe’ shall be based on consideration of relevant material on record and shall be preceded by application of mind by the authority before reaching the conclusion that 'reasons to believe exist’. The relevant paragraphs are extracted below:

> 21. The Hon'ble Apex Court, in BhikhubhaiVithlabhai Patel v. State of Gujarat relying on the principle in Barium Chemicals Ltd. v. Company Law Board held as follows-
>
> > 29. In Barium Chemicals Ltd. v. Company Law Board this Court pointed out, on consideration of several English and Indian authorities that the expressions "is satisfied", "is of the opinion" and "has reason to believe" are indicative of subjective satisfaction, though it is true that the nature of the power has to be determined on a totality of consideration of all the relevant provisions.
> >
> > 30. This Court while expressly referring to the expressions such as "reason to believe", "in the opinion of" observed:
> >
> > "63. ... Therefore, the words, 'reason to believe' or 'in the opinion of' do not always lead to the

[31]. (2005) 7 SCC 627
[32]. (2008) 4 SCC 144

> construction that the process of entertaining 'reason to believe' or 'the opinion' is an altogether subjective process not lending itself even to a limited scrutiny by the court that such 'a reason to believe' or 'opinion' was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative."

22. Further, in Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chennai, the Hon'ble Apex Court held that formation of opinion is based on subjective satisfaction and the same has to be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones.

23. In Barium Chemicals (Supra) the Supreme Court observed the following-

> 28. ..... An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances

> leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out.

Therefore, it is clear from the principle laid down by the Apex Court that an opinion can be formed only by application of mind which should be based on relevant materials. In other words, relevant factors and available information should be considered before forming an opinion.

viii) Therefore, the action of issuing show cause notice under Section 8(1) of the PMLA is quasi-judicial in nature. The Adjudicating Authority before issuing a show cause has to apply its mind to the material placed before it along with the complaint filed under Section 5(1) of the PMLA. It is only after such application of mind that the Adjudicating Authority can reach a conclusion that 'reasons to believe' exist regarding the commission of money laundering. The application of mind here involves a quasi-judicial function as the Adjudicating Authority has to come to conclusion and record its reasons that an offence of money laundering as defined under Section 3 of the PMLA was committed. An authority recording its subjective satisfaction after due application of mind

performs a quasi-judicial function. An action involving interpretation of a statute and recording of reasons has trappings of judicial functions. Such actions are quasi-judicial and cannot be termed as administrative, more particularly when the requirement of issuing a show cause notice based on ‘reasons to believe’ was incorporated as a procedural safeguard.

13. ***Issue B: Whether the action of passing an order confirming provisional attachment under Section 8(3) of the PMLA is quasi-judicial in nature?***

i) According to this Court, the Adjudicating Authority while passing an order of confirmation of provisional attachment of properties performs a quasi-judicial function. Before confirming the provisional attachment, the Adjudicating Authority is obligated to issue a show cause notice, consider the reply to such show cause notice, conduct a hearing of the concerned person whose provisionally attached properties are sought to be confirmed along with the concerned officer and record a finding that properties were involved in money laundering. All these steps when looked together are akin to judicial proceedings. The Adjudicating Authority while passing an order confirming provisional

attachment is essentially deciding a *lis* between two contesting parties i.e., the Director or the concerned officer who seeks confirmation of the provisional attachment and the concerned person who opposes confirmation of such attachment.

ii) Further, Section 8 of the PMLA is titled 'Adjudication' which makes it evident that the actions of Adjudicating Authority under the said provision are adjudicatory in nature and the same are quasi-judicial functions.

iii) Therefore, according to this Court, the action of issuing a show cause notice under Section 8(1) of the PMLA and passing an order confirming provisional attachment under Section 8(3) of the PMLA are quasi-judicial in nature as they have trappings of judicial functions.

14. Now coming to the main question, whether quasi-judicial functions like issuance of show cause notice under Section 8(1) of the PMLA and passing an order confirming provisional attachment under Section 8(3) of the PMLA can be passed by an Adjudicating Authority consisting of a member having no experience in the field of law. According to this Court, a quasi-

judicial order cannot be passed by a bench of an Adjudicating Authority having no experience in the field of law.

i) It is relevant to note that constitution of special quasi-judicial bodies like tribunals gained traction by incorporation of Article 323A in the Constitution of India. The object behind constitution of such bodies was to have disputes adjudicated by people having specialized knowledge in the field of law for which the tribunals were constituted. Such quasi-judicial bodies are created by statutes to replace the traditional Courts and were constituted by the executive and members constituting such tribunals were appointed by the executive. During the phase of tribunalisation in India, concerns were raised regarding the interference of executive in performance of judicial functions by such tribunals. The Courts had to deal with questions pertaining to dilution of theory of separation of powers as all tribunals were constituted by the executive.

ii) In **S.P. Sampath Kumar v. Union of India**[33], the Apex Court held that tribunals/quasi-judicial bodies can be constituted by the executive provided that necessary checks and balances are

[33]. (1987)1SCC124

maintained in appointing the members to such tribunals. The Court held that exercise of judicial powers of such bodies should remain unaffected from executive. In relation to constitution of such tribunals, the Court held that members having requisite qualification in the field of law should be appointed instead of members having no experience in the field of law. The relevant paragraph is extracted below:

> 6. I also fail to see why a District Judge or an advocate who is qualified to be a Judge of a High Court should not be eligible to be considered for appointment as Vice-Chairman of the Administrative Tribunal. It may be noted that since the Administrative Tribunal has been created in substitution of the High Court, the Vice-Chairman of the Administrative Tribunal would be in the position of a High Court Judge and if a District Judge or an advocate qualified to be a Judge of the High Court, is eligible to be a High Court Judge, there is no reason why he should not equally be eligible to be a Vice-Chairman of the Administrative Tribunal. Can the position of a Vice-Chairman of the Administrative Tribunal be considered higher than that of a High Court Judge so that a person who is eligible to be a High Court Judge may yet be regarded as ineligible for becoming a Vice-Chairman of the Administrative Tribunal? It does appear that the provisions of the impugned Act in regard to the composition of the Administrative Tribunal are a little weighted in favour of

> members of the Services. **<u>This weightage in favour of the members of the Services and value-discounting of the judicial members does have the effect of making the Administrative Tribunal less effective and efficacious than the High Court.</u>** I would therefore suggest that a District Judge or an Advocate who is qualified to be a Judge of the High Court should be regarded as eligible for being Vice-Chairman of the Administrative Tribunal and unless an amendment to that effect is carried out on or before 31st March, 1987, the impugned Act would have to be declared to be invalid, because the provision in regard to composition of the Administrative Tribunal cannot be severed from the other provisions contained in the impugned Act.

iii) In **R.K. Jain v. Union of India**[34], the Apex Court held that persons appointed to tribunals exercising quasi-judicial functions shall necessarily have experience in law and such requirement is essential for effective adjudication. Adjudicatory functions cannot be left to technical members who have no experience in the field of law. The relevant paragraphs are extracted below:

> 67. The tribunals set up under Articles 323-A and 323-B of the Constitution or under an Act of legislature are creatures of the statute and in no case can claim the status as Judges of the

[34]. 1993 (4) SCC 119

High Court or parity or as substitutes. **However, the personnel appointed to hold those offices under the State are called upon to discharge judicial or quasi-judicial powers. So they must have judicial approach and also knowledge and expertise in that particular branch of constitutional, administrative and tax laws. The legal input would undeniably be more important and sacrificing the legal input and not giving it sufficient weightage and teeth would definitely impair the efficacy and effectiveness of the judicial adjudication. It is, therefore, necessary that those who adjudicate upon these matters should have legal expertise, judicial experience and modicum of legal training as on many an occasion different and complex questions of law which baffle the minds of even trained judges in the High Court and Supreme Court would arise for discussion and decision.**

69**.** In *Krishna Sahai* v. *State of U.P.* [(1990) 2 SCC 673 : 1990 SCC (L&S) 375 : (1990) 13 ATC 711] this Court emphasised its need in constituting the U.P. Service Tribunal that, **"it would be appropriate for the State of Uttar Pradesh to change its manning and a sufficient number of people qualified in Law should be on the Tribunal to ensure adequate dispensation of justice and to maintain judicial temper in the functioning of the Tribunal"**. In *Rajendra Singh Yadav* v. *State of U.P.* [(1990) 2 SCC 763 : 1990 SCC (L&S) 412 : (1990) 14 ATC 651] it was further reiterated that the Services Tribunal mostly consist of Administrative Officers and the judicial element in the manning part of the Tribunal is very small. **The disputes**

require judicial handling and the adjudication being essentially judicial in character it is necessary that adequate number of judges of the appropriate level should man the Services Tribunals. This would create appropriate temper and generate the atmosphere suitable in an adjudicatory tribunal and the institution as well would command the requisite confidence of the disputants. In *Shri Kumar Padma Prasad* v. *Union of India* [(1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239] this Court emphasised that, "Needless to say that the independence, efficiency and integrity of the judiciary can only be maintained by selecting the best persons in accordance with the procedure provided under the Constitution. The objectives enshrined in the Constitution cannot be achieved unless the functionaries accountable for making appointments act with meticulous care and utmost responsibility."

70. In a democracy governed by rule of law surely the only acceptable repository of absolute discretion should be the courts. Judicial review is the basic and essential feature of the Indian constitutional scheme entrusted to the judiciary. It cannot be dispensed with by creating a tribunal under Articles 323-A and 323-B of the Constitution. Any institutional mechanism or authority in negation of judicial review is destructive of basic structure. So long as the alternative institutional mechanism or authority set up by an Act is not less effective than the High Court, it is consistent with the constitutional scheme. The faith of the people is the bedrock on which the edifice of judicial review and efficacy of the

adjudication are founded. The alternative arrangement must, therefore, be effective and efficient. **For inspiring confidence and trust in the litigant public they must have an assurance that the person deciding their causes is totally and completely free from the influence or pressure from the Government. To maintain independence and imperativity it is necessary that the personnel should have at least modicum of legal training, learning and experience. Selection of competent and proper people instils people's faith and trust in the office and helps to build up reputation and acceptability. Judicial independence which is essential and imperative is secured and independent and impartial administration of justice is assured. Absence thereof only may get both law and procedure wronged and wrong-headed views of the facts and is likely to give rise to nursing grievance of injustice. Therefore, functional fitness, experience at the Bar and aptitudinal approach are fundamental for efficient judicial adjudication. Then only as a repository of the confidence, as its duty, the tribunal would properly and efficiently interpret the law and apply the law to the given set of facts. Absence thereof would be repugnant or derogatory to the Constitution.**

iv) In **L. Chandra Kumar (supra)**, the Apex Court held that constitution of tribunals with members having no experience in law is permissible provided such members are experts in other fields and are paired with members having experience in law. In

other words, tribunals shall comprise of members having technical expertise in the area which is sought to be regulated by law and members having experience in the field of law. The relevant paragraph is extracted below:

> 95. We are also required to address the issue of the competence of those who man the Tribunals and the question of who is to exercise administrative supervision over them. It has been urged that only those who have had judicial experience should be appointed to such Tribunals. In the case of Administrative Tribunals, it has been pointed out that the administrative members who have been appointed have little or no experience in adjudicating such disputes; the Malimath Committee has noted that at times, IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures. For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it difficult to accept such a contention. **It must be remembered that the setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of**

> **judicial members and those with grass-roots experience would best serve this purpose.** To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that administrative members are chosen from amongst those who have some background to deal with such cases.

v) Further, the Apex Court in **Union of India v. R. Gandhi**[35] discussed in length the law relating to constitution of tribunals and its composition. The Court therein explained the difference between regular Courts and tribunals constituted under a statute. The Court held that Courts comprise only of judges whereas a tribunal can have a combination of judicial and technical members. Judicial members are those members having experience in the field of law and technical members are those who are subject experts for the regulation of which the tribunal was constituted. The Court also discussed the question whether technical members can be part of tribunals at all. Answering the question, the Court held that technical members can form part of the tribunal only in

[35]. (2010) 11 SCC 1

cases where their expertise is needed in deciding complicated issues. In cases where only simple adjudicatory functions are involved, technical members cannot be appointed by executive and such appointments will dilute independence of judiciary. It was also held that if the members appointed are not eligible to discharge judicial functions, such appointments will not stand the test of constitutionality. The relevant paragraphs are extracted below:

> 90. But when we say that the legislature has the competence to make laws, providing which disputes will be decided by courts, and which disputes will be decided by tribunals, it is subject to constitutional limitations, without encroaching upon the independence of the judiciary and keeping in view the principles of the rule of law and separation of powers. If tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such tribunals should possess the independence, security and capacity associated with courts. **If the tribunals are intended to serve an area which requires specialised knowledge or expertise, no doubt there can be technical members in addition to judicial members. Where however jurisdiction to try certain category of cases are transferred from courts to tribunals only to expedite the hearing and disposal or relieve from the rigours of the Evidence Act and procedural laws, there is obviously no need to have any non-judicial technical**

member. In respect of such tribunals, only members of the judiciary should be the Presiding Officers/Members. Typical examples of such special tribunals are Rent Tribunals, Motor Accidents Claims Tribunals and Special Courts under several enactments. Therefore, when transferring the jurisdiction exercised by courts to tribunals, which does not involve any specialised knowledge or expertise in any field and expediting the disposal and relaxing the procedure is the only object, a provision for technical members in addition to or in substitution of judicial members would clearly be a case of dilution of and encroachment upon the independence of the judiciary and the rule of law and would be unconstitutional.

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94. We may examine this question with reference to the company jurisdiction exercised by the High Court for nearly a century being shifted to a tribunal on the ground that tribunal consisting of judicial and technical members will be able to dispose of the matters expeditiously and that the availability of expertise of the technical members will facilitate the decision making to be more practical, effective and meaningful. Does this mean that the legislature can provide for persons not properly qualified to become members? Let us take some examples. Can the legislature provide that a law graduate with a Master's degree in Company Law can be a judicial member without any experience as a lawyer or a Judge? Or can the legislature

provide that an Upper Division Clerk having fifteen years' experience in the company law department but with a Law degree is eligible to become a judicial member? Or can the legislature provide that a "social worker" with ten years' experience in social work can become a technical member? Will it be beyond scrutiny by way of judicial review?

95. Let us look at it from a different angle. Let us assume that three legislations are made in a State providing for constitution of three types of tribunals: (*i*) Contract Tribunals; (*ii*) Real Estate Tribunals; and (*iii*) Compensation Tribunals. Let us further assume that those legislations provide that all cases relating to contractual disputes, property disputes and compensation claims hitherto tried by the civil courts, will be tried by these tribunals instead of the civil courts; and that these tribunals will be manned by members appointed from the civil services, with the rank of Section Officers who have expertise in the respective field; or that a businessman in the case of Contract Tribunal, a Real Estate Dealer in regard to Property Tribunal, and any social worker in regard to Compensation Tribunal, having expertise in the respective field will be the members of the tribunal. Let us say by these legislations, all cases in the civil courts are transferred to tribunal (as virtually all cases in the civil courts will fall under one or the other of the three tribunals). Merely because the legislature has the power to constitute tribunals or transfer jurisdiction to tribunals, can that be done?

96. The question is whether a line can be drawn, and who can decide the validity or correctness of such action. The obvious answer is that while the legislature can make a law providing

for constitution of tribunals and prescribing the eligibility criteria and qualifications for being appointed as members, the superior courts in the country can, in exercise of the power of judicial review, examine whether the qualifications and eligibility criteria provided for selection of members are proper and adequate to enable them to discharge judicial functions and inspire confidence.

97. This issue was also considered in *Sampath Kumar* [(1987) 1 SCC 124 : (1987) 2 ATC 82] and it was held that where the prescription of qualification was found by the court, to be not proper and conducive for the proper functioning of the tribunal, it will result in invalidation of the relevant provisions relating to the constitution of the tribunal. If the qualifications/eligibility criteria for appointment fail to ensure that the members of the tribunal are able to discharge judicial functions, the said provisions cannot pass the scrutiny of the higher the judiciary.

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101. Independent judicial tribunals for determination of the rights of citizens, and for adjudication of the disputes and complaints of the citizens, is a necessary concomitant of the rule of law. The rule of law has several facets, one of which is that disputes of citizens will be decided by Judges who are independent and impartial; and that disputes as to legality of acts of the Government will be decided by Judges who are independent of the executive. Another facet of the rule of law is equality before law. The essence

of the equality is that it must be capable of being enforced and adjudicated by an independent judicial forum. Judicial independence and separation of judicial power from the executive are part of the common law traditions implicit in a Constitution like ours which is based on the Westminster model.

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106. We may summarise the position as follows:

(*a*) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

(*b*) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a judicial tribunal. This means that such tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the tribunal should have the independence and security of tenure associated with judicial tribunals.

(*c*) Whenever there is need for "tribunals", there is no presumption that there should be technical members in the tribunals. When any jurisdiction is shifted from courts to tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the tribunals should normally have only judicial members.

Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, tribunals should have technical members. Indiscriminate appointment of technical members in all tribunals will dilute and adversely affect the independence of the judiciary.

(*d*) The legislature can reorganise the jurisdictions of judicial tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (a standard example is the variation of pecuniary limits of the courts). Similarly while constituting tribunals, the legislature can prescribe the qualifications/eligibility criteria. The same is however subject to judicial review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of the judiciary or the standards of the judiciary, the court may interfere to preserve the independence and standards of the judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive.

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108. The legislature is presumed not to legislate contrary to the rule of law and therefore know that where disputes are to be adjudicated by a judicial body other than courts, its standards should approximately be the same as to what is

expected of mainstream judiciary. The rule of law can be meaningful only if there is an independent and impartial judiciary to render justice. **An independent judiciary can exist only when persons with competence, ability and independence with impeccable character man the judicial institutions. When the legislature proposes to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the judicial members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to the High Court Judges, which are apart from a basic degree in Law, rich experience in the practice of law, independent outlook, integrity, character and good reputation. It is also implied that only men of standing who have special expertise in the field to which the Tribunal relates, will be eligible for appointment as technical members. Therefore, only persons with a judicial background, that is, those who have been or are Judges of the High Court and lawyers with the prescribed experience, who are eligible for appointment as High Court Judges, can be considered for appointment as judicial members.**

109. A lifetime of experience in administration may make a member of the civil services a good and able administrator, but not a necessarily good, able and impartial adjudicator with a judicial temperament capable of rendering decisions which have to: (*i*) inform the parties about the reasons for the decision; (*ii*)

demonstrate fairness and correctness of the decision and absence of arbitrariness; and (*iii*) ensure that justice is not only done, but also seem to be done.

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111. As far as technical members are concerned, the officer should be of at least Secretary level officer with known competence and integrity. Reducing the standards, or qualifications for appointment will result in loss of confidence in the tribunals. We hasten to add that our intention is not to say that the persons of Joint Secretary level are not competent. Even persons of Under-Secretary level may be competent to discharge the functions. There may be brilliant and competent people even working as Section Officers or Upper Division Clerks but that does not mean that they can be appointed as members. Competence is different from experience, maturity and status required for the post. As, for example, for the post of a Judge of the High Court, 10 years' practice as an advocate is prescribed. There may be advocates who even with 4 or 5 years' experience, may be more brilliant than advocates with 10 years' standing. Still, it is not competence alone but various other factors which make a person suitable. Therefore, when the legislature substitutes the Judges of the High Court with the Members of the Tribunal, the standards applicable should be as nearly as equal in the case of High Court Judges. That means only Secretary level officers (that is those who were Secretaries or Additional Secretaries) with specialised knowledge and skills can be appointed as technical members of the tribunal.

vi) From the above decisions, it is clear that a tribunal or a quasi-judicial body like the Adjudicating Authority under PMLA performs adjudicatory functions. Therefore, such bodies shall be manned by members having necessary experience in the field of law. Such members shall be capable of interpreting law and applying it to various sets of facts that may arise before them. The said view that adjudicatory functions of tribunals can only be performed by members having experience in law is further fortified by the decisions discussed below.

vii) The Apex Court in **State of Gujarat v. Utility Users' Welfare Assn**.[36] dealt with a similar issue regarding the constitution of tribunal under the Electricity Act, 2003. The Court held that the powers exercised under Section 86(1)(f) of the Electricity Act, 2003 are adjudicatory in nature and therefore, such powers can only be exercised by a judicial member having experience in law. It was further held that where the tribunal consists of a single member, it is mandatory that such member shall be a judicial member. The relevant paragraphs are extracted below:

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[36]. (2018) 6 SCC 21

116. In the context of the question which we are now dealing with, if we were to take the proposition as “no member having knowledge of law is required to be a member of the Commission” then we have a problem at hand. This is so because while interpreting Section 86 of the said Act, it has been expressed that the Commission has the “trappings of the court”, an aspect we have agreed to hereinbefore. Once it has the “trappings of the court” and performs judicial functions, albeit limited ones in the context of the overall functioning of the Commission, still while performing such judicial functions which may be of far-reaching effect, the presence of a member having knowledge of law would become necessary. The absence of a member having knowledge of law would make the composition of the State Commission such as would make it incapable of performing the functions under Section 86(1)(*f*) of the said Act.

117. In *Madras Bar Assn.* [*Madras Bar Assn.* v. *Union of India*, (2014) 10 SCC 1] (MJ-II), the Constitution Bench, referring to the decision in *Madras Bar Assn.* [*Union of India* v. *Madras Bar Assn.*, (2010) 11 SCC 1] (MJ-I) observed that members of tribunals discharging judicial functions could only be drawn from sources possessed of expertise in law and competent to discharge judicial functions. We are conscious of the fact that the case (MJ-I) dealt with a factual matrix where the powers vested in courts were sought to be transferred to the tribunal, but what is relevant is the aspect of judicial functions with all the “trappings of the court” and exercise of judicial power, at least, in respect of same part of the functioning of the State Commission. Thus, if the

Chairman of the Commission is not a man of law, there should, *at least*, be a member who is drawn from the legal field. The observations of the Constitution Bench in *Madras Bar Assn.* [*Madras Bar Assn.* v. *Union of India*, (2014) 10 SCC 1] (MJ-II) constitute a declaration on the concept of basic structure with reference to the concepts of "separation of powers", "rule of law" and "judicial review". The first question raised before the Constitution Bench as to whether judicial review was part of the basic structure of the Constitution was, thus, answered in the affirmative.

118. We are, thus, of the view that it is *mandatory* to have a person of law, as a member of the State Commission. When we say so, it does not imply that any person from the field of law can be picked up. It has to be a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

119. In *BrahmDutt* v. *Union of India* [*BrahmDutt* v. *Union of India*, (2005) 2 SCC 431] it has been observed that if there are advisory and regulatory functions as well as adjudicatory functions to be performed, it may be appropriate to create two separate bodies for the same. That is, however, an aspect, which is in the wisdom of the legislature and that course is certainly open for the future if the legislature deems it so. **However, at present there is a single Commission, which inter alia performs adjudicatory functions and, thus, the presence of a man of law as a member is a necessity in**

order to sustain the provision, as otherwise, it would fall foul of the principles of separation of powers and judicial review, which have been read to be a part of the basic structure of the Constitution.

120. We are also not in a position to accept the plea advanced by the learned Attorney General that since there is a presence of a Judge in the Appellate Tribunal that would obviate the need of a man of law as a member of the State Commission. The original proceedings cannot be cured of its defect merely by providing a right of appeal.

121. We are, thus, of the unequivocal view that for all adjudicatory functions, the Bench must necessarily have *at least* one member, who is or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law and who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

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125.2. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

125.3. That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.

viii) The Delhi High Court in **Mahindra Electric Mobility Limited v. Competition Commission of India**[37] dealt with the constitution of Competition Commission of India. The Court therein relying on **Utility Users (supra)** held that where a tribunal performs judicial functions, it shall be manned by a person having experience in the field of law. The relevant paragraphs are extracted below:

> **147. As far as the argument that the CCI's membership (i.e. the Chairman and members) *qualification and experience* are concerned, the Act visualizes that individuals with qualifications and expertise in diverse fields can be appointed; these include persons from the legal field. This statutory provision *ipso facto*, however, does not satisfy the test of constitutionality, in view of the decisions of the Supreme Court in *Utility Users' Welfare Association* (supra).** In that decision, the Supreme Court dealt with a challenge to Section 113 on the ground that appointment of a judicial member was not mandated, which rendered the functioning of the State Commission (under the Electricity Act) questionable in law. The previous ruling in *Tamil Nadu Generation and Distribution Corporation Limited* v. *PPN Power Generating Co. Private Ltd.*. (2014) 11 SCC 53 was cited. In *Tamil Nadu Generation* (supra) the court had made observations indicating that the chairman of

[37]. 2019 SCC OnLine Del 8032

such commission had to be necessarily a person with judicial experience…….

148. It follows, therefore, that in line with the above declaration of law, at all times, when adjudicatory orders (especially final orders) are made by CCI, the presence and participation of the judicial member is necessary.

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150. With respect to the selection procedure contained in Section 8 (for members of CCI) the court perceives no infirmity in the impugned provision, having regard to the view taken previously, mandatorily, the CCI should have a judicial member, in keeping with the *dicta* in *Madras Bar Association* (supra), as reiterated in *R. Gandhi* (supra) and the recent ruling in *Utility Users Welfare Association* (supra). This would consequently mean that the provision of Section 8 has to be resorted to for selection at all times. This, in the opinion of the court is sufficient safeguard to ensure that executive domination in the selection process (of the panel, shortlisting the names for appointment) does not prevail. The structure of the provision (Section 9 of the Act) is that five members-including the Chief Justice of India (or his nominee) as the chair, man it. At the same time, the composition also ensures the participation of two outside independent experts.

ix) Subsequently, the decision in **Utility Users (supra)** holding that a judicial order can only be passed by a judicial

member and constitution of such tribunal without a judicial member is unconstitutional was followed by various High Courts. In **Assam Power Distribution Company Ltd. v. Eastern India Powertech Ltd.**[38], the Gauhati High Court held as follows:

> **24. The point of determination no. (c) is taken up now. In this regard, having arrived at a conclusion in connection with point of determination no. (b) that without there being a Judicial Member in the respondent no. 2 Commission, could not have undertaken judicial function as envisaged under Section 86(1)(f) of the Electricity Act, 2003. Therefore, this is a case where principles of coram non judice would apply in respect of orders dated 21.09.2018, 06.10.2018.** Moreover, without entering into the issue as to whether the respondent no. 2 Commission could have exercised power of review, which is conferred by the statute, but nonetheless, rejection of prayer for condonation of delay as well as consequential rejection of review petition and stay petition upon rejection of petition no. 2/2020, **the Court is of the considered opinion that even while passing the order dated 11.02.2020, the respondent no. 2 was performing adjudicatory function, without there being a Judicial Member in the Bench, which could not have been done as per the ratio laid down in the case of *Utility Users' Welfare Association* (supra).**

[38]. 2021 SCC OnLineGau 1198

25. The learned senior counsel for the respondent no. 1 had submitted from the Bar that under the provisions of the Assam Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 the prescribed quorum was of two members. Accordingly, it is submitted that the orders impugned herein were passed by two Member Bench of the Commission and as such it cannot be said that the said orders were vitiated by the principles of coram non judice. **In this regard, although the argument appears to be attractive, but in light of the decision in the case of *Utility Users' Welfare Association* (supra), not only it has been held that Section 86(1)(f) of the Electricity Act, 2003 involves adjudicatory function, but in paragraph 116 of the said judgment, it has been further held that absence of member having knowledge of law would make the composition of the State Commission such as would make it incapable of performing the function under Section 86(1)(f) of the Electricity Act. Thus, notwithstanding that the impugned orders were passed by two Member coram, in the absence of Judicial Member, the said orders are found to be vitiated.**

26. Therefore, as the orders dated 21.09.2018 and 06.10.2018, suffer from the vice of coram non judice, the said orders are nonest and therefore, under the facts unique to this case, the belated challenge by way of this writ petition is not found to be fatal to the instant writ petition. The point of determination no. (c) stands answered accordingly.

x) Similarly, the Madras High Court in **Tamil Nadu Spinning Mills Association v. Tamil Nadu Electricity Regulatory Commission**[39] relying on **Utility Users (supra)** held that adjudicatory functions can only be performed by a judicial member. The relevant paragraph is extracted below:

> 11. Article 141 of the Constitution of India states that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Article 144 states that that all authorities, civil and judicial, shall act in aid of the Supreme Court. In other words, it is the duty of the High Court to ensure that the directions of the Hon'ble Supreme Court are complied with in letter and spirit. The Hon'ble Supreme Court expressed its anguish on more than one occasion when the law Member vacancy was not filled up at all. When it has been declared that it is mandatory that there should be a law Member in the Commission, the State Government has no justification in not filling up the same. The technical Member resigned on 17.03.2022. The law Member retired on 05.05.2022. Nothing stopped the Government from filling up both the vacancies simultaneously. It is true that a judgment should not be interpreted like a statute. But when the Hon'ble Supreme Court has made it clear that there must be a Member with legal background in the Commission, it cannot be ignored. It is for this reason, I restrain TNERC from passing final order on the aforementioned tariff petitions till a law Member is appointed.

[39]. MANU/TN/6370/2022

> In other words, the present proceedings can very well go on and everything can be finalized by the Commission as now constituted except the formal declaration of the orders on the tariff petitions. The moment the appointment of the law Member is notified, the Commission is free to formally dispose of the Tariff Petitions. The restraint order of this Court would operate till then and not a moment thereafter.

xi) Therefore, according to this Court any function which is quasi-judicial in nature can only be performed by a judicial member. In the absence of a judicial member, any judicial order would suffer from the doctrine of *coram non judice*. In other words, a judicial order passed by a tribunal not consisting of a member having experience in the field of law will be deemed to have been passed without jurisdiction. Such order is considered to be passed without authority and will be treated as void and non-est. The said view was expressed by the Apex Court in **Dhurandhar Prasad Singh v. Jai Prakash University**[40] and **Chief Engineer, Hydel Project v. Ravinder Nath**[41].

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[40]. (2001) 6 SCC 534
[41]. (2008) 2 SCC 350

xii) Further, the Apex Court in **Kapil Deo Shukla v. State of U.P.**[42] held that incompetence of a jury will render the entire trial as no trial on the ground of *coram non judice.* In other words, incompetence or ineligibility of a body will render its decision as without jurisdiction. The relevant paragraphs are extracted below:

> In our opinion, the remarks of the High Court quoted above, give a correct impression of the proceedings in the Court of Session. It further appears from the judgment of the High Court that the learned Advocate-General who argued the case in support of the appeal on behalf of the State, urged that the jurors were not equal to the task involved in a proper determination of the controversy. The High Court directed the trial court to hold an inquiry and report on this aspect of the case. On a consideration of the report submitted by that court, the High Court recorded its finding to the following effect:
>
> "Out of the five jurors selected by the learned Sessions Judge, three had sufficient knowledge of English, fourth knew very little English and could not read the documents produced in the case and the fifth also had not sufficient knowledge of English; he could understand a letter written in English with some difficulty and could not read English newspapers. This is what we find from a report made by the learned Sessions Judge after summoning the jurors and examining them on a letter issued by us. We are satisfied that the two jurors, Shri Sheikh Ashiq Ali and Shri Farman Ali, were not in a position

[42]. 1958 SCR 640

to decide the question of authorship of the forged documents satisfactorily. It was not merely a question of understanding the contents of the documents produced in the case; the jurors also had to decide whether they were written or signed by the respondent as deposed by the prosecution witnesses or not. They did not possess sufficient acquaintance with English to decide that question satisfactorily."

On that finding, it is clear that the appellant's contention that it was a trial *coram non judice*, is well founded. This case is analogous to the case of *Ras Behari Lal* v. *King-Emperor* [(1933) LR 60 IA 354, 357] which went up to the Judicial Committee of the Privy Council, from a judgment of the Patna High Court confirming the conviction and the sentences of the accused persons on a charge of murder and rioting. In that case, the trial was by a jury of 7. The jury by a majority of six to one, found the accused guilty. The learned trial Judge accepted the verdict and sentenced some of the accused persons to death. The High court overruled the accused persons' contentions that there was no legal trial because some of the jury did not know sufficient English to follow the proceedings in court. The Judicial Committee granted special leave to appeal on a report made by the High Court that one of the jurors did not know sufficient English to follow the proceedings in court. Before the Judicial Committee, it was conceded, and in Their Lordships' view, rightly, by counsel for the prosecution that the appellants had not been tried, and that, therefore, the convictions and sentences could not stand. Lord Atkin who delivered the judgment of the Judicial

Committee, made the following observations upon the concession made by counsel for the respondent:

"In Their Lordships' opinion, this is necessarily the correct view. They think that the effect of the incompetence of a juror is to deny to the accused an essential part of the protection accorded to him by law and that the result of the trial in the present case was a clear miscarriage of justice. They have no doubt that in these circumstances the conviction and sentence should not be allowed to stand."

6. In our opinion, the legal position in the instant case, is the same. It was, however, argued on behalf of the State Government that in the instant case, the jury had returned a unanimous verdict of not guilty, and that, therefore, there was no prejudice to the accused persons. **It is true that the incompetence of the jury empanelled in this case, was raised by the counsel for the State Government in the High Court, but in view of the findings arrived at by the High Court, as quoted above, the position is clear in law that irrespective of the result, it was no trial at all.** The question of prejudice does not arise because it is not a mere irregularity, but a case of "mis-trial", as the Judicial Committee put it. It is unfortunate that a prosecution which has been pending so long in respect of an offence which is said to have been committed about eleven years ago, should end like this, but it will be open to the State Government, if it is so advised, to take steps for a re-trial, as was directed by the Judicial Committee in the reported case referred to above.

xiii) In the present case, as the show cause notices and the orders confirming provisional attachment were passed by a member having no experience in the field of law, such show cause notices and orders are non-est and void in the eyes of law. As stated above, a member having no experience in the field of law is ineligible to pass judicial orders.

xiv) It is relevant to note that under Section 6(2) of the PMLA, members having experience in the field of law and members having experience in the fields of finance, accountancy or administration can be appointed. Section 6(3) of the PMLA prescribes qualifications for a member in the field of law as someone who is qualified for appointment as a District Judge or being qualified for appointment as a member of Indian Legal Service and has held a post in Grade I of that service. However, no such qualification is prescribed under PMLA for appointment of a member having experience in the fields of finance, accountancy or administration. Further, the Prevention of Money-Laundering (Appointment and Conditions of Service of Chairperson and Members of Adjudicating Authorities) Rules, 2007 (hereinafter ‘Rules, 2007’) do not prescribe any qualifications relating to

experience in law for appointment of members having experience in the fields of finance, accountancy or administration. Rule 3 of the Rules, 2007 is extracted below:

> **3. Qualifications for appointment as Member**. - An Adjudicating Authority shall have three Members-one from the field of Law and two from the fields of administration and finance or accountancy.
>
> (1) For the Member from the field of Law, a person shall be qualified for appointment if he-
>
> (a) is qualified for appointment as District Judge; or
>
> (b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service.
>
> (2) For the Member from the field of administration, a person shall be qualified for appointment if he is or has been a Member of the Indian Administrative Service or the Indian Police Service and has held a post of Joint Secretary to the Government of India or an equivalent post.
>
> (3)(a) For the Member from the field of finance or accountancy, a person shall be qualified for appointment if he is or has been a member of an All India Service or a Central Service Group "A", and has held the post of a Joint Secretary to the Central Government or an equivalent post in that service.
>
> (b) From among such persons, the Selection Committee shall have due regard to the academic qualifications of chartered

> accountancy or a degree in finance, economics or accountancy or having special experience in finance or accounts by virtue of having worked for at least two years in the finance or revenue department of either the Central Government or a State Government or being incharge of the finance or accounting wing of a corporation for a like period.

xv) Challenging the *vires* of Section 6 of the PMLA on the ground that the composition of the Adjudicating Authority violates the Articles 14, 19(1)(g), 21, 50, 323-B of the Constitution of India, a PIL was filed before the Apex Court which was decided as **Pareena Swarup (supra)**. The Court decided the matter accepting changes/amendments to Rules, 2007 dealing with qualifications of members having experience in the fields of finance, accountancy or administration. However, none of the proposed amendments/changes provide having experience in the area of law and only provides addition of academic qualification. The relevant portion of the decision in **Pareena Swarup (supra)** is extracted below:

> 11. Mr Gopal Subramanium has informed this Court that the suggested actions have been completed by amending the Rules. Even otherwise, according to him, the proposed suggestions formulated by Mr K.K. Venugopal would be

incorporated on disposal of the above writ petition. For convenience, let us refer to the doubts raised by the petitioner and amended/proposed provisions as well as the remarks of the department in complying with the same:

Sl. No.	*Issues*	*Amended/Proposed provision*	*Remarks*
1.	Rule 3(3) of the Adjudicating Authority Rules, 2007 does not explicitly specify the qualifications of member from the field of finance or accountancy.	Rule 3(3) of the Adjudicating Authority Rules, 2007 have been amended to specify the "academic qualification" for the member from the field of finance and accounting by inserting a sub-clause (*b*) as follows:"(*b*) From among such persons, the Selection Committee shall have due regard to the academic qualifications of chartered accountancy or a degree in finance, economics or accountancy or having special experience in finance or accounts by virtue of having worked for at least two years in the Finance or Revenue Department of either the Central	Action completed. Amended Rule as per Annexure A.

	Government or a State Government or being in charge of the finance or accounting wing of a corporation for a like period."	

According to this Court, the requisite criteria for appointment of a member having experience in the field of finance, accountancy or administration does not require any academic qualifications or practical experience in the field of law. Therefore, such a member alone cannot be excepted to decide questions of law or perform adjudicatory functions.

xvi) The Sikkim High Court in **Eastern Institute (supra)** expressed a similar view and the relevant paragraphs are extracted below:

> **13. In my considered opinion, what emerges from the above with certainty is that in a case where serious questions of law and fact arise, as in the present case, it is essential that one of the Members of the Bench constituted under Clause (b) of Sub-Section (5) of Section 6 of PMLA by the Chairperson of the Adjudicating Authority should be a Judicial Member as he "with his judicial experience would, by virtue of his specialised knowledge, would be better equipped to dispense with speedy and efficient**

justice". This appears to be import of the words "as the Chairperson of the Adjudicating Authority may deem fit".

14. It is an admitted position that the post of a Judicial Member under Respondent No. 3 is still lying vacant and that the impugned show cause notice was issued and the order under challenge passed in the absence of such a Member. **Apart from what have been observed earlier, in a proceeding of the present kind, where orders were passed *ex parte* by the Adjudicating Authority in the absence of the Petitioner-University, it would have been essential for a Judicial Member to be part of the Bench considering the nature of the *lis* before it to ensure that the orders are passed in satisfaction of all the principles relevant and acceptable in law.** *Prima facie*, therefore, I am of the view that the order does not appear to pass the muster of the law laid down in *Tamil Nadu Generation and Distribution Corporation Limited* (supra).

xvii) In the present case, the ED relying on **J. Sekar (supra)** contended that the decisions of the Apex Court on constitution of tribunals with members having experience in law are not applicable to the present case as those decisions dealt with constitution of tribunals under Article 323A and Article 323B of the Constitution of India and Adjudicating Authority is not constituted under the said constitutional provisions. The relevant paragraphs of **J. Sekar (supra)** are extracted below:

82. It was then contended on the strength of the decisions in L. Chandrakumar v. Union of India (1997) 3 SCC 261; Eastern Institute for Integrated Learning v. Joint Directorate 2016 Cri LJ 526, Vishal Exports Overseas Ltd. v. Union of India (decision dated 9th March 2016 of the Gujarat High Court in SCA No. 13949 of 2014) and Uday NavinchandraSanghani v. Union of India (decision dated 1st April 2016 of the Gujarat High Court SCA No. 10076/2015) that even that Single Member has to necessarily be a Judicial Member (JM) and not an Administrative Member (AM).

83. The reliance on L. Chandrakumar v. Union of India (supra) is misplaced. There the question was whether the ousting the jurisdiction of the High Court and vesting the powers of the High Court in a Tribunal is constitutionally valid. That is not what is sought to be done under Section 8 PMLA. It is only to provide an internal judicial review of the orders passed by the authorities under Section 5(1) PMLA. The AA under Section 8 PMLA cannot, therefore, be equated with an Administrative Tribunal under the Administrative Tribunals Act 1985 (ATA). The Central Administrative Tribunal under the ATA was vested with the powers originally with a High Court under Article 226 of the Constitution. **Those were Tribunals under Article 323-B of the Constitution of India. The AA is not that kind of a Tribunal at all. The Court is, therefore, unable to agree with judgments of the learned Single Judges of the Sikkim and Gujarat High Courts in this context.**

> 84. There are other reasons why the Court finds that the aforementioned decisions of the learned Single Judges of the Sikkim and Gujarat High Courts cannot be concurred with. They fail to notice that under Section 25 PMLA, an appeal is provided for from the order of the AA before the AT. Even so, such an AT is not the equivalent to the High Court since an appeal against the order of the AT is provided to the High Court itself. Thus, the hierarchy of judicial review authorities under the PMLA presents a very different scheme from what is found in other statutes, particularly the ATA.
>
> **85. Under the PMLA, however, we first have a decision by an authority under Section 5(1) PMLA. Then we have a review of that decision by the AA under Section 8 PMLA. Then we have an appeal against that decision to the AT under Section 25 PMLA. These authorities, i.e. the AA and the AT, need not be entirely manned only by JMs. They can be AMs as well.**

xviii) This Court respectfully disagrees with the view expressed in **J. Sekar (supra)**. The question is not whether the Adjudicating Authority was constituted under Article 323B of the Constitution of India. The question is whether such Adjudicating Authority is a quasi-judicial body which performs adjudicatory functions. Once it is found that functions of a body like Adjudicating Authority are quasi-judicial in nature and which have

trappings of judicial functions, such functions can only be decided by a person having legal experience.

xix) As stated in **R.K. Jain (supra)**, it is essential that a person whose rights are in question and who may face penal consequences, shall be heard and his/her case shall be decided and adjudicated by a body capable and eligible to decide such issues. It may not be wrong to say that getting a dispute adjudicated by a qualified and duly constituted quasi-judicial body is a facet of natural justice.

xx) To decide this issue, this Court holds that issuance of show cause notice under Section 8(1) of the PMLA and passing an order under Section 8(3) of the PMLA confirming the provisional attachment of properties are quasi-judicial functions. Therefore, an Adjudicating Authority consisting of a single member cannot pass quasi-judicial orders, unless such single member has experience in the field of law. Any quasi-judicial function performed by a single member having experience in the field of finance, accountancy or administration is non-est and would be hit by *coram non judice.* A single member Adjudicating Authority shall necessarily and

mandatorily has to be manned by a person having experience in the field of law. Issue No. 2 is answered accordingly.

xxi) In the present case, the show cause notice under Section 8(1) of the PMLA were issued and confirmation orders under Section 8(3) of the PMLA were passed by a single member having no experience in law. Therefore, the said show cause notices and confirmation orders are non-est and are liable to be set aside.

15. **Issue No.3: Whether the period from 15.03.2020 to 28.02.2022 which was excluded by the Apex Court in computation of limitation *vide* In re: Limitation (supra) is applicable to orders confirming provisional attachment within 180 days?**

i) The Petitioner in W.P. No. 34238 of 2022 contends that the provisional attachment order i.e., PAO No. 04 of 2022 dated 03.02.2022 could not have been confirmed by the Adjudicating Authority *vide* order dated 22.08.2022 as the same was passed after the lapse of 180 days. Further, the Petitioner contends that Adjudicating Authority cannot rely on **In re: Limitation (supra)** in calculating the period of 180 days in light of the Apex Court's decision in **S. Kasi (supra)**.

ii) In W.P. No. 34627 of 2022, the provisional attachment order therein i.e., PAO No. 01 of 2021 was passed on 01.02.2021. Pursuant to which an original complaint under Section 5(5) of the PMLA was filed on 19.02.2021 and show cause notice under Section 8(1) of the PMLA was issued by the Adjudicating Authority on 03.03.2021. A hearing under Section 8(2) of the PMLA was conducted on 05.07.2021 and 06.07.2021. However, no confirmation order was passed till date. The Petitioner contends that as 180 days have lapsed since the passing of the provisional attachment order, the Adjudicating Authority cannot pass an order confirming the provisional attachment.

iii) On the other hand, the ED in both W.P. Nos. 34238 of 2022 and 34627 of 2022 contends that due to Covid-19 pandemic the provisional attachment of properties could not have been confirmed within 180 days. However, in **In re: Limitation (supra)** the Apex Court extended the period limitation from 15.03.2020 to 28.02.2022. ED contends that the period from 15.03.2020 to 28.02.2022 shall be excluded from the date of provisional attachment till the date of passing of confirmation order to compute the period of 180 days.

iv) It is relevant to note that the Apex Court in **In re: Limitation (supra)** took *suo moto* cognizance of the Covid-19 pandemic situation and extended the period of limitation from 15.03.2020 for the purpose of filing petitions/applications/suits/ appeals/all other proceedings under any general or special law before any Court or Tribunal. The object of such extension was in recognition of the difficulties that might be faced by lawyers/litigants to file their applications physically. The relevant paragraphs of **In re: Limitation (supra)** are extracted below:

> 1. This Court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).
>
> 2. To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective courts/tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15-3-

2020 till further order(s) to be passed by this Court in present proceedings.

v) Subsequently, the limitation period was extended *vide* **In re: Cognizance for Extension of Limitation**[43] (hereinafter 'In re: Limitation, 2022') till 28.02.2022. The Apex Court *vide* the said order clarified that where any statute provides an outer limit of limitation period within which the proceedings are to be completed, the period between 15.03.2020 to 28.02.2022 shall be excluded in computing such period. The relevant paragraphs of **In re: Limitation, 2022 (supra)** are extracted below:

> 5.1. The order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [*Cognizance for Extension of Limitation, In re*, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [*Cognizance for Extension of Limitation, In re*, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [*Cognizance for Extension of Limitation, In re*, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
>
> **5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.**

[43]. (2022) 3 SCC 117

> 5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.
>
> **5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (*b*) and (*c*) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.**

vi) For instance, Section 29A of the Arbitration & Conciliation Act, 1996 provides a time limit of 12 months within which an award has to be passed. By virtue of **In re: Limitation, 2022 (supra)**, the period from 15.03.2020 to 28.02.2022 shall be excluded to compute the period of 12 months under Section 29A of the Arbitration & Conciliation Act, 1996. Similarly, Section 12A(3) of the Commercial Courts Act, 2015 provides an outer time period of three months within which pre-institution mediation shall be completed. However, by virtue of **In re: Limitation, 2022 (supra)**, the period from 15.03.2020 to 28.02.2022 shall be

excluded to compute the period of 3 months. Therefore, **In re: Limitation, 2022 (supra)** states that wherever a statute prescribes a maximum period within which proceedings have to be completed, the period from 15.03.2020 to 28.02.2022 shall be excluded to compute such maximum period.

vii) To decide the applicability of **In re: Limitation (supra)** in computation of 180 days for confirming the provisional attachment of property, it is apposite to discuss the nature of time frame prescribed under Section 5 of the PMLA. For the sake of convenience, Section 5 is extracted below:

> 5. Attachment of property involved in money-laundering.— 29[(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 complaint has been made or filed under the corresponding law of any other country:

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

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a 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 undersub-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.

viii) Section 5(1) of the PMLA provides that the authorized officer can provisionally attach properties for a period not

exceeding 180 days. The third proviso to Section 5(1) of the PMLA states that if the proceedings initiated under the PMLA are stayed by the High Court, then such period during which the stay operates shall be excluded in computing the 180-day period. Further, Section 5(3) of the PMLA states that a provisional attachment order passed under Section 5(1) of the PMLA shall cease to have effect after the expiry of 180 days from the date of provisional attachment.

ix) A conjoint reading of Sections 5(1) & 5(3) of the PMLA indicates that the period of 180 days within which a confirmation order shall be passed is mandatory. This view is fortified in light of the decision in **Vijay Madanlal Choudhary v. Union of India**[44] wherein the Apex Court dealing with constitutionality of various provisions of the PMLA held that the period of 180 days is in the form of a procedural safeguard. The relevant paragraph is extracted below:

> 287. Be that as it may, as aforesaid, sub-section (1) delineates sufficient safeguards to be adhered to by the authorised officer before issuing provisional attachment order in respect of proceeds of crime. It is only upon recording satisfaction

[44]. 2022 SCC OnLine SC 929

> regarding the twin requirements referred to in sub-section (1), the authorised officer can proceed to issue order of provisional attachment of such proceeds of crime. Before issuing a formal order, the authorised officer has to form his opinion and delineate the reasons for such belief to be recorded in writing, which indeed is not on the basis of assumption, but on the basis of material in his possession. The order of provisional attachment is, thus, the outcome of such satisfaction already recorded by the authorised officer. **Notably, the provisional order of attachment operates for a fixed duration not exceeding one hundred and eighty days from the date of the order. This is yet another safeguard provisioned in the 2002 Act itself.**

x) It is true that the period of 180 days within which the provisional attachment order under Section 5(1) of the PMLA has to be confirmed is mandatory. However, in appropriate cases the High Court can exclude certain period while computing the period of 180 days. For instance, this Court in **Karvy Realty (India) Ltd. v. The Adjudicating Authority**[45] noting that the Petitioner therein did not have sufficient time to effectively reply to the show cause notice under Section 8(1) of the PMLA granted extra time of two months reply to the show cause notice. The Court therein directed

[45]. MANU/TL/2356/2022

that such extra time of two months shall be excluded to compute the period of 180 days. The relevant paragraph is extracted below:

> 22. In view of the above discussion, this Writ Petition is disposed of granting two months time from today to the petitioners to submit their explanation/reply to the show cause notice dated 19.09.2022. However, it is made clear that the petitioners herein shall not seek further extension of time and they shall submit explanation/reply within the said extended period of two months by keeping in view the object and legislative intent of Section 8 of the Act, that the adjudicating process is time bound. It is relevant to note that for the purpose of computing the period of 180 days, the period which was extended by this Court for submitting reply is excluded as per third proviso to Section 5(1) of the Act.

xi) The decision in **Karvy Realty (supra)** confirmed by a division bench of this Court *vide* order dated 13.02.2023 in W.A. No. 194 of 2023.

xii) According to this Court, in appropriate cases, certain period can be excluded while computing the 180 day period under Section 5(3) of the PMLA. It is important to note exclusion of certain period is different from extending the period. In the present case, the Apex Court exercising its inherent powers under Article 142 of the Constitution of India excluded the period from

15.03.2020 to 28.02.2022 in computation of limitation. Therefore, the period from 15.03.2020 to 28.02.2022 shall be excluded while computing the period of 180 days under Section 5(3) of the PMLA.

xiii) As stated above, the Petitioners relying on the decision in **S. Kasi (supra)** and other decisions of the High Courts in **Vikas WSP Ltd. (supra)**, **Gobindo Das (supra)** and **Hiren Panchal (supra)** contend that the decision in **In re: Limitation(supra)** is not applicable to PMLA proceedings. This Court cannot accept the said contention of the Petitioners.

xiv) In **S. Kasi (supra)**, the question before the Apex Court was whether the decision in **In re: Limitation (supra)** extended the time period `to complete investigation and file charge sheet and whether default bail under Section 167(2) of the Code of Criminal Procedure (hereinafter 'CrPC') could be denied on the ground that investigation was not completed and charge sheet was not filed due to Covid-19. The Court therein held that Section 167(2) of the CrPC envisages an indefeasible right to obtain statutory bail, if investigation is not completed within the prescribed time. The Court held that the decision in **In re: Limitation (supra)** is not applicable to Section 167(2) of the CrPC as personal liberty of an

individual cannot be curtailed. The Court noted the decisions of other High Courts and held that the decision in **In re: Limitation (supra)** is not applicable to police investigations. In other words, time periods prescribed to complete police investigations and where individual liberty of the accused is in question, the benefit of extension of limitation in **In re: Limitation (supra)** cannot be taken. The relevant paragraphs are extracted below:

> 20. If the interpretation by the learned Single Judge in the impugned judgment [*S. Kasi* v. *State*, 2020 SCC OnLine Mad 1244] is taken to its logical end, due to difficulties and due to present Pandemic, police may also not produce an accused within 24 hours before the Magistrate's Court as contemplated by Section 57CrPC, 1973. As noted above, the provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognise the right of personal liberty of a person as enshrined in the Constitution of India. **The order of this Court dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] never meant to curtail any provision of the Code of Criminal Procedure or any other statute which was enacted to protect the personal liberty of a person. The right of prosecution to file a charge-sheet even after a period of 60 days/90 days is not barred. The prosecution can very well file a charge-sheet after 60 days/90 days but without filing a charge-sheet they cannot detain an**

accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge-sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge-sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167CrPC.

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28. We, thus, are of the clear opinion that the learned Single Judge in the impugned judgment [*S. Kasi* v. *State*, 2020 SCC OnLine Mad 1244] erred in holding that the Lockdown announced by the Government of India is akin to the proclamation of Emergency. **The view of the learned Single Judge that the restrictions, which have been imposed during the period of Lockdown by the Government of India should not give right to an accused to pray for grant of default bail even though charge-sheet has not been filed within the time prescribed under Section 167(2) of the Code of Criminal Procedure, is clearly erroneous and not in accordance with law.**

29. We, thus, are of the view that neither this Court in its order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] can be held to have eclipsed the time prescribed under Section 167(2)CrPC nor the restrictions which have been imposed during the Lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a

default bail on non-submission of charge-sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] .

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34. The Rajasthan High Court had occasion to consider Section 167 as well as the order of this Court dated 23-3-2020 passed in *Cognizance for Extension of Limitation, In re* [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] and the Rajasthan High Court has also come to the same conclusion that the order of this Court dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] has no consequence on the right, which accrues to an accused on non-filing of charge-sheet within time as prescribed under Section 167CrPC. The Rajasthan High Court in *Pankaj* v. *State* [*Pankaj* v. *State*, 2020 SCC OnLine Raj 867] decided on 22-5-2020 has also followed the judgment of the learned Single Judge of the Madras High Court in *Settu* v. *State* [*Settu* v. *State*, 2020 SCC OnLine Mad 1026] and has held that the accused was entitled for grant of the default bail. The Uttarakhand High Court in *Vivek Sharma* v. *State of Uttarakhand* [*Vivek Sharma* v. *State of Uttarakhand* First Bail Application No. 511 of 2020, order dated 12-5-2020 (Utt)] in its judgment dated 12-5-2020 has after considering the judgment of this Court dated 23-3-2020 passed in *Cognizance for Extension of Limitation, In re* [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10] has taken the view that the order of this Court does

> not cover police investigation. We approve the above view taken by the learned Single Judge of the Madras High Court in *Settu* v. *State* [*Settu* v. *State,* 2020 SCC OnLine Mad 1026] as well as by the Kerala High Court [*Mohd. Ali* v. *State of Kerala*, 2020 SCC OnLine Ker 1742] , the Rajasthan High Court [*Pankaj* v. *State,* 2020 SCC OnLine Raj 867] and the Uttarakhand High Court [*Vivek Sharma* v. *State of Uttarakhand* First Bail Application No. 511 of 2020, order dated 12-5-2020 (Utt)] noticed above.

xv) Relying on the decision in **S. Kasi (supra)**, a learned single judge of the Delhi High Court in **Vikas WSP Ltd. (supra)** held that provisional attachment of properties deprives a party of his right to property. Therefore, **In re: Limitation (supra)** does not extend to PMLA proceedings in computation of 180 days within which provisional attachment of properties has to be confirmed by the Adjudicating Authority. The Court therein also held no period of limitation is prescribed under Section 5(1) & 5(3) of the PMLA and after the lapse of 180 days, the Adjudicating Authority becomes *functus officio*. Further, had the legislature or the Government thought it fit, they would have expressly extended the period within which provisional attachment of properties could have been confirmed. However, the Court left the question

regarding the applicability of **In re: Limitation (supra)** in computation of 180 days open. The relevant paragraphs are extracted below:

> 23. Therefore, a reading of sub-section (1) of Section 5 with Section 2(1)(d) of the Act leaves no manner of doubt that the effect of the Provisional Attachment Order is deprivation of the right to property.
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> **25. In the present case, the Act clearly deprives the person against whom the Provisional Attachment Order is passed of his right to deal in the property against which the attachment is ordered. Such deprivation can therefore, be for a maximum of 180 days and no further, except where such order is confirmed by the Adjudicating Authority prior thereto under Section 8(3) of the Act. Once the 180 day period has lapsed without such order being passed under Section 8(3) of the Act, the Provisional Attachment Order ceases to have effect and therefore, there is no order before the Adjudicating Authority to confirm under Section 8(3) of the Act. The Adjudicating Authority therefore, becomes *functus officio.***
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> 28. In view of the above dicta, the submission of the learned counsel for the respondents that as the delay in proceedings before the Adjudicating Authority cannot be blamed on the respondents, the respondents must not be penalized and the

time period should be extended, cannot be accepted. It is not a question of penalization of the respondents for the delay, but of application of the mandate of law from which there is no escape. Equally, the principle of *Actus Curiae NeminemGravabit* can also have no application.

30. Clearly, the above order extended the period of limitation. In the present case, Section 5(1) and 5(3) do not provide the period of limitation, but the period of validity of the Provisional Attachment Order. The same would not stand extended due to the above order of the Supreme Court. This becomes more evident from the order dated 06.05.2020 passed by the Supreme Court in I.A. 48411/2020, whereby it was pleased to extend the period of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881, observing as under:—

31. In fact, the most relevant in this series of orders to the present controversy is the order dated 10.07.2020, which clearly shows that the above referred two orders of the Supreme Court were only in relation to the period of limitation and did not extend the period to do something required under a Statute or the period of validity of an order, as in the present case. Realizing such difference, the Supreme Court extended the period to pass an Arbitral Award under Section 29A and for completion of pleadings under Section 23(4) of the Arbitration and Conciliation Act, 1996 as also for completing the process of compulsory pre-litigation, mediation and settlement under Section 12A of the

Commercial Courts Act, 2015, however, refused to extend the period of validity of a cheque. This itself shows that the orders of the Supreme Court are not a universal extension of time across the board, be it limitation or period prescribed for doing a particular thing, or as in the present case, the period of validity of an order.

32. The above distinction is also apparent to the Government of India as it promulgated The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 31.03.2020, extending the time limit for completion of any proceedings or passing of any order etc. specified in the Acts specified therein. However, the Prevention of Money Laundering Act, 2002 is not one of the "specified Acts" under the Ordinance. Therefore, the respondents cannot take benefit of even this Ordinance. On the other hand, the Ordinance clearly shows that the reliance of the respondents on the orders of the Supreme Court is liable to be rejected.

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35. The above judgment clearly highlights the reason and the limit of the order dated 23.03.2020 passed by the Supreme Court. It also highlights that the said order was never meant to curtail any provision of other statute which is enacted to protect the personal liberty of a person. In my opinion, in a similar manner, the order dated 23.03.2020 was not meant to deny any person his/her property rights.

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37. In view of the above, the 180 days from the date of the Provisional Attachment Order dated 13.11.2019 having expired without any order under Section 8(3) of the Act being passed by the Adjudicating Authority, it is held that the Adjudicating Authority has been rendered *functus officio* and cannot proceed with the Original Complaint, being O.C. No. 1228/2019 pending before it. The Notice/Summons dated 26.05.2020 is accordingly set aside.

38. In the present case I have intentionally refrained myself from making any comment on whether the period of total lockdown declared by the Central Government, that is from 24.03.2020 to 20.04.2020, can be excluded for computation of the 180 days, as it is not disputed that even on exclusion of this period, the 180 days would have expired on 16.06.2020, the returnable date of the notice issued by the Adjudicating Authority.

xvi) Similarly, the Calcutta High Court in **Gobindo Das (supra)** held that Adjudicating Authority cannot be termed as a litigant for whose benefit **In re: Limitation (supra)** was passed. Therefore, **In re: Limitation (supra)** cannot be used to extend the 180 day period to pass orders confirming provisional attachment of properties. The relevant paragraphs are extracted below:

13. Considering the records available, submission of the parties and judgments/order relied upon by them and following the judgment of the Hon'ble Supreme Court in the case of *S. Kasi* (supra) in my considered opinion the Adjudicating authority/Respondent No. 2 cannot be called a litigant or advocate or a quasi-judicial authority and cannot take the benefit of the order of the Hon'ble Supreme court passed in Suo moto Writ Petition (Civil) No. 3 of 2020 (supra) by taking the stand that on the expiry of validity of the said provisional attachment order after 180 days under Section 5 (3) of the aforesaid Act, the same would be deemed to have been extended automatically by virtue of the aforesaid order of the Hon'ble Supreme Court when he was not required to pass any formal order of extension of the same under Section 8 (3) of the aforesaid Act. I am of the considered opinion that such stand of the Respondent No. 2 is legally not sustainable since the impugned order of provisional attachment of bank accounts and postal accounts in question of the petitioner, dated 11th December, 2019, which has expired its validity on 9th June, 2021, has no force after expiry of 180 days from the date of passing of such order in view of not passing any formal order under Section 8 (3) of the said Act extending the validity of the same by the Respondent No. 2 and the action of Respondent No. 3 in not allowing the petitioner to operate its bank and postal accounts in question after the expiry of the period validity of 180 days from the date of the order passed under Section 5 (1) of the aforesaid Act, such action of the Respondent Enforcement authority, is arbitrary and illegal.

14. In view of the discussion made above this Writ Petition is allowed by declaring that the impugned order of provisional attachment of Bank accounts and postal accounts in question dated 11th December, 2019 passed under Section 5 (1) of The Prevention of Money Laundering Act, 2002 after expiry of 180 days on 9th June, 2021 is ceased to have any effect or force as a consequence of failure on the part of the Respondent Enforcement authority/Adjudicating authority in passing further order under Section 8 (3) of The Prevention of Money Laundering Act, 2002 extending or confirming order dated 11th December, 2020 under Section 5 (1) of the said Act on or before 9th June, 2021 after expiry of its validity under Section 5 (3) of the said Act by taking the stand of automatic deemed extension/confirmation of the said order by virtue of the order of the Hon'ble Supreme Court in Suo moto Writ Petition (Civil) No. 3 of 2020 (supra) by claiming itself as a litigant or advocate or quasi-judicial authority when it was not required to approach physically any quasi-judicial or judicial authority to initiate any proceeding or to file any application/suit/appeal for the purpose of extension or confirmation of the order under Section 5 (1) of The Prevention of Money Laundering Act, 2002.

xvii) Similarly, the Calcutta High Court in **Hiren Panchal (supra)** held that *vide* orders in **In re: Limitation (supra)**, the Apex Court extended the period of limitation to safeguard the right

of litigants to institute proceedings. The Court held that computation of 180 days to confirm provisional attachment of properties under Section 8(3) of the PMLA cannot be equated to initiation/institution of proceedings. The Court also held that prescription of 180 days is in the form of a protection against deprivation of right to property. The relevant paragraphs are extracted below:

> 15. It is further relevant to state that the orders passed by the Supreme Court in the Suo Motu writ petition mention specific provisions in specific statutes such as Sections 23(4) and Section 29A of The Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and Section 138 provisos (b) and (c) of the Negotiable Instrument Act, 1881. **On an examination of the specific statutes mentioned by the Supreme Court, it will be seen that all these statutes prescribed provide for specific time frame for instituting a suit, filing a claim/counter claim or an application in furtherance of a remedy provided under the statute. The intention was hence to preserve the right of a litigant to seek a remedy under the Act and not to deprive a litigant of such right of remedy where the litigant has not been able to physically come to the Court or to the Tribunal to file the proceeding in aid of the right.**

16. The right thus conferred by the Supreme Court is in relation to the prescribed period of limitation in instituting a proceeding.

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18. Section 5(3) is a clear embargo on the order of attachment continuing to have effect after the expiry of 180 days. Section 5(1) designates the authority and the steps to be taken for proceeding against any person who is in possession of any proceeds of crime. The section is hence concerned with the procedure to be undertaken for provisional attachment of a property subject to the fulfillment of the other conditions in Section 5. **A prescribed procedure after the same has been initiated cannot be equated to institution of a suit or filing of a petition/application which is a starting point of litigation for a person who seeks relief under a statute. The 180 days window in Section 5 contemplates an end-point whereas the Supreme Court in the Suo Motu writ petition sought to protect the starting-point, which was at the risk of being defeated by reason of the pandemic.**

19. In other words, what was being protected by the orders of the Supreme Court was the right to remedy, not the right to take away a remedy under a given statute. The respondents before this Court seek to do the latter. The only step taken by the ED is the order of the provisional attachment dated 30th September, 2021. No other steps were taken by the ED before the petitioners reply on 3rd January, 2022 or before the expiry of 180 days period on 31st March, 2022. By its inaction and failure to act in

terms of Section 5(1)(b) or the other conditions of the said section, the ED has made itself vulnerable to Section 5(3) of the PMLA. The petitioner in turn has been given the breather of exhaustion of the 180 days window from 1st April, 2022 and the ED cannot now revive the proceedings after more than 80 days have passed from the end point of the 180 days period.

21. In Gobindo Das, the Appeal Court disagreed with the view of the Adjudicating Authority being a "non-litigant". The Division Bench was also disturbed by the fact that the bank accounts of the writ petitioners have been debited leaving the balance at zero despite the order of attachment. Prakash Corporates dealt with the prescribed statutory time period for filing of the written statement under Order VIII Rule 1 of The Code of Civil Procedure, as amended by the Commercial Courts Act. Prakash Corporates also recognised the fact that the decision in S. Kasi was concerned with filing of the charge sheet under Section 167(2) of The Code of Criminal Procedure (Cr.P.C.) and hence would not apply to filing of written statements beyond the prescribed time-limit.

22. The reasoning in S. Kasi would apply to the present case. The Supreme Court recognised that the 23rd March, 2020 order in the Suo Motu writ petition was for the benefit of those whose remedy may be barred by time because of not being able to physically come to Court to file proceedings. The Supreme Court made a distinction between the benefit given to litigants and extension of time for filing of a chargesheet by the police as contemplated

> **under Section 167(2) of the Cr.P.C. The Court also noted the element of personal liberty of a person which was required to be protected. Although, the right of the petitioners before the Court is more to do with the right not to be deprived of property save by authority of law - Article 300A, the petitioners have established a case where such right is under threat by the action of the ED. The litigants have been conferred a benefit under Section 5(1)(b) and 5(3) of the PMLA on the failure of the Authority to take action within the specified time frame. If the Authority does fail to take requisite steps, the right to relief arises immediately after exhaustion of the 180 days window and once such right is given to a litigant, it cannot be taken away.**

This Court respectfully disagrees with the views expressed in **Vikas WSP Ltd. (supra)**, **Gobindo Das (supra)** and **Hiren Panchal (supra)** in relation to applicability of **In re: Limitation (supra)**.

xviii) According to this Court, the decision in **S. Kasi (supra)** cannot be relied upon by the Petitioners to contend that **In re: Limitation (supra)** is not applicable in computing 180 days under Section 5(3) of the PMLA. In **S. Kasi (supra)**, **In re: Limitation (supra)** was held to be inapplicable to proceedings involving personal liberty of a person where the investigating

officer failed to file charge sheet within the prescribed time. The decision in **S. Kasi (supra)** cannot be extended to PMLA proceedings dealing with confirmation of provisional attachment order within 180 days.

xix) It is true that provisional attachment of property has an effect of potentially depriving a person of his property. However, right to personal liberty and right to property stand on a different footing and cannot be equated. This is evident from the fact that the urgency in concluding proceedings dealing with a person in jail is much higher than a person whose property is provisionally attached. Further, under Section 5(4) of the PMLA, the person whose property is provisionally attached can still enjoy such property till the same is confiscated. Even in cases of confirmation of provisional attachment, a person can still enjoy such property till the same is confiscated.

xx) In **Vijay Madanlal Choudhary (supra)**, the Apex Court held that provisionally attached properties which are confirmed can still be enjoyed by a party till a confiscation order is passed. The relevant paragraphs are extracted below:

304. The other grievance of the petitioners is in reference to the stipulation in sub-section (4) of Section 8 providing for taking possession of the property. This provision ought to be invoked only in exceptional situation keeping in mind the peculiar facts of the case. **In that, merely because the provisional attachment order passed under Section 5(1) is confirmed, it does not follow that the property stands confiscated; and until an order of confiscation is formally passed, there is no reason to hasten the process of taking possession of such property. The principle set out in Section 5(4) of the 2002 Act needs to be extended even after confirmation of provisional attachment order until a formal confiscation order is passed. Section 5(4) clearly states that nothing in Section 5 including the order of provisional attachment shall prevent the person interested in the enjoyment of immovable property attached under sub-section (1) from such enjoyment. The need to take possession of the attached property would arise only for giving effect to the order of confiscation. This is also because sub-section (6) of Section 8 postulates that where on conclusion of a trial under the 2002 Act which is obviously in respect of offence of money-laundering, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.** Once the possession of the property is taken in terms of sub-section (4) and the finding in favour of the person is rendered by the Special Court thereafter and during the interregnum if the property changes hands and title vest in some third party, it would result in civil consequences even to third party. That is certainly avoidable unless it is absolutely necessary in the peculiar facts of a particular case so as to invoke the option available under sub-section (4) of Section 8.

305. Indisputably, statutory Rules have been framed by the Central Government in exercise of powers under Section 73

> of the 2002 Act regarding the manner of taking possession of attached or frozen properties confirmed by the Adjudicating Authority in 2013, and also regarding restoration of confiscated property in 2019. Suffice it to observe that direction under Section 8(4) for taking possession of the property in question before a formal order of confiscation is passed merely on the basis of confirmation of provisional attachment order, should be an exception and not a rule. That issue will have to be considered on case-to-case basis. Upon such harmonious construction of the relevant provisions, it is not possible to countenance challenge to the validity of sub-section (4) of Section 8 of the 2002 Act.

xxi) Therefore, provisions prescribing timelines and which deal with police investigation upon which a person's liberty is dependent has to be strictly construed. On the other hand, where timeline is prescribed for attachment of properties and due to unforeseen circumstances like Covid-19 such attachment was not confirmed, benefit can be granted in favour of the Adjudicating Authority by excluding the period as prescribed under **In re: Limitation (supra)**, *a fortiori* when the property can still be enjoyed.

xxii) It is relevant to note that the Supreme Court in **Prakash Corporates v. Dee Vee Projects Ltd.**[46]dealt with the application of **In re: Limitation (supra)** in relation to filing of a

[46]. (2022) 5 SCC 112

written statement. The Court therein held that the scope of **In re: Limitation (supra)** cannot be unnecessarily narrowed and in relation to **S. Kasi (supra)** held that the same stands on different footing as it dealt with Article 21 of the Constitution of India. The relevant paragraphs are extracted below:

> **27.7. We are not elaborating on other directions issued by this Court but, when read as a whole, it is but clear that the anxiety of this Court had been to obviate the hardships likely to be suffered by the litigants during the onslaughts of this pandemic. Hence, the legal effect and coverage of the orders passed by this Court in SMWP No. 3 of 2020 cannot be unnecessarily narrowed and rather, having regard to their purpose and object, full effect is required to be given to such orders and directions.** [To complete the scenario, we may indicate in the passing that even after we had heard this matter, there had been re-surge of Covid-19 cases with spread of a new variant of the virus. The drastic re-surge in the number of Covid cases has led this Court to again deal with the matter in SMWP No. 3 of 2020 on an application bearing No. 21 of 2022; and by the order dated 10-1-2022 [*Cognizance for Extension of Limitation, In re*, (2022) 3 SCC 117 : (2022) 2 SCC (Civ) 46 : (2022) 1 SCC (Cri) 580 : (2022) 1 SCC (L&S) 501], this Court again restored the principal order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] and in continuation of the previous orders, has

further directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Be that as it may, the fresh order in SMWP No. 3 of 2020 need not be elaborated for the present purpose.]

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32.2. In fact, in *S. Kasi case* [*S. Kasi* v. *State*, (2021) 12 SCC 1 : 2020 SCC OnLine SC 529] , this Court also noticed that a coordinate Bench of the same High Court had already held [*Settu* v. *State*, 2020 SCC OnLine Mad 1026] that the said order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] did not cover the offences for which Section 167CrPC was applicable but, in the order [*S. Kasi* v. *State*, 2020 SCC OnLine Mad 1244] impugned, the other learned Single Judge of the same High Court took a view contrary to the earlier decision of the coordinate Bench; and that was found to be entirely impermissible. **In any case, the said decision, concerning the matter of personal liberty referable to Article 21 of the Constitution of India and then, relating to the proceedings to be undertaken by an investigating officer, cannot be applied to the present case relating to the matter of filing written statement by the defendant in a civil suit.**

xxiii) Further, a Division Bench of Madras High Court in **S. Prasanna v. The Deputy Director, Directorate of Enforcement,**

Government of India[47] held that the decision in **S. Kasi (supra)** is not applicable to compute the period of 180 days under Section 5(3) of the PMLA. The Court also disagreed with the view adopted in **Vikas WSP Ltd. (supra)**, and **Hiren Panchal (supra)**. The relevant paragraphs are extracted below:

> 12. Insofar as the judgment of the Calcutta High Court that was brought to our notice, we find that the Calcutta High Court had mainly relied upon the judgment of the Apex Court in S. Kasi case. With utmost respect to the learned Single Judge of the Calcutta High Court, we are not in agreement with the reasoning in the above judgment. The issue that was dealt with by the Apex Court in S. Kasi case pertains to the scope of Section 167(2) of Cr.P.C. which is directly referable to Article 21 of the Constitution of India viz., personal liberty of a person. The same cannot be equated while dealing with a property right under Article 300-A of the Constitution of India and the judgment of the Apex Court in S. Kasi case cannot be applied to a case involving property right of an individual or a corporate.
>
> **14. Our reasoning supra is also supported by the judgment of the Apex Court in Prakash Corporates v. Dee Vee Projects Limited [(2022) 5 SCC 112]. The Apex Court has explained the scope of the order passed in S. Kasi case and has categorically held that the same cannot be applied in a matter involving proceedings before a Court. The**

[47]. MANU/TN/8962/2022

second respondent was exercising a quasi-judicial function and the ratio in S. Kasi case cannot be applied to such a quasi-judicial authority. In any case, we keep this issue open to enable the petitioner to agitate the same before the Appellate Tribunal.

xxiv) This Court also disagrees with the view adopted in **Vikas WSP Ltd. (supra)**, **Gobindo Das (supra)** and **Hiren Panchal (supra)**. The decision in **Vikas WSP Ltd. (supra)** was stayed by a Division Bench of the Delhi High Court *vide* order dated 08.01.2021 in LPA 362/2020. In any case, the question regarding the application of **In re: Limitation (supra)** was left open.

xxv) As far as **Gobindo Das (supra)**, is concerned, though it is true that Adjudicating Authority is not a litigant, the authorized officer representing the ED is a litigant to the proceedings initiated under PMLA and for the purpose of application of **In re: Limitation (supra)**. Therefore, where the ED has been diligent in provisionally attaching the property and filing the original complaint within 30 days under Section 5 of the PMLA, prejudice cannot be caused to it by not excluding the period from 15.03.2020 to 28.02.2022. One litigant’s interests cannot be protected at the

cost of another. This Court would further like to stress that the provisionally attached properties can still be enjoyed under Section 5(4) of the PMLA.

xxvi) The reasoning in **Hiren Panchal (supra)** that what was protected under **In re: Limitation (supra)** was institution of proceedings and not proceedings which were already initiated cannot be accepted in light of the decision in **Prakash Corporates (supra)** which held that **In re: Limitation (supra)** cannot be narrowly applied.

xxvii) Lastly, the decisions in **S. Kasi (supra),Vikas WSP Ltd. (supra)**, **Gobindo Das (supra)** and **Hiren Panchal (supra)** cannot be applied for the simple reason that **In re: Limitation (supra)** was further clarified in **In re: Limitation 2022 (supra)** wherein the Court at Para 5.4 (extracted supra) held that where time period is prescribed for termination of proceedings, the period from 15.03.2020 to 28.02.2022 shall be excluded. In the present case, Section 5(3) of the PMLA states that provisional attachment of properties will cease to have effect after a lapse of 180 days from the date of provisional attachment. That would mean that attachment proceedings shall terminate if the same are not

confirmed within a period of 180 days. Therefore, while calculating/computing the 180 day period, the period from15 .03.2022 to 28.02.2022 shall be excluded.

xxviii) To answer Issue No. 3, this Court holds that the decision in **In re: Limitation (supra)** and subsequent extensions *vide* **In re: Limitation 2022 (supra)** are applicable to PMLA proceedings to compute the period of 180 days. While computing such period, the period from15.03.2020 to 28.02.2022 shall be excluded.

16. **Issue No.4: Whether the Adjudicating Authority becomes *functus officio* after a lapse of 180 days from the date of passing of the provisional attachment order, if such provisional attachment is not confirmed under Section 8(3) of the PMLA?**

i) In W.P. No. 34627 of 2022, the Petitioner relying on the decision by a Single Bench of the Delhi High Court in **Vikas WSP Ltd. (supra)** contended that that the Adjudicating Authority becomes *functus officio* after the lapse of 180 days, if the provisional attachment is not confirmed.

ii) As in the present case, the Petitioner in the case of **Vikas WSP Ltd. (supra)**, contended that the provisional attachment of properties in that case ceased to have effect as the 180-day period under Section 5(3) of the PMLA lapsed and the said provisional attachment of properties was not confirmed. The learned single judge accepted the contention of the Petitioner and held that provisional attachment of properties ceases to have effect if the same is not confirmed within a period of 180 days. The learned single judge held that the Adjudicating Authority becomes *functus officio* after the expiry of the 180-day period and cannot act on the original complaint under Section 5(5) of the PMLA. In other words, the learned single judge held that even the original complaint ceases to have effect after the lapse of the 180-day period. The relevant paragraphs are extracted below:

> 25. In the present case, the Act clearly deprives the person against whom the Provisional Attachment Order is passed of his right to deal in the property against which the attachment is ordered. Such deprivation can therefore, be for a maximum of 180 days and no further, except where such order is confirmed by the Adjudicating Authority prior thereto under Section 8(3) of the Act. **Once the 180 day period has lapsed without such order being passed under Section 8(3) of the**

> **Act, the Provisional Attachment Order ceases to have effect and therefore, there is no order before the Adjudicating Authority to confirm under Section 8(3) of the Act. The Adjudicating Authority therefore, becomes *functus officio.***
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> **37. In view of the above, the 180 days from the date of the Provisional Attachment Order dated 13.11.2019 having expired without any order under Section 8(3) of the Act being passed by the Adjudicating Authority, it is held that the Adjudicating Authority has been rendered *functus officio* and cannot proceed with the Original Complaint, being O.C. No. 1228/2019 pending before it.** The Notice/Summons dated 26.05.2020 is accordingly set aside.

iii) However, it is relevant to note that the decision rendered by the learned single judge in **Vikas WSP Ltd. (supra)** was stayed by a Division Bench of the Delhi High Court in **Directorate of Enforcement v. Vikas WSP Ltd.**[48]. The relevant paragraph is extracted below:

> 5. In view of the above, we hereby stay the operation, implementation and execution of the judgment and order of the learned Single Judge dated 18.11.2020 passed in W.P.(C) 3551/2020 and impugned in the present appeal.

[48]. 2021 SCC OnLine Del 5577

iv) On the other hand, the ED contends that the Adjudicating Authority does not become *functus officio* after a lapse of 180 days. Reliance was placed on the decision of a Single Bench of the Calcutta High Court in **Fairdeal Supplies (supra)**.

v) The learned single judge in **Fairdeal Supplies (supra)** disagreed with the view expressed by the learned single judge of the Delhi High Court in **Vikas WSP Ltd. (supra)** that the Adjudicating Authority becomes *functus officio* after a lapse of 180 days.

vi) The Calcutta High Court in **Fairdeal Supplies (supra)** held that Section 8 of the PMLA contemplates two stages. Section 8(2) of the PMLA involves adjudication by the Adjudicating Authority as to the question of whether the provisionally attached properties were involved in money laundering or not. Section 8(3) of the PMLA is a subsequent stage which comes into picture only if the Adjudicating Authority reaches a conclusion under Section 8(2) of the PMLA that the properties were involved in money laundering.

vii) The Calcutta High Court held that a conjoint reading of Section 5(3) of the PMLA and Section 8(3) of the PMLA indicates that the time limit of 180 days is only applicable to the stage of Section 8(3) of the PMLA and is not applicable to the stage of 8(2) of the PMLA. In other words, the Calcutta High Court in **Fairdeal Supplies (supra)** held that the Adjudicating Authority under Section 8(3) of the PMLA cannot confirm the provisional attachment of properties after a lapse of 180 days. However, even after a lapse of the 180-day period, it can give a finding whether such provisionally attached properties were involved in the offence of money laundering or not under Section 8(2) of the PMLA.

viii) The decision in **Fairdeal Supplies (supra)** states that Adjudicating Authority does not become *functus officio* after a lapse of 180 days for all purposes. The Adjudicating Authority can still continue with the adjudication and give a finding under Section 8(2) of the PMLA. However, it cannot confirm the provisional attachment under Section 8(3) of the PMLA. The relevant paragraphs in **Fairdeal Supplies (supra)** are extracted below:

x) In the light of the discussion as above, I am unable to agree with the view taken by a Learned Single Judge of Delhi high Court in *Vikas WSP* (supra) cited by the petitioners that the Adjudicating Authority becomes *functus officio* with the expiry of 180 days time period from the date of passing the order of provisional attachment unless the Adjudicating Authority completes the adjudication and confirms the order of provisional attachment before such 180 days period.

xi) In the instant case, the jurisdiction of the Adjudicating Authority was attracted on a complaint under Section 5(5) being lodged after an order for provisional attachment under Section 5(1) was made. The Deputy Director under PMLA in the instant case on 19th February, 2020 i.e., within 30 days from the date of passing the order of provisional attachment had filed the complaint under Section 5(5) of PMLA. The Adjudicating Authority on receiving the complaint under Section 5(5) upon having reasons to believe that the petitioner no. 1 has committed an offence under Section 3 or is in possession of proceeds of crime, served a notice under Section 8(1) of PMLA on 19th February, 2020 upon the petitioner no. 1 and its Directors calling upon them to indicate the source of income, earnings or assets out of which or by means of which the property attached under the provisions of Section 5(1) of PMLA was acquired. It is an admitted position that immediately upon expiry of the minimum 30 days' notice period for show cause under Section 8(1) was over, the country went into a national lockdown. As a natural consequence, the matter being fixed on 4th May, 2020 before

the Adjudicating Authority for a hearing under Section 8(2) could not take place. The petitioner no. 1 also did not file any reply as required under Section 8(2) of PMLA. Before the adjudication under Section 8(2) was over, the 180 days time period from the date of passing of the provisional order of attachment had expired. (xii) It appears from Section 8(2) of PMLA that there is no time limit for completing the adjudication. The stipulation in Section 5(3) on a conjoint reading of the said section along with Section-8(2) also does not indicate any timeframe. However, on expiry of 180 days the order of provisional attachment losses its validity unless confirmed prior to expiry of such 180 days. Thus, an adjudication pursuant to a complaint under Section 5(5) of PMLA if not completed before expiry of 180 days from the date of passing of the order of provisional attachment the said order of provisional attachment at the highest cannot be confirmed under Section 8(3) if the Adjudicating Authority finds that the property is involved in money-laundering. **The embargo to confirm an order of provisional attachment in a given case where such order of provisional attachment has lost its force by efflux of 180 days, however cannot be an impediment for the Adjudicating Authority in hearing a matter in terms of section 8(1) and 8(2) of PMLA. The narrow construction of the stature as sought to be made by the petitioners, therefore cannot be accepted as it will lead to holding 180 days to be the time period for completing adjudication under Section 8(2) of PMLA.**

xiii) Since I have already held that the Adjudicating Authority does not become *functus officio* on expiry of the period of 180 days from the passing of the order of provisional attachment unless such order is confirmed under Section 8(3) in view of the provisions of Section 5(3) of the PMLA, the Adjudicating Authority in the instant case, is, free to proceed with the Complaint Case being Complaint no. 1262 of 2020 till the Sec. 8(2) stage i.e., to give a finding whether the property is involved in money-laundering or not.

xiv) So far as the issue of the order of provisional attachment remained valid or not after expiry of 180 days due to the pandemic is concerned, I keep the same open to be decided in the writ petition wherein direction for affidavits have been given without vacating the interim order passed on 21st October, 2020. In fact, the confirmation of the order of provisional attachment under Section 8(3) of PMLA cannot be also done in the instant case before the writ petition being finally disposed of even if the Adjudicating Authority comes to a finding that the property in question is involved in money-laundering in view of the interim order dated 21st October, 2020. xv) The other issue raised by the respondents no. 2, 3, 4 and 13 that the petitioners are seeking review of the order dated 26th March, 2021 does not fall for any scrutiny in the facts of the instant case though there is no dispute as to the ratio laid down in *Ram Chandra Singh* (Supra) cited by the said respondents.

Conclusion:—

> 10. The order dated 26th March, 2021 is accordingly clarified that hearing of Complaint No. 1262 of 2020 now pending before the Adjudicating Authority shall continue up to the stage indicated in Section 8(2) of PMLA but the confirmation provided under Section 8(3) of PMLA shall take place after the final hearing of the writ petition depending upon the final result. I had in fact meant this in my order dated 26th March, 2021.

ix) According to this Court, the Adjudicating Authority becomes *functus officio* after a lapse of 180 days, if the provisional attachment of properties is not confirmed. The effect of Adjudicating Authority being rendered *functus officio* makes all the proceedings emanating from such provisional attachment order as void. In other words, as the provisional attachment of properties ceases to exist, the original complaint filed under Section 5(5) of the PMLA, the show cause notice issued by the Adjudicating Authority under Section 8(1) of the PMLA, the Adjudication under Section 8(2) of the PMLA will be a nullity. The proceedings of attachment cease to exist and the properties will revert back to the owners as if they were never attached.

x) The above view is further fortified by the decision of the Apex Court in **Vijay Madanlal Choudhary (supra)** which noted

that the period of 180 days is procedural safeguard. Non-compliance of the same shall render the provisional attachment as non-existent.

xi) Once the period of 180-day lapses, the provisional attachment of properties ceases to have effect. In such cases, the ED has to re-initiate the process of attachment under Section 5(1) of the PMLA by passing a fresh provisional attachment order by recording their reasons to believe. While issuing the said fresh attachment order, the ED shall again strictly follow the entire procedure as prescribed under Sections 5 & 8 of the PMLA and the relevant Rules thereunder.

xii) In other words, ED should record the reasons to believe before issuing the fresh provisional attachment order, forward such fresh provisional attachment order to the Adjudicating Authority and the Adjudicating Authority shall again satisfy itself that the properties were involved in money laundering and shall issue a fresh show-cause notice in relation to the fresh provisional attachment order, the parties shall again be given a right of hearing before passing orders under Sections 8(2) and 8(3) of the PMLA. Needless to say that after issuance of the fresh provisional

attachment order, the confirmation shall be completed within a period of 180 days.

xiii) As far as the decision in **Fairdeal Supplies (supra)** is concerned, this Court respectfully disagrees with the view expressed by the Calcutta High Court. According to this Court, the decision in **Fairdeal Supplies (supra)** results in absurd situations and the same are discussed below. Before discussing the decision in **Fairdeal Supplies (supra)**, it is relevant to note that any interpretation that leads to anomaly or absurdity has to be avoided. The Court has to interpret statutes in a manner that avoids its mockery. The Apex Court in **Kalyan Dombivali Municipal Corpn. v. Sanjay Gajanan Gharat**[49] held as follows:

> 40. We find that the view taken by the High Court is also not acceptable in view of another principle of statutory interpretation. In the case of *Mahadeo Prasad Bais (Dead)* v. *Income-Tax Officer 'A' Ward, Gorakhpur*, this Court held that an interpretation, which will result in anomaly or absurdity, should be avoided. It has been held that at times, the circumstances justify a slight straining of the language of the clause so as to avoid a meaningless anomaly.
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[49]. 2022 SCC OnLine SC 385

> 43. It could thus be seen that this Court has held that the court should not always cling to literal interpretation and should endeavor to avoid an unjust or absurd result. The court should not permit a mockery of legislation. It has been held that to make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye, 'some' violence to language is also permissible.

xiv) The view in **Fairdeal Supplies (supra)** that after a lapse of 180 days, the Adjudicating Authority can record a finding whether the properties were involved in money laundering under Section 8(2) of the PMLA, but cannot confirm the provisional attachment, if given affect, will result in absurdity and subversion of rights of the parties involved.

xv) For instance, let's consider a case where 180 days lapse and the provisional attachment of properties is not confirmed. In such a case, going by the dictum in **Fairdeal Supplies (supra)**, if the Adjudicating Authority records a finding under Section 8(2) of the PMLA that the property was involved in money laundering, the party whose property was involved is left without a remedy.

xvi) As stated above, if the provisional attachment of properties is not confirmed within a period of 180 days, the ED can

re-initiate the process of attachment by issuing a fresh provisional attachment order under Section 5(1) of the PMLA. However, following the decision in **Fairdeal Supplies (supra),** if in relation to the earlier provisional attachment, the Adjudicating Authority already records a finding under Section 8(2) of the PMLA that the properties were involved in money laundering, then the entire process in relation to the fresh provisional attachment order is redundant as a view is already expressed against the person whose property is sought to be attached.

xvii) In other words, a person whose property is sought to be attached by issuing a fresh provisional attachment order is prejudiced as a finding is already recorded against him in relation to the earlier provisional attachment order. The effect of such a situation is a farce. The procedure to be followed after issuing a fresh provisional attachment order under Sections 5 & 8 of the PMLA i.e., recording of reasons to believe by the authorized officer and the Adjudicating Authority, issue of show cause notice and consequent adjudication is rendered ineffective as the Adjudicating Authority had already reached the conclusion that the properties were involved in money laundering. Therefore, this

Court disagrees with the view expressed by the Calcutta High Court in **Fairdeal Supplies (supra)**.

xviii) Issue no. 4 is decided by holding that the Adjudicating Authority will become *functus officio* after a lapse of 180 days, if the provisional attachment of properties is not completed.

17. **Conclusion of findings in the issues discussed:**

To sum up, all the issues discussed herein are answered as follows:

i. Issue No.1 is decided by holding that the scheme under PMLA permits constitution of the Adjudicating Authority consisting of a single member.

ii. Issue No. 2 is decided by holding that the Adjudicating Authority consisting of a single member who has no experience in the field of law cannot issue a show cause notice under Section 8(1) of the PMLA and cannot pass an order confirming the provisional attachment of properties under Section 8(3) of the PMLA as the same are quasi-judicial functions. Only a member having experience in the field of law can perform quasi-judicial functions.

iii. Issue No. 3 is decided by holding that the decision in **In re: Limitation (supra)** and subsequent extensions *vide* **In re: Limitation 2022 (supra)** are applicable to PMLA proceedings to compute the period of 180 days. The period from 15.03.2020 to 28.02.2022 shall be excluded while computing such period of 180 days.

iv. Issue No. 4 is decided by holding that the Adjudicating Authority is rendered *functus officio* for the purpose of confirming a provisional attachment order after a lapse of 180 days. After a lapse of 180 days, the ED or the authorized officer can re-initiate the process of attachment by issuing a fresh provisional attachment order.

18. **Result in the respective writ petitions:**

i. W.P. No. 34238 of 2022 is allowed and the order dated 22.08.2022 confirming the provisional attachment of properties in relation to O.C. No. 1633 of 2022 is set aside. However, after its due constitution either with a single member having experience in the field of law or with two members one of whom shall necessarily be a member having

experience in the field of law, the Adjudicating Authority is at liberty to record its satisfaction again and issue a fresh show cause notice and conduct hearing. Further, the period from the date of issuing show cause notice till the due constitution of the Adjudicating Authority shall be excluded in computing the 180-day period under Section 5(3) of the PMLA.

ii. I.A. No. 1 of 2022 in W.P. No. 41133 of 2022 is allowed, and the show cause notice dated 19.09.2022 is stayed along with all further proceedings in relation to O.C. No. 1799 of 2022 till the Adjudicating Authority is duly constituted either with a single member having experience in the field of law or with two members one of whom shall necessarily be a member having experience in the field of law. Further, the period from the date of issuing show cause notice till the date when the Adjudicating Authority is duly constituted shall be excluded in computing the 180-day period under Section 5(3) of the PMLA.

iii. I.A. No. 1 of 2022 in W.P. No. 44343 of 2022 is allowed, and the order dated 01.12.2022 confirming the provisional

attachment of properties is stayed along with all further proceedings in relation to O.C. No. 1680 of 2022 till the Adjudicating Authority is duly constituted either with a single member having experience in the field of law or with two members one of whom shall necessarily be a member having experience in the field of law.

iv. W.P. No. 34627 of 2022 is allowed and the entire proceedings emanating from provisional attachment order dated 01.02.2021, the original complaint bearing O.C. No. 1410 of 2021 and consequent show cause notice dated 03.03.2021 are set aside as the Adjudicating Authority failed to pass a confirmation order within a period of 180 days. However, the ED/authorized officer is at liberty to re-initiate the attachment proceedings by issuing a fresh provisional attachment order.

v. In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in W.P. Nos.34238 and 34627 of 2022 shall stand closed.

K. LAKSHMAN, J

13th March, 2023

Note: L.R. Copy be marked.
(B/O.) Mgr