

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE ARINDAM MUKHERJEE.

CAN 1 OF 2021

IN

W.P.A. 8232 OF 2020

FAIRDEAL SUPPLIES LIMITED & ANR.

VS.

UNION OF INDIA & ORS.

For the petitioners	:	Mr. Jishnu Chowdhury, Mr. Sarvapriya Mukherjee, Mr. Aniruddha Agarwalla, Advocates
For the Respondents no. 2, 3, 4 & 13	:	Ms. Debjani Ray, Mr. Sumitava Chakraborty. Advocates
For the Respondent no. 5	:	Mr. Rajarshi Dutta, Mr. Arjun Mookherjee. Advocates
For the Respondent no.6	:	Mr. Om Narayan Rai, Advocate
For the Respondent no.9	:	Mr. Rajarshi Dutta, Mr. Rahul Poddar, Mr. Sandip Kr. Dutta. Advocates
For the Respondent no.10	:	Ms. Rituparna Sanyal, Mr. Santosh Kr. Roy. Advocates
For the Respondent no. 11	:	Mr. Avishek Guha, Ms. Ruchika Mall. Advocates
For the Respondent no. 12	:	Ms. Riti Basu, Ms. Chandrani Das. Advocates
Heard on	:	12.04.2021 and 13.04.2021
Judgement on	:	23rd April, 2021.

Arindam Mukherjee, J.:

This is an application inter alia for modification of the order dated 26th March, 2021 passed in the Writ Petition being WPA 8232 of 2020. Although, the scope of the instant application is very limited but, for proper appraisal of the grounds on which the order has been sought to be modified, the basic facts are stated hereinbelow:

1. On the basis of a complaint made on 14th January, 2015 by Sri Pranav Kumar, the then Zonal Head, UCO Bank, Zonal Office, Gariahat Branch, Kolkata, an FIR was registered by Central Bureau of Investigation (CBI, BS & FC), Kolkata. A charge-sheet bearing number 06/2016 dated 18th August, 2016 was filed before the competent Court against the petitioner no. 1 and its directors for offence under Sec. 120-B read with Sections 406 and 420 of the Indian Penal Code (in short IPC). As Sections 120B, 406 and 420 of IPC are scheduled offence as defined under Section 2 (1) (y) of the Prevention of Money Laundering Act, 2002 (in short 'PMLA') an investigation under PMLA was initiated by recording an Enforcement Case Information Report (in short ECIR) number KLZO/17/2016 on 2nd December, 2016 against the petitioner no. 1 and its Directors for alleged commission of offence under Section 3 which is punishable under Section 4 of PMLA. The directors of the petitioner no. 1 have, however, not joined the writ petition as petitioners. The petitioner no. 2 claims to be an authorized signatory.
2. On 20th January, 2020 the Deputy Director, Directorate of Enforcement, Government of India being an officer under the provisions

of Section 5 (1) of PMLA passed an order of Provisional Attachment. On 19th February, 2020 a complaint being Complaint no. 1262 of 2020 was filed by the said Deputy Director before the Adjudicating Authority under Section 5(5) of PMLA inter alia stating the facts of attachment and praying for confirmation of the order of provisional attachment dated 20th January, 2020 under the provisions of Section 8(3) of PMLA.

3. On 19th February, 2020, the Adjudicating Authority issued a notice under Section 8(1) of the PMLA.
4. The petitioners filed a writ petition on or about 7th October, 2020. In the said writ petition, on 21 October, 2020 an interim order was passed. The operative portion of the order is set out hereunder for convenience:

“This Court is of the view that since an adjournment has been prayed for on behalf of the respondents, the respondent should not take any steps in terms of the impugned order until the matter is heard out on merits.”

5. The writ petition was again taken up on 5th February, 2021, when the matter was fixed for hearing in view of the interim order of stay being in operation.
6. On 18th March, 2021 when the matter was again taken up, it was submitted on behalf of the petitioners that the petitioners intended to withdraw the writ petition as the order of provisional attachment had lapsed with the expiry of 180 days in view of the provisions of Section 5 (1) (b) of the PMLA. The petitioners’ prayer was opposed by the

respondents no. 2, 3, 4 and 13 and as such the matter was adjourned. On 22nd March, 2021, the petitioners prayer for withdrawal of the writ petition on the ground that the order of provisional attachment had expired by efflux of time under the provisions of Section 5(1)(b) was again opposed by respondents no. 2, 3, 4 and 13 on the ground that the order of provisional attachment according to the said respondents did not expire by efflux of time in view of the order dated 8th March, 2021 passed by the Hon'ble Supreme Court of India in suo motu **Writ Petition (C) No. 3 of 2020) (In re: Cognizance of Extension of Limitation)**. The matter was again taken up on 26th March, 2021, when an order was passed, the operative portion whereof is set out hereunder for convenience:

“The petitioners thereafter wanted to withdraw the writ petition as, according to the petitioners, the order of provisional attachment dated 20th January, 2020 had lost its force on expiry of 180 days from the passing of the same in view of the provisions of Section 5(1)(b) of the Prevention of Money Laundering Act, 2002 (in short PMLA).

The prayer for withdrawal of the writ petition was opposed by the respondent nos.2, 3, 4 and 13 on the ground that the order of provisional attachment dated 20th January, 2020, which the petitioners say to have lost its force, according to the said respondents, was in subsistence in

view of the order passed by this Court as also by the Hon'ble Supreme Court during the pandemic. The respondent nos.2, 3, 4 and 13 submitted that the petitioners are free to withdraw their writ petition simplicitor but no condition or leave or any observation from this Court should not be attached to the leave to withdraw the writ petition.

Faced with this situation, the petitioners do not intend to withdraw the writ petition.

The respondent no.3, on finding that the petitioners are no more interested to withdraw the writ petition and intend to proceed with the same, raises the maintainability point of the writ petition on several grounds, including the jurisdictional ground. The respondent nos.2, 3, 4 and 13 further submits that the interim order dated 21st October, 2020 was passed only on the premise that the respondents had sought for time. The matter was not heard on merits while passing the interim order on 21st October, 2020. The respondent nos.2, 3, 4 and 13 also point out to the conduct of the petitioners. The said respondents submit that the provisional attachment order lost its force with the expiry of 180 days, as submitted by the petitioners, then the writ petition has been filed much

beyond 180 days commencing from 20th January, 2020. The writ petition, according to the petitioners, therefor, is not maintainable on such ground alone as the only challenge therein is the provisional order of attachment dated 20th January, 2020.

So far as the prayer for vacating the interim order made by the respondent nos.2, 3, 4 and 13 is concerned, the same cannot be vacated at this stage, particularly in view of the fact that such interim order is continuing from 21st October, 2020 and no vacating application has been made by the said respondents in the meantime.

Pendency of the writ petition will, however, not be an embargo on the respondents in proceeding with the complaint no.1262 of 2020 made under the provisions of Section 5(5) of PMLA as the same will not amount to any coercive step in terms of the provisional order of attachment.

After hearing the respective submissions and considering the materials on record, I find that the matter can be more effectively heard after calling for affidavits.

Let affidavit-in-opposition be filed within a period of four week from date. Reply, if any, thereto be filed by two weeks thereafter.

Liberty to mention after expiry of six weeks for inclusion in the list under the heading "Hearing".

The directions for filing of affidavits are peremptory in nature, considering the fact that the interim order is subsisting as on date."

7. The petitioners have filed this instant application as a portion of the order dated 26th march, 2021 has been according to the petitioners misused by the respondents no. 2, 3, 4 and 13 to proceed with the adjudication under Sections 8(1), 8(2) and 8(3) of PMLA. The portion of the order dated 26th March 2020 which the petitioners wants modification is set out hereunder:

"Pendency of the writ petition will, however, not be an embargo on the respondents in proceeding with the complaint no. 1262 of 2020 made under the provisions of Section 5(5) of PMLA as the same will not amount to any coercive step in terms of the provisional order of attachment."

8. **Petitioners' Submission:-**

- (a) The petitioners say that the order of provisional attachment dated 20th January, 2020 passed under the provisions of Section 5(1) has in fact expired on or about 20th July, 2020 i.e., prior to the writ petition being filed. Once the order of provisional attachment has come to an end with the efflux of 180 days from the date of passing of the order, the Adjudicating Authority to whom an application had been made under Section 5(5) of PMLA has become *functus officio* and as such the question of proceeding for any adjudication in terms of the provisions of Sections 8(1), 8(2) and 8(3) of PMLA cannot and does not arise. If the order of provisional attachment is not there, according to the petitioners, the question of the Adjudicating Authority confirming such order also does not arise. Any step taken by the Adjudicating Authority under the provisions of Sections 8(1), 8(2) and 8(3) of the PMLA is without jurisdiction and an invalid action according to the petitioners. The petitioners say that the respondent nos. 2, 3, 4 and 13 should not be allowed to proceed with the adjudication under the provisions of Sections 8(1), 8(2) and 8(3) of PMLA in the facts and circumstances of the case as also in view of the order dated 21st October, 2020. Taking advantage of the order dated 26th March, 2021, no step to confirm the order of provisional attachment should be allowed to continue any further. The petitioners therefor, are seeking modification of the said order.

(b)The petitioners say that so far as the other part of the order dated 26th March, 2021 is concerned, the petitioners have no objection and intend to have the writ petition heard after completion of affidavits. The petitioners also say that so far as the criminal proceedings for ascertainment of scheduled offence is concerned, the petitioners have no objection and the trial before the Special Court may be allowed to continue. The petitioners have relied upon a judgement dated 8th November, 2020 passed by a Learned Single Judge of the High Court at Delhi in **W.P.(C) 3551/2020 and 12626/2020 M/S VIKAS WSP LTD. & ORS. Vs. DIRECTORATE ENFORCEMENT & ANR**, in support of their contention that the Adjudicating Authority with the expiry of the validity/life of an order of provisional attachment becomes *functus officio* and cannot proceed any further for adjudication in terms of provisions of Section 8(1), 8(2) and 8(3) of PMLA. The petitioners have also relied upon an order dated 9th April, 2021 passed by a Learned Single Judge, of this Court in WPA no. 4845 of 2021 [**Knight Riders Sports Private Limited Vs. Adjudicating Authority (PMLA)and others**]to demonstrate the validity of the order of provisional attachment to have not been extended automatically despite its lapse with the expiry of 180 days from passing of the same in view of the order passed by the Hon'ble Supreme Court of India (In re: Cognizance of Extension of Limitation) as contended by the respondent nos. 2, 3, 4 and 13 has been rejected.

(c) The petitioners further say that the complaint case having Complaint No. 1262 of 2020 which is the source from where the Adjudicating Authority is purporting to derive its jurisdiction even after lapse of the order of provisional attachment should be stayed otherwise, the said Adjudicating Authority is bent upon to confirm the order of provisional attachment though the same has lapsed on expiry of 180 days from the passing of the same.

9. **Submission of respondents no. 2, 3, 4 and 13:-**

(i) On behalf of the respondent nos. 2, 3, 4 and 13, the order dated 8th March, 2021 passed in (In re:: Cognizance of Extension of Limitation) is relied upon and in particular paragraph 3 thereof to contend that the outer limit of 180 days for the order of provisional attachment has stood extended in view of the said order dated 8th March, 2021 passed by the Hon'ble Supreme Court. The time available to the Adjudicating Authority for confirming the order of provisional attachment under Section 8(3) by terminating the proceeding shall also stand extended in view of the said order. The Adjudicating Authority is therefore, free to proceed with the matter and pass necessary orders under Sec. 8(3) of PMLA by bringing the adjudication process to a logical conclusion.

(ii) It is also submitted that the definition of proceeding according to Black's Law Dictionary (11th Edition) is "the regular and orderly progression of a lawsuit, including all acts and events between the

time of commencement and the entry of judgment”. The meaning of the term ‘proceeding’ has also been referred from the Supreme Court on Words and Phrases wherein it appears that the term ‘proceeding’ has been described as “is a very comprehensive term and generally speaking means a prescribed scope of action for enforcing a legal right”. It is also submitted that the petitioners were required to show-cause in terms of the notice dated 19th February, 2020 on or before 4th May, 2020 and appear before the respondent no. 13 on 4th may, 2020. The mandate under Sec. 8(1) according to the respondent nos. 2, 3, 4 and 13 is to serve a notice of not less than 30 days. If that minimum notice period is taken into consideration, then the 30 days period from 19th February, 2020 expires on 20th March, 2020. But from 24th March, 2020 national lockdown had been declared due to pandemic. Even after withdrawal of the lockdown period, owing to the pandemic, the Adjudicating Authority was not functioning regularly and as such the maximum time period of 180 days to confirm the order of provisional attachment should be computed by holding that such time period has expired between 15th March, 2020 and 14th March, 2021 as per the order of the Hon’ble Supreme Court of India dated 8th march, 2021 thereby allowing the confirmation if necessary to be completed within a period of 90 days from 15th March, 2020.

- (iii) It is further submitted on behalf of the respondent no. 2, 3, 4 and 13 that the adjudication under Sections 8 (1), 8(2) and 8(3) is not

only restricted to the confirmation of the provisional order of attachment but, for declaration as to whether the property is involved in money-laundering and therefor, stands on an independent footing. The Adjudicating Authority as such does not become *functus officio* upon lapse of the order of provisional attachment with the expiry of 180 days from passing of the same.

- (iv) The said respondents also say that the adjudication up to a stage as contemplated under Sec. 8(2) of PMLA should be at least allowed to continue in the facts of the instant case. The respondent nos. 2, 3, 4 and 13 further submitted that the order of the Learned Single Bench of the High Court at Delhi dated 8th November, 2020, does not take into consideration the order passed by the Hon'ble Supreme Court on 8th March, 2020. That apart and in any event, the said judgement and order dated 8th November, 2020 has been stayed by the Division Bench of the High at Delhi by an order dated 8th January, 2020 in **LPA 362/2020 & C.M. APPL. 30675/2020 (Stay) (Directorate of Enforcement and Anr. vs. M/s Vikas WSP Limited & Ors)**. The respondent no. 2, 3, 4 and 13 have also taken a point that the petitioners in the garb of an application for modification is in effect seeking a review of the order dated 26th March, 2021. This is impermissible in law and on this context, the said respondents cite a judgement reported in 2014 12 SCC 713 (**Ram Chandra Singh vs. Savitri Devi & Ors.**)

10. Since the scope of the application is very limited and adjudication thereof is dependent only on interpretation of the legal provisions by consent of parties, I proceed to deal with the same without calling for affidavits.

11. **Findings:**

(i) On a plain reading of Section 2(1)(y) and Section 3 of the PMLA , it appears to me that the legislature has bifurcated the offence under PMLA into “Scheduled Offence” and “Offence of money-laundering”. “Scheduled Offence” are provided in Part A of the schedule to PMLA which takes into its sweep offences under various statutes. Scheduled Offence also includes offences specified under Part B and Part C of the Schedule to PMLA.

(ii) The offence of money-laundering on the other hand is clearly specified in Section 3 which may have some overlapping with scheduled offence but are mostly different. Section 4 of PMLA provides for punishment for money-laundering. On a conjoint reading of Section 3 and 4 of PMLA, it appears to me that a separate set of punishment has been clearly provided by the legislature for offence of money-laundering which is different from the punishment in case of scheduled offence under different statutes wherein the punishment for offences under those statutes are specifically provided.

(iii) On a reading of Section 43 and 44 of the PMLA, it also appears that an offence punishable under Section 4 and any scheduled offence connected to the offence punishable under that Section shall be tried by

the Special Court constituted for the area in which the offence has been committed. It is, therefore, apparent from Section 44 that an offence punishable under Section 4 and any scheduled offence connected to the offence under Section 4 shall be tried by the Special Court. The second proviso of Section 45 of PMLA also clearly provide that the Special Court shall not take cognizance of any offence punishable under Section 4 of PMLA except upon a complaint in writing made by the director or any officer of the Central Government or the State Government authorised in writing in this behalf by the Central Government. Sub-Section 1A of Section 45 debars a police officer otherwise authorised under the Code of Criminal Procedure 1973 (in short 'Cr.P.C.') from ordinarily investigating an offence under the PMLA.

(iv) Investigation “is defined in Section 2(1)(na) which includes all proceedings under PMLA conducted by the director or by an authority authorised by the Central Government under PMLA for collection of evidence. The legislature, therefor, by including such provisions in the PMLA has segregated the investigation and trial of an offence under PMLA or any scheduled offence connected thereto and have provided for the Court wherein such offence has to be tried. Authorities under PMLA have been specified in Section 48. The jurisdiction, powers of the authorities and other officers are provided in Chapter VIII of the PMLA. On a plain reading of Section 54 of PMLA, it is also clear that the legislature wanted to include officers from other departments and/or agencies for fruitful assistance in the inquiry.

(v) The first proviso to Section 5(1) provides that “no such order of attachment” shall be made unless in relation to the scheduled offence, report has been forwarded to a Magistrate under Section 173 of Cr.P.C. Section 3 of Cr.P.C. provides for the manner in which a “Magistrate” shall be construed. Section 173 (2) (i) of Cr.P.C. speaks about a “Magistrate” empowered to take cognizance of the offence on a police report. Since, Section 45(1-A) as by implication eliminate a police officer from investigating an offence under PMLA, therefore, the police report under Section 173 (2) (i) of Cr.P.C. to the Magistrate under ordinary course, has to be submitted by the Director or an officer not below the rank of Deputy Director under PMLA who is authorised to investigate under PMLA. This is what has been exactly provided under the first proviso under Section 5(1) of PMLA. An exception has, however, been carved out under the second proviso to Section 5(1) of PMLA as to when a property can be provisionally attached even without complying with the provisions of the first proviso to Section 5(1) of PMLA. At the same time, under Section 43 and 44, any offence which is punishable under Section 4 of PMLA and any scheduled offence connected thereto has to be tried by a Special Court. Cognizance of an offence cannot be taken for a second time as a Court of Original Jurisdiction under Section 193 of Cr.P.C. The role of the Magistrate to whom a report is filed under the first proviso of Section 5 (1) of PMLA, therefor, requires further scrutiny to ascertain whether such Magistrate has to take a passive role in committing the case by not exercising its cognizance power so that the Special Court is free to exercise the same for the first

time as a Court of Original Jurisdiction under Section 193 of the Cr.P.C., or that the Magistrate can take cognizance of the matter on a report under the first proviso of Section 5(1) filed before it. Since I am not required to answer this question while adjudicating the issue in hand, I refrain from dealing with this point further. These are so far as trying an offence punishable under Section 4 of PMLA and a scheduled offence connected thereto are concerned. Thus, it is apparent that PMLA is a Complete Code in itself for taking cognizance of an offence punishable under Section 4 of PMLA with connected schedule offences, its investigation and trial.

- (vi) This now takes me to analyse the role of the Adjudicating Authority appointed under Section 6 of PMLA as it is necessary to answer the issue involved.
- vii) Section 5 has a heading “Attachment of Property involved in money-laundering”. Attachment has been defined in Section 2 (1) (d) of the PMLA. However, the Act nowhere defines “provisional attachment”, though section 5(1) speaks of an order in writing to provisionally attach a property for a period not exceeding 180 days from the date of such order. If the Director or any other officer not below the rank of Deputy Director has reasons to believe that a property is involved in money laundering and records the same in writing on the basis of the materials in his possession, may provisionally attach a property. The use of word “may” gives a discretion upon the Director or an officer not below the rank of Deputy Director to either provisionally attach a property or not to do so depending upon his perception on the basis of

materials available with him. The second proviso to Section 5(1) further clarifies the reasons for which a provisional attachment is required to be made – “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”. The second proviso to Section 5(1) of PMLA also authorises the officer concerned to pass an order of provisional attachment even without first complying with the provisions of the first proviso to Section 5(1) of PMLA. The difference of wording of the first and the second proviso also makes it clear that the first proviso relates to the property of a person charged of having committed a scheduled offence while the second proviso relates to property of any other person not necessarily charged of having committed a scheduled offence. It therefore, appears that pending investigation when the officer concerned thinks it necessary to either provisionally attach or that non-attachment of the property provisionally is likely to frustrate any proceeding may by an order in writing provisionally attach such property. The provisional attachment is therefor a temporary measure valid for a specified time unless confirmed by the Adjudicating Authority and is subject to further investigation for the purpose of trial before the Special Court.

viii) The Director or an Officer not below the rank of Deputy Director while exercising jurisdiction under Section 5(1), therefor, has the discretion either to provisionally attach the property or not to do so. If the officer chooses to provisionally attach the property, he has to forward a copy of

the order along with materials in his possession to the Adjudicating Authority. The Prevention of Money-Laundering (Issuance of Provisional Attachment Order) Rules, 2013 specifies the manner of issuance of provisional attachment order. The manner of forwarding a copy of the order of provisional attachment of property with materials as required under Section 5(2) of PMLA is provided in Rule 3 of the Prevention of Money-Laundering (the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and copy of the Reasons along with the material in respect of Survey, to the Adjudicating Authority and its Period of Retention) Rules, 2005. Rule 6 of the 2005 Rules provides for the period of time such order of provisional attachment, the materials and copy of the reasons are required to be retained by the Adjudicating Authority. Section 5(2) of PMLA, therefor, does not trigger the initiation of any Adjudication under Section 8(1) of PMLA. The concerned officer on passing an order of provisional attachment has to within 30 days therefrom file a complaint before the Adjudicating Authority under Section 5(5) of the PMLA. The process of adjudication is attracted immediately on such complaint being filed under Section 5(5) of PMLA. The Adjudicating Authority upon receipt of such complaint under Section 5(5) if has reasons to believe that any person has committed an offence under Section 3, may serve a notice not less than 30 days to such person calling upon him to show-cause as to 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. The Adjudicating Authority,

therefor, declares whether a property is involved in money laundering. The procedure to be followed for the adjudication is specified under Section 8(2) of PMLA. After completion of the adjudication process as envisaged under Section 8(2) of PMLA the Adjudicating Authority has to record a finding whether all or any of the properties referred to in the notice issued under Section 8(1) are involved in money laundering. Once this finding is arrived at and it is declared by the Adjudicating Authority that the property/properties are involved in money laundering, the Adjudicating Authority shall confirm the order of attachment under Section 5(1) of PMLA i.e., the order provisionally attaching the property. The Adjudicating Authority after conclusion of hearing under Section 8 (2) of PMLA, therefor can either declare that the property or properties are involved in money-laundering or hold that they are not so. The adjudication process, by the Adjudicating Authority is thus not dependent on the order of provisional attachment being in force, though the initiation of adjudication under Section 8(1) of PMLA had commenced after a complaint being lodged under Section 5(5) of PMLA pursuant to an order of provisional attachment under Section 5(5) of PMLA. Even Section 8(1) of PMLA empowers the Adjudicating Authority to form a prima facie independent opinion before issuing a notice under such Section after receiving a complaint under Section 5(5) of PMLA. The adjudication by the Adjudicating Authority is, therefor, independent of the fact whether the order of provisional attachment on the date of completion of the adjudication under Section 8(2) of PMLA is in operation or not.

- ix) The role of the Special Court and the Adjudicating Authority is therefore, completely different. The Special Court tries the matter for finding whether an offence punishable under Section 4 connected with scheduled offence, if any and hold the accused guilty of the same if finds such offence has been committed. The punishment consequent upon such finding follows. The Adjudicating Authority on the other hand makes an endeavour to find out whether the property(s) are involved in money-laundering and makes a declaration to that effect on finding it in the affirmative. Upon such declaration being made the order of provisional attachment is confirmed.
- 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 loses 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.

12. **Conclusion:-**

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.

13. The application being CAN 1 of 2021 filed in WPA 8232 of 2020 is accordingly disposed of without any order as to costs.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(Arindam Mukherjee, J.)