

**APPELLATE TRIBUNAL FOR SAFEMA, FEMA, PMLA, NDPS & PBPT ACT
AT NEW DELHI**

Date of Decision: 27.06.2019

MP-PMLA-5432/JP/2018 (Stay)
FPA-PMLA-2778/JP/2018

Rajasthan Financial Corporation	...	Appellant
Versus		
The Deputy Director Directorate of Enforcement, Jaipur	...	Respondent

Advocates/Authorized Representatives who appeared

For the appellant : Shri Shyam Moorjani, Advocate

For the respondent : Shri Neeraj Atri, Advocate

CORAM

JUSTICE MANMOHAN SINGH : CHAIRMAN
SHRI G.C. MISHRA : MEMBER

JUDGEMENT

FPA-PMLA-2778/JP/2018

1. By this order, we propose to decide the present appeal which was filed by Rajasthan Financial Corporation against the order dated 9th November, 2018 confirming the provisional attachment order dated 13.06.2018 in O.C. No. 984/2018.

2. Before issuance of notice under Section 8(1) of the Act, the Adjudicating Authority on 29.06.2018 have recorded the reason to believe, by referring the Provisional Attachment Order no. 02/2018 dated 16.05.2018 issued by the Deputy Director, Enforcement Directorate,

Jaipur; the Original Complaint dated 13.06.2018 numbered as OC 984/2018 and its Annexure/RUD.

a) FIR dt. 07.03.2016 is registered for the offences under section 120 B, 420, 467, 468, 471, 472 and 474 of IPC and section 13(2) r/w 13(1) (d) of PC Act by CBI, BS & FC New Delhi against Satish Kumar Goyal and others. Charge-Sheet dt. 07.03.2016 came to filed by CBI for the offences punishable under section 120 B, 409, 420, 467, 468, 471 of IPC and section 13(2) r/w 13(1) (c) and 13(1) (d) of PC Act against Bharat Bomb, Shankar Khadelwal, Vipul Kaushik, Santosh Kumar Gupta and Usha Gupta. Investigation against Satish Kumar, Sanjiv Kumar, Deshraj Meena, Adarsh Manchanda, Awadesh Tiwari, Piyush Jain and Vineet Jain is shown to be pending. ECIR dt. 11.07.2016 came to be registered by the Enforcement Director as the offences under section 120 B, 420, 467 and 471 of IPC and section 13(2) r/w 13(1) (d) of PC Act are the scheduled offences. The Charge-Sheet reveals that without requisite KYC documentation, over 386 bank accounts were opened by the suspects in the said three branches of Syndicate Bank at (i) Malviya Nagar branch, Jaipur, (ii) M.I. Road branch, Jaipur and (iii) Bapu Nagar Branch, Udaipur by using identification documents of genuine account hodlers in other banks with the nexus of bank officials for diverting the bank funds to the tune of 1055.79 Cr. to various destinations by adopting three different modus operandi i.e. (i) discounting of forged cheques, (ii) withdrawing money through over-draft facility using forged life insurance policies (LIC policies) and (iii) discounting forged inland bills that were raised against letters of credit shown to have been issued by another bank. This resulted in siphoning off of the public money causing loss to the bank to the tune of Rs.1055.79 Cr.

b) The evidence revealed Bank officials were in active connivance with Bharat Bomb and Shankar Khandelwal in the fraud. They misused their power to discount bills, cheques and sanction of loans against forged LIC policy. Cheques of M/s. Temple Trust Board, Nathdwara, M/s. Dharm Putra Sansthan, and M/s. Patanjali Yog Hospital etc. were discounted without due (legal) authority. Accounts of M/s. Mobile Associates (Naresh Kanwarani), M/s. Everest Ashiana (Vineet Jain), M/s. Raj Minerals (Mahendra Meghwal), M/s. Padmawati Enterprises (Bhaskar Jain), M/s. Rameshwaram (Pradeep Nimawat), M/s. Dharma Putra Sansthan (Vipul Kaushik), M/s. Arihant Financial (Piyush Jain) and M/s. Ranu Motors (Nitin Parikh) were used for forged cheques discounting. Money was layered and transferred to different accounts of M/s. Guman Furniture & Services, M/s. Guman Furniture & Electronics, M/s. Guman Jewellers, Shankar Khandelwal, Tikam Khandelwal and others.

c) The Deputy Director has analysed the details emerging from the subsequent FIRs filed. The investigation revealed that (1) Bharat Bomb, Chartered Accountant of Udaipur, (2) Shankar Lal Khandelwal, Builder of Jaipur, (3) Vipul Kaushik, Key Associate of Bharat Bomb (4) Santosh Kumar Gupta, then Bank Manager, Syndicate Bank, (5) Vineet Jain, (6) Piyush Jain and (7) Usha Gupta w/o Santosh Gupta are involved in criminal activities relating to the scheduled offences under section 120 B, 420, 467, 471, 472 of the Indian Penal Code and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

d) The above named persons in association with other persons acquired huge amount of money by way of criminal activities related to aforesaid scheduled offences, thus there is derivation of

proceeds of crime. The tainted money earned by master mind Bharat Bomb in association with other persons were either placed into various bank accounts, invested in large number of immovable properties in their name or name of associates or was transferred to individuals/firms/companies including those of Shankar Khandelwal, his family members & his group of companies; Himanshu Verma & his companies; Pavitra Kothari, family member & his companies for investment/loan purpose by way of complex maze of financial transactions. Bharat Bomb through the accounts of his associates, and his fictitious firms transferred about Rs.231.20 Cr. in accounts of Shankar Lal Khandelwal of Guman Group, his family members and his companies out of the Proceeds of Crime generated from Syndicate Bank Fraud and out of the above fund about Rs.103.07 Cr. has been repaid by Shankar Lal Khandelwal of Guman Group, his family members, his companies and more than Rs.128,13,64,438/- is still outstanding. Further, Shankar Lal Khandelwal committed fraud aggregating to Rs.58,22,00,000/- by availing fraudulent housing loans in the name of his associates, employees, family members by showing illicit booking of flats in various projects of Guman Group. That in aggregate Shankar Lal Khandelwal of Guman Group, his family members and his companies are beneficiary of more than Rs.1,86,35,64,438/- which are Proceeds of Crime generated out of Syndicate Bank fraud. Further, Pavitra Kothari, his father Daulat Raj Kothari and his company M/s. G.S. Build Estate Pvt. Ltd. Are beneficiary of Proceeds of Crime to the tune of Rs.14.28 Cr. Himanshu Verma is beneficiary of Proceeds of Crime to the tune of Rs.58.72 Cr. bank officials viz. Santosh Kumar Gupta and Deshraj Meena, their spouses are also beneficiary of Proceeds of Crime.

The amount lying in bank accounts, property purchased, property

owned by Bharat Bomb and his associates; Shankar Lal Khandelwal, his family members, associates, companies; Himanshu Verma & his companies, Pavitra Kothari & his family members; bank officials viz. Santosh Kumar Gupta, Deshraj Meena and their spouses are proceeds of crime or value thereof being derived or obtained as result of criminal activity relating to a schedule offence.

e) The Deputy Director has elaborated in Para 11 of the OC the facts concerning the attached movable and immovable assets under separate captions (i) Land at village Champapura, Patwar – Sarna Chaud, Teh.- Kalwar, Dist. Jaipur registered in the name of M/s. Charlie Tradelink Pvt. Ltd. (ii) Farm House at Khasra No. 204, 205, 206, 207 admeasuring 9600 Sq. Mtrs. At Village-Thikriya, Tehsil-Sanganer, Main Ajmer Road, Jaipur (iii) Unsold stock at projects Guman Eternity Block A and Guman Eternity Block-B of companies M/s. Shreenth Ji Business Venture Pvt. Ltd. And M/s. Sanwariaji Business Venture Pvt. Ltd. Respectively at Shastri Nagar, Subhash Nagar, Jaipur; (iv) Unsold stock at Guman Height, Plot No. 204, Krishna Sagar Colony, Jaipur, Rajasthan (v) Plot No. GH-1 Gokul Nagar, Gokulpura, Kalwar Road Jaipur (vi) Land and Building of Hotel Palak Paradise at Kalwar Road, Delhi Ajmer Express Highway, Jaipur (vii) Various immovable assets of Guman Group led by Shankar Lal Khandelwal (ix) Office of Fourth Floor, Solaris Building D of Urmi Corporate Park, Plot No. C.T.S. No.988(Part), 98C, S.No.46(PT) & 47(PT) of Village Tungwa, Saki Vihar Road, Andheri(E), Mumbai-72 registered in the name of M/s. Sanwariyaji Business Ventures Pvt. Ltd. (x) Land at Village – Parasrampura, Sargot, Ringhas, Tehsil-Shrimandhopur, District – Sikar, Rajasthan (Total Area 1.99 acres) registered in the name of

M/s. Shrikripa Steel Industries LLP (xi) Land at Village-Parasrampura, Sargot, Righas, Tehsil-Shrimadhopur, District – Sikar, Rajasthan registered in the name of M/s. Shrikripa Rolling Mills LLP; (xii) Movable & Immovable properties registered in the name of Santosh Kumar Gupta, Chief Manager, Syndicate Bank (Retired) and his family members (xiii) Movable & Immovable properties registered in the name of Deshraj Meena, Chief Manager (Suspended), Syndicate Bank and his family members (xiv) Immovable properties of Himanshu Verma and his companies (xv) Immovable properties of Pavitra Kothari, Daulatraj Kothari, Priya Kothari (xvi) Vill No. 40, Pafarth City Kalwar Road, Jaipur registered in the name of Mahendra Meghwal and cash of Rs.66,88,400/- seized by CBI from Mahendra Meghwal (xvii) Plot No. A-5, Airport Enclave (Airport Plaze Extension) Tonk Road, Jaipur admeasuring 7276.40 Sq. Mtrs in the name of M/s. A. Gangwal Real Estate LLP (xviii) Proceeds of Crime available in various bank accounts of different firms/persons whose accounts were used by Bharat Bomb in defrauding Syndicate Bank (xix) Proceeds of Crime available in various bank accounts of different firms/persons controlled by Shankar Lal Khandelwal.

f) It is evident that prime facie the Defendants are in possession of the proceeds of crime and/or have committed the offence of money laundering punishable under section 4 of PMLA.

g) The Defendants 1 to 127 named in the OC are required to be heard and called upon to indicate the sources of their income, earning or assets out of which or by means of which he has acquired the property attached under section 5(1) of PMLA.

3. The Appellant has nothing to do and has no connection with the allegation of crime committed by the defendants/respondent no. 2 Bharat Bomb and other persons concerned involved for the offences of money-laundering. The Appellant is not holding any funds of any of the defendant/respondent. The mortgage properties are admittedly not derived from criminal activities or proceed of crime. The scope of the PMLA is to punishing the accused person and not to punish the innocent person who is not involved in the crime within the meaning of Section 2 (v) read with Section 3 of the Act. The appellant is not charge sheeted nor any prosecution complaint has been filed against the appellant. The appellants have also no objection if the borrowers properties which were acquired from proceed of crime be dealt by the respondent in any manner.

4. There is no nexus whatsoever, between the alleged crime and the appellant who is mortgagee of the property and is a victim of the fraud and is innocent party. The definition of proceed of crime as per Section (u) of the Act comprises of the property which is derived or obtained as a result of criminal activities. The mortgaged property is not acquired from proceed of crime.

5. The present appeal relates to property at Sr. No.05 being the plot no. GH-1, Gokul Nagar, Gokul Pura, Kalwar Road, Jaipur (hereinafter called 'said property') description and contentions wherefor have been given by the respondent ED in para 11.05 of para 11 of the complaint OC No. 984/2018.

6. There is no dispute that property situated at Parth City, Phase I, Kalwar Road, Jaipur being Group Housing Plot measuring 11502 sq yards has been mortgaged with the Appellant to the extent of Rs 10.25

Crores by the ED whereas the Circle Rate / DLC rate of the said property is Rs. 15.72 Crores.

7. The case of the appellant is that the value of the said property is Rs. 15,45,38,573/- (Rupees Fifteen Crore Forty Five Lakh Thirty Eight Thousand Five Hundred Seventy Three only) and the said property was wrongly attached provisionally vide POA dated 16.05.2018 and the confirmation order was incorrectly passed by the Adjudicating Authority.

8. Admitted Case of the parties on record is that:

a) Appellant is a Financial Institution established under the State Financial Corporation Act 1951 ('SFC Act' for short) and is a state of Rajasthan undertaking.

b) The Appellant granted a loan of Rs.772.00 Lakh to M/s. Guman Builders & Developers (P) Ltd., Respondent No.50 herein ('Borrower' for short) for purchase of the said property from Jaipur Development Authority ('JDA' for short). The loan was granted on a margin of 50% after duly verifying everything from JDA regarding title ,payment etc. and further the amount of loan was directly paid to JDA and not given in the hands of the borrower. The said loan has been secured by equitable mortgage of the said property in favour of the appellant by deposit of original title deeds of the said property. The loan was sanctioned vide sanction letter dated 18.11.2014, Loan agreement dated 26.11.2014 alongwith all the necessary documents were duly executed and equitable mortgage by deposit of title deeds created on 26.11.2014. The charge was duly got created & registered by the appellant with the Registrar of Companies. The amount of loan of Rs. 772.00 Lakh was duly

disbursed directly to JDA on 26.11.2014 (*kindly see Page 285-287 Vol.-III part-A*) and after registration of the documents by JDA in favour of the borrower, the original title deeds were duly deposited with the appellant confirming creation of equitable mortgage by deposit of original title deeds.

c) That the original title documents of the said property are with the appellant deposited by way of equitable mortgage till today. The said property is mortgaged to the appellant on 26.11.2014.

d) That the borrower failed to make the payment of the installments regularly and consequently borrower became NPA and appellant served a legal notice dated 28.06.2016 recalling the loan followed by notice dated 20.07.2016 under Section 30 of the SFC Act. Borrower failed to repay the loan despite the notices, therefore the possession of the said property mortgaged to the appellant was taken over on 28.11.2016 by the appellant in exercise of powers conferred under section 29 of SFC's Act 1951.

e) The possession of the said property is with the appellant since 28.11.2016 till today.

f) That the provisional attachment order (PAO) was issued on 16.15.2018 (*see page 349 vol.-III Part-B*). The complaint OC-984/2018 was filed only on or about 12.06.2018 and served on the appellant only on 24.05.2018.

g) The appellant is not an accused. The appellant has been made a party only because it is a financial institution who has granted loan and the said property has been mortgaged by the borrower

with the appellant and the appellant is in possession of the said property having taken over the same for recovery of its dues in exercise of powers conferred under SFC's Act.

9. All the supporting documents are placed on record.

10. The only allegation made with respect to the said property is in para 11.05 of the OC while admitting that appellant is the secured creditor mortgagee of the said property is that a sum of Rs. One Crore was paid by the borrower to JDA on 20.11.2014 from its account after receiving the same from an alleged impugned account. The appellant filed its reply to OC denying allegations regarding attachment and stated its case. ED filed its rejoinder wherein it admitted that the appellant is a financial institution and is the mortgagee in possession of the said property against the loan granted to the borrower which loan the borrower has failed to repay and the which appellant is entitled to recover the same from the said property.

11. It is argued on behalf of the appellant that the present case is squarely covered by the recent judgment of the Hon'ble Delhi High Court in Directorate of Enforcement vs. Axis Bank & Ors. reported in 2019 SCC Delhi 7854 dated 2.4.2019 , wherein, it has been observed as under:

“163. Having regard to the above scheme of the law in PMLA, it is clear that if a bonafide third party claimant had acquired interest in the property which is being subjected to attachment at a time anterior to the commission of the criminal activity, the product whereof is suspected as proceeds of crime, the acquisition of such interest in such property (otherwise assumably untainted) by such third party cannot conceivably be on account of intent to defeat or frustrate this law. In this view, it can be concluded that the date or period of the commission of criminal activity which is the basis of such action under PMLA can be safely treated as the cut-off. From this, it naturally follows that an interest in the property of an accused, vesting in a third party acting bona fide, for lawful and

adequate consideration, acquired prior to the commission of the proscribed offence evincing illicit pecuniary benefit to the former, cannot be defeated or frustrated by attachment of such property to such extent by enforcement authority in exercise of its power under Section 8 PMLA.

165. Situation may also arise, as seems to be the factual matrix of some of the cases at hand, wherein a secured creditor, it being a bonafide third party claimant vis-a-vis the alternative attachable property (or deemed tainted property) has initiated action in accordance with law **for enforcement of such interest prior to the order of attachment under PMLA**, the initiation of the latter action unwittingly having the effect of frustrating the former. Since both actions are in accord with law, in order to co-exist and be in harmony with each other, following the preceding prescription, it would be appropriate that the **PMLA attachment, though remaining valid and operative, takes a back-seat allowing the secured creditor bonafide third party claimant to enforce its claim by disposal of the subject property, the remainder of its value, if any, thereafter to be made available for purposes of PMLA.**”

12. The Hon’ble High Court of Delhi has held that the interest of a third party in the property of an accused, acquired prior to the commission of the proscribed offence cannot be defeated or frustrated by attachment of such property U/s 8 of the Act. The Hon’ble High Court further recognized the right of such third party to proceed with enforcement of its interest in accordance with law such that while the order of attachment under the Act would not be rendered irrelevant, yet it would take a backseat such that the State action would be restricted to such part of the value of the property as exceeds the claim of the third party, *if any*.

13. Pertaining to jurisdiction of this appellate tribunal, it is clear that in terms with the statutory safeguards incorporated in the Act, any party aggrieved by the confirmation of the Provisional Attachment Order by the Adjudicating Authority may challenge such confirmation in an appeal to this Hon'ble Tribunal U/s 26 of the Act and then before the Hon'ble High Court U/s 42 of the Act against the order of this Tribunal. Accordingly, under the legislative and statutory scheme of the Act, unless a party has exhausted its remedies in appeal right up to the Hon'ble High Court, an order confirming the attachment cannot be said to have attained finality. This Tribunal is only concerned with the validity of the impugned order and provisional attachment order which has been confirmed.

14. Therefore, this Tribunal possesses the requisite jurisdiction in terms with the Act as the court of first appeal, to adjudicate upon the pleas of the Appellant and determine the bonafides and legitimacy of its claims as well as the legality of the Provisional Attachment Order. Upon an argument being raised by the Enforcement Directorate that claims of third parties are to be solely adjudicated by the Special Court before whom trial is pending.

15. The Hon'ble High Court of Delhi in the *Axis Bank Decision* has held that the claim of a party asserting a bonafide and legitimate claim would be inquired into by the Special Court only if the order confirming the attachment "has attained finality". An order cannot be said to have attained finality until and unless all the remedies under the Act have been exhausted. No doubt, the bank and financial institutions are always at liberty to approach the Special Court (if so desired) in order to invoke the amended provision of sub section 8 of Section 8, however, it is wrong

to suggest that the bank and financial institutions are not entitled to challenge the order of attachment because this tribunal is only exclusively having jurisdiction to examine the validity of attachment and to decide the same under section 26 of the Act as to whether attachment was valid or not. The bank and financial institution are entitled to take the remedy before the Special Court after the decision of appeal or during the pendency of appeals.

16. The main findings of the Hon'ble High Court of Delhi in which the exceptions are created, are as follows:-

(i) Date of Commission of offence of Money Laundering under PMLA is the "cut off" date and if the Bank has mortgage / charge over the properties prior to the commission of offence under PMLA then it is a Bonafide Claimant and its Statutory rights can't be defeated under Section 8 of PMLA, 2002.

(ii) Priority of Bonafide Claimants / Secured Creditors will have their dues realized first from the sale of such attached immovable assets and if any balance is left out then the balance amount shall go to the ED on the premise that the said properties will continue to remain attached with the ED under PMLA on the ground of value thereof.

(iii) Prior mortgage charge of secured creditors must be registered qua the mortgaged immovable properties only then Bank's statutory rights under Section 13 of the SARFAESI, Act are protected.

(iv) SARFAESI, action initiated prior to the commission of offence of Money Laundering under PMLA would remain valid and interest of secured creditors will remain protected.

17. If paras 167 to 169 of Hon'ble High Court's Judgment are read co-jointly with para-163 and 165, it is clear from the same that if the attachment has attained finality or if order of confiscation has been passed, the claim and legitimate interest will have to be inquired by the Special Court. The said findings are correct if the situation as in the present case appears are the same. In the present case, attachment has not attained finality or any confiscation has been passed or any trial has commenced under the Section-4 of PMLA against the appellants. In fact, appellants are innocent parties. They are victim. The trial against accused parties may take number of years. Their case is squarely covered under para-163 and 165 of the judgement.

18. From the facts of the present, it is evident that legal issues of the Appellant case are similar to the judgement rendered by Hon'ble Delhi High Court as (a) The Appellant is not an accused and is *bona fide* third party to the transactions complained of by the ED; (b) The Appellant disbursed a loan in accordance with law to the Respondents Accused and created a mortgage over the Secured Property *prior to* the commission of the Scheduled Offence in respect of the Secured Property; and (c) The Appellant commenced the proceedings under SARFAESI Act against the Secured Property *prior to* its provisional attachment. (d) The said property was not acquired from the proceed of crime.

19. The appellant is always at liberty to approach the Special Court to initiate the proceeding for disposal of mortgaged property, if so desired, who is agreeable to deposit the excess amount if such situation will arise. Counsel for appellants after taking the instructions from his clients stated that his clients are duty bound to deposit the excess amount with the respondent.

20. The Appellant has already initiated recovery proceedings under the SARFAESI and RDDBFI Act and insolvency proceedings under the I&B Code for enforcement of its interest. S. 13 SARFAESI allows secured creditors to enforce security. The possession is already with the appellant.

21. In the light of above, the impugned order is set-aside with regard to attachment of properties mortgaged with the appellant. The rest of the attachment shall continue.

22. No costs.

(Justice Manmohan Singh)
Chairman

(G.C. Mishra)
Member

New Delhi,
27th June, 2019
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