



**IN THE COURT OF SPECIAL JUDGE FOR C.B.I.
FOR GREATER BOMBAY AT MUMBAI**

P.M.L.A. SPECIAL CASE NO. 5 OF 2018
(under the Prevention of Money Laundering Act, 2002)

IN THE MATTER OF :

DEPUTY DIRECTOR,
DIRECTORATE OF ENFORCEMENT & OTHERS .. Complainant

V/s.

M/S. KINGFISHER AIRLINES LIMITED AND
OTHERS .. Respondents

APPLICANTS

1. STATE BANK OF INDIA,
Having its Corporate Centre at
State Bank Bhavan, Madame Cama Road,
Nariman Point, Mumbai-400 021.
And having its Industrial Finance Branch
at 61, Residency Plaza, Residency Road,
Bengaluru-580 025.
2. BANK OF BARODA,
Having its Head Office at Baroda House,
P.B. No. 506, Mandavi, Vadodara-396 006.
Acting through its Branch Office at
P.O. Box 11745, Samata Building,
General Bhosale Marg, Nariman Point,
Mumbai-400 021.

3. CORPORATION BANK,
Having its Corporate Office at
Mangaladevi Temple Road,
Pandeshwar, Mangalore-575 001.
And having its Industrial Finance
Branch at Rallaram Memorial Bldg.,
1st Floor, CSI Compound, Mission Road,
Bengaluru-560 027.
4. THE FEDERAL BANK LIMITED,
Having its Registered Office at Federal
Towers, Aluva-683 101, Kerala.
And having its Branch Office at
St. Marks Road, 9, Halcyon Complex,
St. Marks Road, Bangalore-560 001.
5. IDBI BANK LIMITED,
Having its Head Office at IDBI Tower,
WTC Complex, Cuffe Parade,
Mumbai-400 005, Maharashtra, India.
And acting through its Branch Office at
Corporate Banking Group-FAMG,
9th Floor, IDBI Tower, WTC Complex,
Cuffe Parade, Colaba, Mumbai-400 005.
6. INDIAN OVERSEAS BANK,
Having its Central Office at 763,
Anna Salai, Chennai-600 002.
And its Branch Office at 'Harikripa',
26-A, S.V. Road, Santacruz (W),
Mumbai-400 054.
7. JAMMU & KASHMIR BANK LIMITED,
Having its Registered Office at
Corporate Headquarter,
Maulana Azad Road, Srinagar,
Kashmir-190 001.
And its Branch Office at Syed House,
124, S.V. Savarkar Marg, Mahim (West),
Mumbai-400 016.

8. PUNJAB & SIND BANK,
Having its Head Office at 21,
Rajendra Place, New Delhi-110 008.
And having amongst others,
a Branch Office at J.K. Somani Building,
British Hotel Lane, Fort, Mumbai-400 023.
9. PUNJAB NATIONAL BANK,
Having its Head Office at 7,
Bhikaji Cama Place, New Delhi-110 607.
Acting through its Large Corporate Branch
at Centenary Building, 28, M.G. Road,
Bengaluru-560 001.
10. UCO BANK,
Having its Head Office at 10,
BTM Sarani, Kolkata-700 001,
West Bengal, India.
And its Branch Office at 1st Floor,
13/22, K.G. Road, Bengaluru-560 009.
11. UNITED BANK OF INDIA,
Having its Head Office at 11,
Hemanta Basu Sarani, Kolkata-700 001.
Acting through its Branch Office at
40, K.G. Road, Bengaluru-560 009.
12. JM FINANCIAL ASSET RECONSTRUCTION
CO. PVT. LTD., Having its Registered
Office at 7th Floor, Cnergy, Appasaheb
Marathe Marg, Prabhadevi,
Mumbai-400 025.

Applicant Nos. 2 to 12 are represented
by Mr. C. Vidyashankara, Assistant General
Manager & Case Lead Office of the
Applicant no. 1.

CORAM : H.H. THE SPECIAL JUDGE,
SHRI. JAYENDRA C. JAGDALE,
(C. R. No. 51).

DATED : 24th May, 2021.

Mr. S. D. Gonsalves, Ld. S.P.P. for the Enforcement Directorate.
Mr. Singh, Enforcement Officer for the Enforcement Directorate.

Sr. Counsel Mr. H.H. Ponda a/w Ld. Adv. Ms. Roshni Naik I/b DUA Associates for State Bank of India.

Mr. Heineken NV, Ld. Advocate for HDFC.

Mr. Ramsingh Rajput for Agrud Pvt., Ld. Advocate for LKP Finance.

Ms. Dimple Shah a/w Mr. Ajay Hailkar i/b Bachubhai Munim and Co. Ld. Adv. for M/s. DEVI Investment Pvt. Ltd., GEM Investment and Trading Co. Pvt. Ltd., KAMSCO Industries Pvt. Ltd., Mallya Pvt. Ltd., PHARMA Trading Co. Pvt. Ltd., VITTAL Investments Pvt. Ltd. and M/s. Mandwa Farms Pvt. Ltd.

Mr. Vivid Tandon @ Mr. Prakashal Jain I/b Trilegal Ld. Advocate for the Intervenor.

Mr. Satish Manshinde I/b Bharucha and Partners for Diageo Holding Netherlands B.V. (Intervenor).

Mr. Faizan Mithaiwala I/b P and A Law Offices Ld. Advocate for Intervenor United Spirits Ltd.

Ms. Jennifer Sanjana I/b Zerick Dastur Advocates and Solicitor for Official Liquidator for UBHL.

Ms. Palak Agrawal I/b Zerick Dastoor Advocates and Solicitors, Ld. Advocate for Official Liquidator of Hon'ble Karnataka High Court for UBHL.

Ms. Rashmin Jain I/b Kanga and Co. for accused Dr. Vijay Mallya.

Ms. Kajal Sarvaiya h/f. Ms. Rita Yadav, Ld. Advocate for the Official Liquidator for M/s. Kingfisher Airlines Limited.

Ms. Shikha Jain for M/s. APEX Law Partners, Ld. Advocate for Notice No. 20 ECL.

ORAL ORDER BELOW EX-5

This is an application placed on record by the Intervenor, consortium of Banks, headed by the State Bank of India (SBI) u/sec. 8(8) of the Prevention of Money Laundering Act, 2002. The original FIR was lodged by the Assistant General Manager and Lead Officer, SBI,

Stressed Assets Management Branch, Bengaluru, whereby it has been alleged that M/s. Kingfisher Airlines Limited, its Directors along with Dr. Vijay Mallya, loan guarantors and others have dishonestly/fraudulently acted and thereby cheated SBI along with other members of consortium of Banks to the tune of Rs. 6000 crores. The said FIR bearing no. RC-8(E)/2016-BS & FC was lodged under scheduled offences. On 19/08/2016, Enforcement Directorate has registered a case bearing no. ECR/0-7/MBZO/2016 against M/s. Kingfisher Airlines Limited, Dr. Vijay Mallya, UBHL and other suspected persons. The present PMLA Special Case No. 5/2018 is the outcome of case registered by Enforcement Directorate.

The background of case :-

The Directorate of Enforcement has filed a complaint under Prevention of Money Laundering Act, 2002 against Dr. Vijay Vittal Mallya, M/s. Kingfisher Airlines Limited & M/s. United Breweries (Holdings) Limited through Dr. Vijay Vittal Mallya, Shri. A. Raghunathan (Chief Financial Officer of M/s. Kingfisher Airlines Limited) and other directors & officers of IDBI Bank Limited (now retired), wherein the Directorate of Enforcement alleged that the above mentioned accused participated in the criminal activities, which lead to the generation and acquisition of the amount to the tune of hundreds of crores. All the accused knowingly and intentionally had participated in assisting the activities of money laundering as defined u/sec. 3 of the Prevention of Money Laundering Act, 2002 and thereby liable for the offence punishable u/sec. 4 of said Act. The prosecution has prayed for the order of confiscation of all the property of accused Dr. Vijay Mallya, as described in the complaint, to the Central Government along with any other appropriate order.

Heard arguments advanced by Ld. Advocate for the Applicants Banks, Ld. SPP for the Enforcement Directorate and Ld. Advocate for the Respondents. The Ld. Advocate for Applicants Banks has reiterated the contents of application. The prosecution has strongly objected to grant prayer in the application. It has filed reply on the application. I have perused the application and documents produced on behalf of the Applicants Banks. I have also perused the reply filed by the prosecution on record.

After registration of the case by Enforcement Directorate, the Deputy Director, Mumbai Zonal Office, has provisionally attached various properties of Dr. Vijay Mallya, UBHL and other concerned companies, vide order dated 11/06/2016. This preliminary order was confirmed by the Adjudicating Authority vide order dated 22/06/2017 vide OC No. 639/2016.

The following properties were attached by competent authorities. For the sake of convenience, the said properties can be divided into two-three categories viz. 1) Immovable Properties and Bank Deposits, 2) Unpledged Shares and 3) Pledged Shares.

TABLE-A

Immovable and Bank Deposits

SI. No.	Description of the property	In the name of	Value
1.	Under construction flat in Kingfisher Tower, Vittal Mallya Road, Bangalore adm. 245327 sq.ft.	United Breweries (Holdings) Ltd.	Rs. 564.25 crores
2.	Fixed deposit in A/c. No. BL 912275 with HDFC Ltd., Bangalore	Dr. Vijay Mallya	Rs. 5.00 crores along with interest amount
3.	Fixed deposit in A/c. No. BL 912282 with HDFC Ltd., Bangalore.	Dr. Vijay Mallya	Rs. 5.00 crores along with interest.

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Order Below Application at Ex-5

4.	Land parcel along with built in house (Farm House) at Mandwa, Alibaug	Mandwa Farms Pvt. Ltd.	Rs. 24.92 crores (approx.)
Total			Rs. 599.17 Crores

TABLE-B**Present market value of Rs. 725 crores (approx.)****Unpledged Shares**

SI. No.	Name of Holder	Shares description	Quantity	Rate (As on 21.12.10)	Amount (INR)	Total Holding Value (INR)	Client ID	DP Name
1.	Devi Investment Pvt. Ltd.	USL	2700	1470.25	3969675	89,68,98,500.00	24902586	HDFC Bank Ltd.
		UBL	1859300	480.25	892928825			
2.	Kingfisher Finvest	Mcdowell	1856707	133.65	248148890.6	27,31,43,140.55	21882044	HDFC Bank Ltd.
		USL	117000	1470.25	24994250			
	Kingfisher Finvest	Mcdowell	171000	133.65	22854150	8,33,99,045.00	20497743	HDFC Bank Ltd.
		USL	41180	1470.25	60544895			
3.	Mallya Private Limited	McDowell	201	133.65	26863.65	4,70,15,50,811.40	24885173	HDFC Bank Ltd.
		UBL	9786666	480.25	4700046347			
		USL	1005	1470.25	1477601.25			
4.	Pharma Trading Company	UBL	1454756	480.25	698646569	698646569	24885180	HDFC Bank Ltd.
	Pharma Trading Company	UBL	58990	480.25	28329947.5	2,83,29,947.5	10676889	IF & FS Securities Services Ltd.
5.	Dr. Vijay Mallya	USL	12500	1470.25	18378125	18378125	24861731	HDFC Bank Ltd.
		UBL	253333	480.25	121663173.3	121663173.3	33866219	HDFC Bank Ltd.

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Order Below Application at Ex-5

	Dr. Vijay Mallya	UBL	149333	480.25	71717173.25	7,17,32,143.00	33866227	HDFC Bank Ltd.
		McDowell	2	133.65	267.3			
		USL	10	1470.25	14702.5			
6.	Vittal Investment Private Ltd.	UBL	375955	480.25	180552388.8	180552388.8	24916278	HDFC Bank Ltd.
7.	United Breweries (Holding) Ltd.	UBL	56000	480.25	26894000	2,68,94,000.00	20020507	ICICI Bank Ltd.
	United Breweries (Holding) Ltd.	UBL	19487911	480.25	9359069258	12,82,31,25,853.50	40714802	ICICI Bank Ltd.
		McDowell	172452	133.65	23048209.8			
		USL	2340424	1470.25	3441008386			
8.	Kamso Industries	UBL	2249636	480.25	1080387689	1080387689	24886842	HDFC Bank Ltd.
9.	The Gem Investment And Trading	UBL	4215132	480.25	2072342143	2072342143	24885198	HDFC Bank Ltd.
		Total				2307.7 Crore		

TABLE-C**Pledged Shares**

Sr. No.	Name of Holder	Shares of	Quantities	Rate (as on 21.12.10)	Amount (INRs)	Name of the Institutions	Loan Outstanding	Client ID	DP Name
							(Rs. In Crore)		
1.	United Breweries (Holding) Limited	USL	976741	1470.3	143,60,53,455	ECL Finance Ltd.	0.67	40714802	HDFC Bank Ltd.
2.	Kamso	UBL	2321460	480.25	111,48,81,165	ECL Finance		24886842	HDFC

	Industries					Ltd.			Bank Ltd.
3.	Dr. Vijay Mallya	UBL	10486666	480.25	503,62,21,347	UTI Investment Advisory Services Ltd.	Nil	20016170	ICICI Bank Ltd.
	Dr. Vijay Mallya	UBL	10464288	480.25	502,54,74,312	UTI Investment Advisory Services Ltd.		20016189	ICICI Bank Ltd.
4.	United Breweries (Holdings) Limited	UBL	1389068	480.25	66,71,00,000	Yes Bank Ltd.	195*	10050398	Yes Bank Ltd.
			Total Value		1327.97 crore				

In the meantime, the Applicants Banks had started DRT proceedings. The Applicants Banks have filed OA No. 766/2013 before the Debt Recovery Tribunal, Bengaluru against M/s. Kingfisher Airlines Limited, UBHL, Dr. Vijay Mallya and M/s. Finvest India Limited, thereby the Banks (present Applicants) had prayed for recovery of sum of Rs. 6203,35,03,879.42. The said claim was allowed by DRT vide order dated 19/01/2017. According to the said order, UBHL, M/s. Kingfisher Airlines Limited, Dr. Vijay Mallya and KFIL companies are held jointly and severally liable to pay the Applicants Banks the claim amount with interest @ 11.5% with yearly rest.

Against the above mentioned DRT order dated 19/01/2017, UBHL Management has filed an Appeal bearing A.I.R. No. 613/2017 before Debt Recovery Appellate Tribunal, Chennai. The said State Appellate Tribunal dismissed the Appeal. Thereafter the Management of UBHL has filed a Writ Petition bearing no. 22891/2018, thereby challenging the order of dismissal of its Appeal. The Hon'ble

Karnataka High Court has dismissed the said Writ Petition vide order dated 08/11/2019. In the meantime, DRT issued Recovery Certificate on the basis of final order dated 19/01/2017.

The UBHL has filed SLP Civil Diary No. 4509/2020 before the Hon'ble Supreme Court. The Hon'ble Supreme Court of India dismissed the said SLP vide order dated 16/07/2020. Similarly, Dr. Vijay Mallya has filed an Appeal bearing A.I.R. No. 605/2017 and company M/s. Kingfisher Airlines Limited has filed an Appeal bearing A.I.R. No. 594/2017 before the Debt Recovery Appellate Tribunal thereby challenging the abovementioned order dated 19/01/2017. The Appeal filed by Dr. Vijay Mallya was dismissed by the Appellate Tribunal. Writ Petition No. 22111/2018 and Writ Petition No. 19205/2018 were dismissed by the Hon'ble Karnataka High Court vide order dated 05/10/2018.

On the basis of above contentions, the intervenor consortium of Bank has prayed to the Court that the said Banks are entitled to have a possession of properties mentioned above and this Court may release the properties so as to enable to Recovery Officer, who has already attached the said properties and has exclusive jurisdiction to proceed for recovery proceedings.

Reply of Official Liquidator :-

Official Liquidator of M/s. United Breweries Holding Limited (UBHL) has filed an affidavit in reply dated 04/03/2019. The factual aspect presented by the Official Liquidator discloses that the Hon'ble Karnataka High Court has passed an order dated 07/02/2017, whereby the Hon'ble Karnataka High Court has directed winding up of

assets and properties of UBHL under the provisions of section 449 of the Companies Act, 1956. Thereby the Hon'ble Karnataka High Court has recognized that the Official Liquidator is the custodian of interest of secured and unsecured creditors and act as an agent of UBHL's assets. UBHL has preferred an Appeal against the same order, but it was dismissed by the Hon'ble High Court vide order dated 06/03/2020. Then UBHL has filed a Special Leave Petition before the Hon'ble Supreme Court of India, challenging the Appeal order dated 06/03/2020. The Supreme Court of India has dismissed the Special Leave Petition vide its order dated 26/10/2020, whereby the order for winding up of UBHL as well as the appointment of Official Liquidator has become final.

On the basis of abovementioned factual aspects, the Official Liquidator has prayed that it is entitled to restoration of assets and properties of UBHL in terms of section 8(7) of the Prevention of Money Laundering Act, 2002, as he is the sole custodian of interest of the secured and unsecured creditors of UBHL.

Reply of Respondents :-

The Respondents filed their reply to the application placed by the present Applicants SBI and others. Herein I would like to refer, briefly, the common important points raised by the Respondents and other intervenors. The first important point raised on behalf of the Respondents is that the application is not maintainable. Secondly, the important objection raised by the Respondents that this Court is lacking the requisite jurisdictional facts to assume jurisdiction of the present case. Thirdly, Directorate of Enforcement, being a prosecutor agency, has to confirm on note that it has relinquished its right of confiscation

of the properties/assets and consents to the purported release of assets in favour of present Applicants Banks.

The Ld. Counsel of Respondents has advanced an argument that the scope u/sec. 8(8) of the Prevention of Money Laundering Act, 2002 is quite limited. The said section comes into play only at the time of execution and execution is required to be done as per procedure of law. The Ld. Counsel has also emphasized that the property is not involved in money laundering act, therefore this application is premature. The Banks can not ask for sale of properties and the Court can not handover the said properties. It is also clear that the said properties are not proceeds of crime. The said properties were acquired many years ago. The Ld. Counsel has also pointed out the Doctrine of “alter ego” is not applicable to this issue.

Discussion of rival contentions and conclusion :-

At the outset, I would like to specify the provisions u/sec. 8(8) of the Prevention of Money Laundering Act, 2002 in its verbatim.

“Where a property stands confiscated to the central Government under sub-section (5), the Special Court in such a manner as may be prescribed, may also direct the Central Government to restore such a 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 a 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 purpose of restoration of such

properties during the trial of case in such a manner as may be prescribed.

The arguments advanced by both the sides propose to be discussed within the scope of said section. The Ld. Counsel of Respondents has further advanced an argument that section 8(8) of the Prevention of Money Laundering Act, 2002 provides that the Special Court may direct the Central Government to restore such confiscated property or part thereof of the claimant, who has legitimate interest in the property and who may have suffered a quantifiable loss as a result of the offence of money laundering “**in such a manner as may be prescribed**”. It means that the Court shall not consider a claimant's claim, under the said section, unless the claimant satisfies the Court that he has acted in good faith and has suffered losses despite having taken all reasonable precautions. Moreover, the claimant should not have been involved in the offence of money laundering. Meaning thereby the Court can not consider the plea of restoration of properties by the claimant unless and until the claimant proves all the above mentioned conditions.

It is further argued on behalf of the Respondents that no Special Court can pass an order as per Rule 3A(2) of the Prevention of Money Laundering (Restoration of Property) Rules, 2016, without giving the owner of property is or in the event of his death, the legal representative of such person or official assignee or official receiver as the case may be an opportunity of being heard. Moreover, the other creditors, who are also victims of money laundering must also be given the property in accordance with the manner as prescribed in Rule 3(2) of the Restoration Rules. The Special Court can not give priority of

preference to one creditor over the others.

Ld. Counsel of the Respondents/accused has vehemently argued that they have already challenged the order of Appellate Tribunal under the Prevention of Money Laundering Act, 2002 including Appeal Nos. 2538/2018, 2539/2018 & 1768/2017, whereby they have challenged the order of attachment of said properties. The said Appeals are still pending. Even the orders dated 01/12/2016 & 22/02/2017 passed by the Adjudicating Authority u/sec. 8(3) of the Prevention of Money Laundering Act, 2002 are also challenged by them. Until the said Appeals get decided, no action can be taken by this Court.

Lastly, it has been argued on behalf of the Respondents that Dr. Vijay Mallya has given only a personal guarantee. Merely giving of a personal guarantee, does not connect Dr. Vijay Mallya in any way with the offence of money laundering or the proceeds of crime. There is nothing to suggest that Dr. Vijay Mallya concealed, in possession, acquired or used proceeds of crime and projected it or claimed to be untainted property so as to invoke the ingredients of money laundering as per section 3 of the Prevention of Money Laundering Act, 2002. The loan obtained from consortium of Banks was used for completely legitimate purposes. The details of foreign payment out of disbursement of loan taken from consortium of Banks were also provided, which shows that the entire amount from consortium of Banks was disbursed towards lease rentals, maintenance services, repair services, engineering vendors of the aircrafts. It is also submitted on behalf of the Respondents that the Applicants Banks are stating that Dr. Vijay Mallya is not coming back to India. On this ground only the Special Court is required to refuse the claim of

Applicants Banks.

At present this Court is not required to finally decide criminal liability of the accused persons. However, prima-facie, it has come on record about falsification of accounts of M/s. Kingfisher Airlines Limited. It is needless to mention that Dr. Vijay Malya had full control and command over M/s. Kingfisher Airlines Limited. The said company M/s. Kingfisher Airlines Limited did not have actual off-shore operations. But, allegedly the accounts of said company indicates expenditure of fuel for Aircrafts Operating Off-shore. Similarly, during year 2009 to 2011, M/s. Kingfisher Airlines Limited was virtually defaulter. However, despite of said poor financial conditions, the same company had transferred loan amount, which was received from the Applicants Banks to Force India Formula No. 1 Racing Team. The transferred amount was shown as payments for operating expenses in relation to Flight Operations. But, the said amount was actually transferred to Axis Bank and thereafter to HSBC London, United Kingdom for Force India. It is needless to mention that both KFA & Force India Formula No. 1, companies were under the command and control of Dr. Vijay Mallya. Prima-facie, this is falsification of accounts and misappropriation of funds.

As far as the possibility of coming back of Dr. Vijay Mallya to India is concerned, its legal process is going on. However, it is surprising to note that the legal team of Dr. Vijay Mallya agitating and demanding from Enforcement Directorate an information as to when Dr. Vijay Mallya is coming to India. In fact, the said legal team is required to take instructions from their client Dr. Vijay Mallya as to when he is submitting himself to the Judicial System of India.

Ironically, the absconding accused himself asking the Court to get confirmation from the Investigating Agencies as to when they would secure the custody of accused himself. Dr. Vijay Mallya should come with clean hands.

One Diageo Holdings Netherlands B.V. (in short DHN) approached the Court as an Interested Party and pleaded that the DHN provided Back Stop Guarantee dated 05/08/2013 to the Standard Chartered Bank (SCB) on behalf of Dr. Vijay Mallya's Watson Limited Company. Subsequently, Watson Limited defaulted in repayment of the SCB Loan and as per agreement, DHN repaid the outstanding amount to SCB and therefore, stood subrogated to all rights of SCB over the Pledged Shares. In order to counter the said submissions, the Ld. Counsel of Applicants Banks has categorically stated that the said DHN company belongs to Dr. Vijay Mallya only. In this respect, it is important to note that the said DHN company neither explained nor disclosed as to who are the real owners of that company. They have not specifically asserted about control over the said company. Apparently, the said assertion of "Back Stop Guarantee Agreement" is dubious transaction and possibility can not be ruled out that said DHN company is a shell dummy company of Dr. Vijay Mallya. Hence, the submissions made by DHN is not acceptable. It is also important to note that Dr. Vijay Mallya concealed the information from the Applicants Banks about the so-called settlement that he entered with DHN company and money received thereof. Prima-facie, this transaction fortify Applicants Banks' claim against Dr. Vijay Mallya.

As far as objections about jurisdiction & maintainability are concerned, Section 8(8) of the Prevention of Money Laundering Act,

2002 renders sufficient jurisdiction to this Court to deal with attached properties. Therefore, there is no substance in the argument that the present application Ex-5 is without jurisdiction. Similarly, all other third party intervention applications can not be looked into, as they have to approach proper forum i.e. DRT etc. to claim relief, if any. Prosecuting Agency (Directorate of Enforcement) Confirmed on oath that it is relinquishing its rights of confiscation of the properties. The Prosecuting Agency does not have any objection of restoration of properties to Recovery Officer of DRT. Therefore, there is no impediment in passing order in favour of the Applicants Banks.

It has to be remembered that the present application placed on record by the Applicants Banks (claimants) on the basis of Proviso, which was inserted by the Act 13 of 2018 (w.e.f. 19/04/2018). In the light of said Proviso and arguments advanced by the Ld. Counsel, it is material to note that the claimants are Public Sector Banks and these Banks are dealing with the public money. There can not be any personal or private interest of said claimants to pursue such claim against the present Respondents and accused. Therefore, one can safely conclude that it has been done in "Good Faith". As far as "Quantifiable Loss" is concerned, it is apparent on the face of record that the claimants/Applicants Banks have suffered losses. Though, one can prima-facie conclude, at this stage, exact "quantifiable loss", but there can not be two opinions that due to this transaction the Applicants Banks have suffered huge losses. The claim of Applicants Banks of Rs. 6203,35,03,879.42 is not imaginary. Even the accused Dr. Vijay Mallya himself placed a proposal for replacement of due amount. Had really there was no loss to the Applicants Banks, then, why Dr. Vijay Mallya is ready to repay the loss. Thus, the Applicants Banks have proved

“Quantifiable Loss”. The Proviso also specify that restoration of such properties may be done in such a manner as may be prescribed. The definition of “prescribed” is given in Section 2(1) of the Prevention of Money Laundering Act, 2002, wherein the provision spells out that “prescribed” means prescribed by Rules made under the Prevention of Money Laundering Act, 2002. The relevant Rules are prescribed under Rule 3-A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016. The said rules divides into three sub-rules. The sub-rule(1) is not applicable in present context, as it is applicable in cases wherein “Charge” u/sec. 4 of the Act has already been framed. However, sub-rule 2 of Rule 3-A is absolutely applicable in the present context. For purpose of clarity, I would like to reproduce the same in its verbatim.

“Rule 3-A(2) : When the property referred to in sub-rule (1) is **insufficient** to meet the loss suffered by the claimant as a result of the offence of money laundering, the Special Court, as it thinks fit, may pass an order of restoration of property directing the Central Government, if necessary, to auction such property and disburse on a pro-rata basis in accordance with the share of loss suffered by each claimant and may give custody thereof to such claimant on his executing a bond undertaking to produce such restored property before the Special Court as and when required for the purposes of sub-section (5) or sub-section (6) or sub-section (7) of Section 8 of the Act.”

Perusal of abovementioned Rule clearly indicates that if property attached under the Prevention of Money Laundering Act, 2002 is **insufficient** to meet the losses suffered by the claimants, then the Special Court may pass an order of restoration of attached property. In the case in hand, the amount of quantifiable loss is about Rs. 6203 crores. However, the valuation of properties mentioned under Tables A,

B & C are at about Rs. 599.17 crores, Rs. 23077 crores & Rs. 1327 crores respectively (It has been graphically mentioned in the earlier part of the order). Apparently, the properties are **insufficient** to meet the loss suffered by the claimants (Applicants Banks). Therefore, one can conclude that the said properties can be restored to the Applicants Banks on their executing bond undertaking to produce restored properties before this Special Court as and when required for the purposes of sub-section (5) or sub-section (6) or sub-section (7) of Section 8 of the Prevention of Money Laundering Act, 2002.

In order to support the claim regarding preliminary issue, the Ld. Counsel for accused Dr. Vijay Mallya has placed reliance upon the observations of Hon'ble Supreme Court in the case of **Krishan Chander vs. Ram Lal [(1973)2 SCC 759]**, wherein the Hon'ble Lordships have held that the Hon'ble High Court ought to have decided as to whether requirements of Section 82 are complied with or not. Apparently, the said observations are in respect of different law and in different context. It has nothing to do with the provisions of the Prevention of Money Laundering Act, 2002. Hence, with due respect, I submit that the said citation is not helpful to the accused Dr. Vijay Mallya.

Similarly, in the case of **Management of Express Newspaper (P) Ltd. vs. Workers [(1963)3 SCR 540]**, the Hon'ble Supreme Court has observed in the background of industrial dispute and opined regarding Constitution of Special Tribunals, wherein the Hon'ble Lordships have held that the said preliminary issue should be dealt with by the Tribunal. With due respect, I submit that the said citation is not helpful to the accused Dr. Vijay Mallya.

The Ld. Counsel of accused Dr. Vijay Mallya has advanced an argument that it is a well established principle of law wherein if the Statute requires something to be done in a particular manner i.e. “in the manner prescribed”, then the act must be done in that manner or not at all. In this respect, the Ld. Counsel of accused Dr. Vijay Mallya has placed reliance upon the case of **Nazir Ahmad vs. King Emperor [LR 63 IA 372]**, wherein it has been observed that if a power is given to do a certain thing in a certain way, then the thing must be done in that way only or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to the “**Tailor vs. Tailor**”. The same principles were reiterated by the Hon'ble Supreme Court in the case of **State of UP vs. Singhara Singh (1964)4 SCR 485**. In the instant case, this Court is adhering the law laid down u/sec. 8(8) of the Prevention of Money Laundering Act, 2002 and Rule 3-A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016.

Under such circumstances, in my opinion, there is justifiable reason for allowing this application. Moreover, the Prosecuting Agency i.e. Directorate of Enforcement has no objection to vacate the order dated 10/11/2016, which was actually passed in their favour. Therefore, in the light of above discussion, I proceed to pass the following order :-

ORDER

- 1 The application at Ex-5 is hereby allowed.

- 2 The properties described as Schedule A, B & C of the application Ex-5 are hereby restored to the Applicants Banks through Recovery Officer, holding Certificate of Recovery dated 10/04/2017,

:21:

Order Below Application at Ex-5

issued by DRT, Bengaluru vide Decree passed in OA No. 766/2013 vide order dated 19/01/2017.

3 The Recovery Officer and Applicants Banks are directed to submit Bond Undertaking as per Rule 3-A(2) of the Prevention of Money Laundering (Restoration of Property) Rules, 2016.

4 The Recovery Officer, DRT is permitted to proceed in accordance with law subject to compliance of the order of Hon'ble Karnataka High Court dated 07/02/2017 in Company Petition No. 57/2012, in respect of Official Liquidator of UBHL.

5 The application at Ex-5 stands disposed of accordingly.

(Order dictated and pronounced in open court.)

(Jayendra C. Jagdale)
The Special Judge for CBI,
City Civil & Sessions Court,
Gr. Bombay.

Dated : 24/05/2021

Dictated on : 24/05/2021
Transcribed on : 24/05/2021
Signed on : 24/05/2021
Delivered to Certified :
Copy Section on

:22:

Order Below Application at Ex-5

“Certified to be true and correct copy of the original signed judgment/order”.

Upload Date & Time : 24/05/2021 at 2.27 p.m.

Gitalaxmi R. Mohite

Name of the Stenographer

H.H.J. SHRI. JAYENDRA C. JAGDALE (C. R. No. 51)

Date of pronouncement of judgment/order :-24/05/2021

Judgment/order signed by the P.O. on :-24/05/2021

Judgment/order uploaded on :-24/05/2021