

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

*** HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

*** HONOURABLE MS. JUSTICE J. UMA DEVI**

**+Writ Petition No.37487 of 2012 &
WAMP.No.155 of 2016 in W.A.No.133 of 2013**

Date: 31-12-2018

#Between:

M/s. Satyam Computer Services Limited,
(a company incorporated under the provisions of
Companies Act, 1956), having its registered
Office at Mahindra Satyam Infocity, Unit 12,
Plot 35/36, Hi-Tech City Layout, Survey No.64,
Madhapur, Hyderabad, represented by its Assistant
Vice President

And

Directorate of Enforcement, Government of
India (Prevention of Money Laundering Act, 2002),
Hyderabad and 9 others

... Petitioner

... Respondents

! Counsel for the Petitioner : Mr. S. Ravi, senior counsel

^ Counsel for Respondents : Mr. Nagaraj, A.S.G. for ED
Mr. Narender Reddy, senior counsel

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> HEAD NOTE:

? Cases referred

- 1) (1970) 2 SCC 355
- 2) AIR 1973 SC 1362
- 3) 988 (Suppl) SCC 308
- 4) (1994) 5 SCC 593
- 5) (2005) 6 SCC 292

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HONOURABLE MS. JUSTICE J. UMA DEVI

Writ Petition No.37487 of 2012 & WAMP.No.155 of 2016 in

W.A.No.133 of 2013

COMMON ORDER: *(per V. Ramasubramanian,J)*

Challenging a Provisional Attachment Order passed by the Enforcement Directorate and the proceedings initiated under the Prevention of Money Laundering Act, 2002 (PMLA, 2002), the petitioner came up with the writ petition in W.P.No.37487 of 2012.

2. Pending disposal of the writ petition, the petitioner sought interim suspension of the impugned Provisional Attachment Order. On 11-12-2012, a learned Judge of this Court granted interim suspension, in WPMP.No.47572 of 2012.

3. As against the interim suspension order granted by the learned single Judge in WPMP.No.47572 of 2012 in W.P.No.37487 of 2012, the Enforcement Directorate filed an appeal in W.A.No.133 of 2013. A Division Bench of this Court dismissed the writ appeal by an order dated 31-12-2014.

4. Thereafter, the Bank of Baroda came up with an application in WAMP.No.155 of 2016 in the disposed of writ appeal seeking a clarification as to whether the fixed deposits lying with them to the tune of Rs.255 crores should be released to the writ petitioner, in view of the interim suspension granted by the learned single Judge in the writ petition, which was also confirmed in the writ appeal.

4. Actually, the main writ petition was before a learned single Judge and the Miscellaneous Petition filed by the Bank of Baroda in the disposed of writ appeal, came up before us for hearing. When the Miscellaneous Petition was heard, the learned senior counsel for the writ petitioner and the learned Additional Solicitor General submitted that it would be better to take up the writ petition for disposal rather than dealing with the Miscellaneous Petition in the disposed of writ appeal. Thereafter, orders were passed by the Hon'ble the Acting Chief Justice, posting the writ petition along with Miscellaneous Petition in the writ appeal. This is how both are before us.

5. We have heard Mr. S. Ravi, learned senior counsel appearing for the writ petitioner, Mr. Nagaraj, learned Additional Solicitor General appearing for the Enforcement Directorate and Mr. Narender Reddy, learned senior counsel appearing for the bank.

6. It is not necessary for us to deal with the Miscellaneous Petition in the disposed of writ appeal, as the outcome of the same would depend upon the outcome of the writ petition. Therefore, we shall take up the writ petition for disposal first.

Background facts:

7. The background facts leading to the Provisional Order of Attachment passed by the Enforcement Directorate could be summarized in brief as follows:

- (a) Satyam Computer Services Limited was a listed company having about 3 lakhs shareholders and 53,000 employees, with

a presence in over 60 countries. At the relevant point of time, it was the fourth largest Information Technology Company in India.

- (b) On 07-01-2009, the Chairman and Managing Director of the company by name B. Ramalinga Raju sent short waves across the board, by making startling revelations, to the effect that the books of accounts of the company reflected fictitious cash and bank balances to the tune of about Rs.5040 crores and an understated liability of Rs.1230 crores and that none of the Board Members had any clue about the situation in which the company was.
- (c) Shocked at the sathyam (truth) coming out of (A)Satyam, in such a fashion, the Government of India initiated prompt action, by filing an application through the Ministry of Corporate Affairs, before the Company Law Board. The application was filed on 09-01-2009 under Sections 388B, 397, 398, 401, 402, 403 read with 406 and 408 of the Companies Act, 1956.
- (d) The reason as to why the Government of India intervened to take prompt action within 48 hours, as stated in their application before the Company Law Board, was that the company had to be maintained as a going concern, in order to protect the interests of 53,000 employees and more than 3 lakhs share holders. In the application so filed by the Ministry of Corporate Affairs before the Company Law Board, they sought the

suspension of the Board of Directors and the appointment of 10 Nominated Directors to the Board.

- (e) On 09-01-2009, the very day on which the application was filed by the Union of India, the Company Law Board passed an interim order in C.P.001/2009 suspending the Board of Directors with immediate effect, authorizing the Central Government to constitute a fresh Board of Directors with not more than 10 persons of eminence, with one of them being designated as Chairman and directing the newly constituted Board to meet within 7 days of the constitution and to submit periodical reports to the Central Government.
- (f) Accordingly, the Central Government appointed, for the time being, six eminent persons as Directors. The Directors met for the first time on 17-01-2009 and then on January, 22 and 23, 2009.
- (g) The newly nominated Board of Directors found that the company was in “acute liquidity crisis” and that there was shortage of funds even to meet day-to-day operations like payment of salaries. Therefore, the Board of Directors passed a resolution on 22-01-2009 to obtain loans from banks to the extent of Rs.600 crores.
- (h) The loans secured by the newly appointed Board were found sufficient only to meet short-term requirements. Therefore, the Board resolved to seek the permission of the Company Law

Board for the induction of an equity partner for the infusion of fresh capital.

- (i) Accordingly, an application was filed on 18-02-2009. The Company Law Board passed an order in the said application on 19-02-2009. By this order, the Company Law Board directed the Board (1) to pass a resolution for amendment of the capital clause of the Memorandum of Association so as to increase the authorised equity share capital, (2) to pass a resolution authorizing itself to make a preferential allotment of equity shares at par or at a premium; and (3) to induct a strategic investor, selected through a transparent, open and competitive price bid auction, overseen by a retired Judge of the Supreme Court or a former Chief Justice of India.
- (j) The order of the Company Law Board dated 19-02-2009 also made it mandatory for the Board of Directors of the company to obtain prior approval of the Company Law Board before the actual allotment of shares on a preferential basis.
- (k) Pursuant to the order of the Company Law Board dated 19-02-2009, the Board of Directors of the company issued a Request for Proposal (RFP) on 13-03-2009. It was stated therein that the company needed capital infusion of Rs.1000 crores. The RFP required the interested bidders to give Expression of Interest (EOI) on or before 20-03-2009 along with the proof of availability of Rs.1500 crores and two performance bank guarantees of Rs.5.00 crores and Rs.100 crores.

- (l) During the period from 24-03-2009 to 04-04-2009, all the bidders were given access to the data room.
- (m) On 12-04-2009 all bidders submitted their financial bids. On 13-04-2009, the bids were opened under the supervision of Sri S.P. Bharucha, former Chief Justice of India. A company by name Venturebay Consultants Private Limited, a subsidiary of Tech Mahendra Limited became the successful bidder and the former Chief Justice of India certified that the auction was fair, transparent and open.
- (n) On 16-04-2009, the Company Law Board passed an order in C.A.No.179 of 2009 in CP.001/2009, approving the induction of Venturebay as a strategic investor and also approving the allotment of preferential shares subject to the condition that successful bidder deposited a sum of Rs.1,750 crores as consideration for 31% equity shares by 21-04-2009. ***In fact, the approval of the Company Law Board was for the allotment of 30,27,64,327 equity shares of Rs.10/- each at a premium of Rs.48/- per share.***
- (o) It must be pointed out that the order of the Company Law Board dated 16-04-2009 began with an interesting observation that the appropriate title that could be given to the order would be "Adoption of Orphan Satyam" or "Orphan Satyam Adopted". In paragraph 4 of its order dated 16-04-2009, the Company Law Board expressed hope that the strategic partner would adopt

and nurture the ailing company and help the company to regain its glory, by adopting the best Corporate governance practices.

- (p) Pursuant to the order of the Company Law Board, the strategic partner deposited Rs.1,756 crores and also infused additional funds to the tune of Rs.1152 crores, through open offer. In total, the strategic partner infused a sum of Rs.2908 crores.
- (q) In the meantime, the Government of India ordered an investigation by the Serious Fraud Investigation Office. They filed reports on 13-04-2009, 23-10-2009 and 24-12-2009. The reports indicated that the company itself was a victim of fraud and crime perpetrated by the former Chairman and Managing Director and that the former CMD kept the Board of Directors in the dark and that there has been an illegal and unauthorized outflow of funds from the company.
- (r) While the above proceedings were going on, a criminal complaint came to be registered in Crime No.2 of 2009 on 09-01-2009 on the file of CBCID, Andhra Pradesh, for offences under Sections 120B, 420, 467 and 471 IPC. Subsequently, it was taken over by the CBI in RC.No.4 (S)/2009-CBI/Hyd, dated 20-02-2009.
- (s) After investigation, the CBI filed a charge sheet on 07-04-2009. A supplementary charge sheet was filed on 22-11-2009. A further charge sheet was filed on 07-01-2010.
- (t) The charge sheets filed by the CBI accused the former Chairman and others of entering into a criminal conspiracy

during the period of 2001-2008 and of luring ordinary investors into buying the shares of the company by continuously carrying out falsification of the books of accounts and thereby providing himself and the family members, an opportunity of off-loading the shares held by them at the most opportune times.

- (u) After three years of filing of the charge sheets before the designated Court, the Joint Director of Enforcement passed a provisional attachment order bearing No.4 of 2012 dated 18-10-2012, attaching the fixed deposits lying with the Andhra Bank, ING Vysya Bank, IDBI Bank and Bank of Baroda to the total tune of Rs.822 crores, on the ground that they represent part of the proceeds of crime within the meaning of Section 2 (1) (u) of the Prevention of Money Laundering Act, 2002.
- (v) Thereafter, the adjudicating authority under the PMLA, 2002 issued a show cause notice dated 29-10-2012 under Section 5 (5) of the Act.
- (w) Aggrieved by the Provisional Order of Attachment dated 18-10-2012 and also challenging the show cause notice dated 29-10-2012, the petitioner came up with the above writ petition.

Proceedings before this Court:

8. After admitting the above writ petition, a learned Judge of this Court passed a detailed order dated 11-12-2012 in WPMP No.47572 of 2012, staying the Provisional Attachment Order as well as all further proceedings pursuant to the show cause notice.

9. Challenging the interim order passed by the learned Judge, the Enforcement Directorate filed an appeal in W.A.No.133 of 2013 but the same was dismissed by a Division Bench of this Court by an order dated 31-12-2014. Therefore, now the writ petition has come up for final disposal.

Basis of the provisional attachment order:

10. The provisional attachment order dated 18-10-2012 proceeds primarily on the basis of the charge-sheets filed by the CBI in the Special Court. According to the provisional attachment order, the charge-sheets filed by the CBI before the designated Court revealed the following:

(i) That B.Ramalinga Raju and others along with their relatives and associates floated 327 companies under the guise of carrying out agricultural and other allied activities, with the hidden object of investing the funds derived from the pledge or sale of inflated shares of Satyam Computers in real estate;

(ii) That out of these 327 companies, some were known as loan companies and some were known as investment companies;

(iii) That the shares held in the name of B.Ramalinga Raju and others in Satyam Computers, were transferred by them to another company by name S.R.S.R. Holdings Private Limited, floated by Ramalinga Raju's son and others;

(iv) That the said company S.R.S.R. Holdings Pvt. Ltd. secured loans from non-banking finance companies, by pledging the shares so transferred;

(v) That an amount of Rs.1,425/- Crores, obtained from various non-banking finance companies was transferred by S.R.S.R. Holdings Pvt. Ltd. to the bank accounts of Satyam Computers;

(vi) That a part of the loan amount was returned, leaving an outstanding liability of Rs.1,230.40 Crores; and

(vii) That the 37 companies who advanced loans to Satyam Computers issued letters demanding repayment, at the behest of Ramalinga Raju and his brother.

11. As per the provisional attachment order, the Directorate of Enforcement also conducted investigation, though on the basis of the charge-sheets filed by the CBI. According to them, this investigation revealed –

(i) that on 22-6-2006, a private limited company by name S.R.S.R. Holdings Pvt. Ltd. was floated by Ramalinga Raju and his family members;

(ii) that during September, 2006, all the shares of Satyam Computers held in the accounts of Ramalinga Raju and others to the extent of 2.78 Crores were sold to S.R.S.R. Holdings Pvt. Ltd., through the Stock Market;

(iii) that the individuals borrowed funds from a non-banking financial company to the extent of Rs.2,266/- Crores and invested the same in S.R.S.R. Holdings Pvt. Ltd., for purchasing the shares of Satyam Computers through Stock Market;

(iv) that the shares consequently became the investment of S.R.S.R. Holdings Pvt. Ltd.;

(v) that thereafter, Satyam Computers announced the issue of bonus shares in the ratio of 1:1, resulting in the shares held by S.R.S.R. Holdings Pvt. Ltd. getting doubled to the extent of 5.56 Crore shares;

(vi) that by transferring the shareholding, the individuals derived illegitimate gain to the tune of Rs.2,171.45 Crores;

(vii) that this amount represented the proceeds of crime within the meaning of Section 2(1)(u) of the Act;

(viii) that these proceeds of crime were transferred from the loan companies to other front companies, which in turn transferred the same to some other companies, to conceal the actual source of funds, which happened to be the loans derived from the pledging of inflated shares of Satyam Computers;

(ix) that an amount of Rs.1,425/- Crores was transferred to the bank accounts of Satyam Computers by 37 front companies over a period of two years from 17-11-2006 to 30-10-2008;

(x) that out of the said amount, Rs.194.60 Crores was repaid leaving a balance of Rs.1,230.40 Crores remaining with Satyam Computers;

(xi) that the trail of funds in respect of the above-mentioned amount of Rs.1,425/- Crores transferred to Satyam Computers revealed that an amount of Rs.822/- Crores constituted a part of Rs.2,171.45 Crores derived by pledging inflated shares of Satyam Computers;

(xii) that the aforesaid amount of Rs.822/- Crores was routed through 34 front companies to Satyam Computers;

(xiii) that the said amount of Rs.822/- Crores has been layered and finally parked with Satyam Computers by 34 front companies;

(xiv) that these funds were later used by Satyam Computers for meeting their day-to-day expenses like payment of salaries;

(xv) that therefore this amount constituted proceeds of crime which mingled with the other legitimate sources of income;

(xvi) that had this mingling not taken place, the books of accounts of Satyam Computers would have shown negative balance; and

(xvii) that since Satyam Computers had fixed deposits to the tune of Rs.822/- Crores, the same became liable to be attached, as the said amount is equivalent to the value of the proceeds of crime.

Grounds of attack of the impugned order

12. The provisional order of attachment is assailed by the petitioner on the grounds, *inter alia*, --

(i) that all statutory authorities such as the Company Law Board, the CBI, the Serious Fraud Investigation Office etc., have recognized the company Satyam Computers to be a victim of fraud and hence the amounts lying in the hands of the victim of fraud cannot be attached as the proceeds of crime;

(ii) that after inducing and enticing a strategic equity partner through an open, fair and transparent process of bidding conducted

under the supervision of the former Chief Justice of India, to infuse funds to the tune of about Rs.2,908 crores, it was not fair on the part of one of the Government Agencies to take away an asset of the company;

(iii) that the impugned provisional attachment order is full of contradictions, in the sense that even according to the order, the amount of Rs.822 crores went out of the company with the same amount of swiftness with which it came in and hence it was not available anymore in the company to be attached; and

(iv) that Section 8(5) of the Prevention of Money Laundering Act, 2002, as amended in the year 2013 cannot be applied retrospectively and that therefore the impugned order is liable to be set aside.

Objections of the Enforcement Directorate

13. But the writ petition is opposed by the Enforcement Directorate on the grounds, *inter alia*, --

(i) that the writ petition is not maintainable in view of the existence of a statutory remedy;

(ii) that the entertaining of the writ petition will defeat the object of the Prevention of Money Laundering Act, 2002, which is to confiscate to the Government, the proceeds of crime;

(iii) that after the 2013 amendment to the Act, even the property held by a person who is not an accused in respect of a scheduled offence, can be attached by the Enforcement Directorate;

(iv) that under Sections 23 and 24 of the Prevention of Money Laundering Act, 2002, there is a presumption and the burden is on the accused to prove his innocence;

(v) that the strategic investor has now lost its identity, in view of the orders of amalgamation passed by the Company Court of the High Court of Judicature at Hyderabad in C.P.No.123 of 2013 by order dated 11-6-2013;

(vi) that by virtue of the order of amalgamation, the transferee became liable under Section 394 of the Companies Act, 1956;

(vii) that since the Enforcement Directorate is an independent agency, it is not bound by the outcome of the investigation by the CBI or SEBI or SFIO;

(viii) that the investigation by the CBI related only to the offences committed by individuals and not by company;

(ix) that the CBI never made the company as an accused and hence the company cannot now take refuge under the findings of the Special Court;

(x) that even as per some portions of the charge-sheet filed by the CBI, the company was engaged in criminal activities; and

(xi) that since the strategic investor was aware of the prosecutions and investigations pending against the company, when they participated in the transparent process of bidding, they are now estopped from questioning the outcome of such investigation.

14. We have carefully considered the above submissions.

15. Since the very maintainability of the writ petition is questioned, we shall first take up the same, before analyzing the rival contentions.

Maintainability of the writ petition:

16. The question of maintainability of the writ petition is raised by the learned Additional Solicitor General of India, on the ground that what is impugned in the writ petition is only a provisional order of attachment passed under Section 5(1) of the Prevention of Money Laundering Act, 2002, which can be in force only for a period not exceeding 90 days from the date of the order, in the manner provided in the Second Schedule to the Income Tax Act, 1961. Under Section 5(2), the provisional order of attachment passed under sub-section (1) should be forwarded to the Adjudicating Authority and a complaint should also be filed by the Director under Section 5(5) within a period of 30 days from the order of attachment. Upon receipt of the complaint under Section 5(5), the Adjudicating Authority is obliged to initiate action under Section 8(1). He shall then pass an order under Section 8(3) confirming the attachment, if he has reason to believe that the properties concerned were involved in money laundering. If the commission of the offence of money laundering is established after trial, then the Adjudicating Authority may order the confiscation of such property under Section 8(6).

17. In view of the procedure detailed as aforesaid, it is contended by the learned Additional Solicitor General of India that

the petitioner can as well raise all objections they have, to the provisional order of attachment, before the Adjudicating Authority, as and when a show cause notice is issued under Section 8(1). In fact, the Adjudicating Authority has issued notices to the petitioner in this case under Section 8.

18. According to the learned Additional Solicitor General of India, even if the Adjudicating Authority passes an order adverse to the interest of the petitioner, they have a remedy of appeal under Section 26 to the Appellate Tribunal and thereafter under Section 42 to the High Court. When the scheme of the Act prescribes so many safeguards, it is not open to the petitioner according to the learned Additional Solicitor General of India, to straightaway invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

19. The learned Additional Solicitor General of India not only invited our attention to the provisions of the Prevention of Money Laundering Act, 2002, but also invited our attention to various decisions of the Supreme Court on the question of maintainability of the writ petition in cases where different layers of procedure are stipulated in the Act itself.

20. In response, it is contended by Mr. S.Ravi, learned Senior Counsel appearing for the petitioner –

(i) that once the writ petition has been admitted and rule is issued, the availability of alternative remedy may not be a bar;

(ii) that when a condition precedent for the exercise of jurisdiction is not fulfilled, a writ petition is maintainable despite the availability of alternative remedy;

(iii) that the alternative remedy of going before the Adjudicating Authority is not an effective alternative remedy, since the scope and jurisdiction of the Adjudicating Authority is very narrow, as it is confined only to a limited question whether the properties are involved in money laundering or not;

(iv) that prior to the amendment to Section 8(5), under the 2013 amendment, an order of attachment will cease to have effect, the moment the accused is acquitted;

(v) that since the petitioner company was not one of the accused and the Special Court has already convicted individuals, the attachment should cease to have effect;

(vi) that the amendment which came into effect from 15-02-2013 cannot have retrospective application and this question about the implication of the amendment, cannot be decided by the Adjudicating Authority;

(vii) that today there is a conflict between two regulatory regimes, one under the Companies Act, 1956 under which a strategic partner was inducted for the revival of the company and another under the Prevention of Money Laundering Act, 2002 where the strategic partner is put to jeopardy and this conflict cannot be resolved by an Adjudicating Authority;

(viii) that in view of the findings recorded by the learned Judge while granting an interim order, which was also confirmed by the Division Bench, the question of maintainability has attained finality; and

(ix) that in any case, the Adjudicating Authority itself has filed a counter to the writ petition, swearing to an opinion that the attached property represents the proceeds of crime and that therefore there is no use going before the same authority.

21. Before proceeding further, it should be pointed out that the 3rd respondent in the writ petition is the Adjudicating Authority. The 1st respondent is the Directorate of Enforcement. A counter affidavit was sworn to by the Assistant Director of Enforcement Directorate on 06-12-2012 in the main writ petition. In the caption given, it was stated **“counter affidavit filed on behalf of respondent Nos.1 and 3”. Even in the solemn affirmation column, it was stated by the Assistant Director who was the deponent to the counter affidavit that he was filing the counter affidavit on behalf of the respondents 1 and 3.**

22. If the Assistant Director of Enforcement Directorate had sworn to a counter affidavit, as though it was filed on behalf of the Adjudicating Authority also, but without the knowledge of the Adjudicating Authority, then the Adjudicating Authority cannot be held to have formed an opinion or reached a pre-determined conclusion. **But in the solemn affirmation portion, the Assistant Director of Enforcement Directorate has not merely stated that**

he was filing the counter on behalf of the respondents 1 and 3, but has also stated that “he was authorised to do so”. If he was authorised by the Adjudicating Authority to file a counter affidavit, then the Adjudicating Authority cannot go back on the contents of the counter affidavit.

23. Realising this folly, the Enforcement Directorate has come up with an application in I.A.No.8 of 2018 seeking amendment of the counter affidavit by deleting the word “Respondent No.3/Adjudicating Authority” from the counter affidavit. It is stated in the affidavit in support of this application that due to a typographical mistake, it was stated in the counter affidavit as though the same was filed on behalf of the Adjudicating Authority also. It is also claimed in the affidavit in support of this application that in the entire counter, there was no mention that it was filed by the Adjudicating Authority. Therefore, it is claimed that what was stated in the caption was a clerical error.

24. But there are two difficulties in accepting the stand taken by the Enforcement Directorate in I.A.No.8 of 2018. The first is that the affidavit in support of I.A.No.8 of 2018 is sworn to by one Mr. Raja Sekhar Reddy, Assistant Director, whereas the original counter affidavit was sworn to by one Mr. T.Samuel, Assistant Director. It would have been better if the very same person who sworn to the counter affidavit had come up with this explanation. In any case, the solemn affirmation portion of the counter affidavit filed in the main writ petition clearly states that he was filing the

counter affidavit on behalf of respondent Nos.1 and 3 and that he was also authorised to do so.

25. Therefore, a shadow of doubt is cast about whether the Adjudicating Authority was party to the counter affidavit or not. But we shall not decide the question of availability of alternative remedy, on the basis of this aspect, since such an error could have crept in at various levels, (including in the office of the Standing counsel) if at all it was a clerical error. Though the Enforcement Directorate may not give any benefit of doubt to the petitioner, we would give the benefit of doubt to the Enforcement Directorate on this aspect.

26. That takes us to the other arguments revolving around the question of maintainability. There is no dispute about the fact that the writ petition was admitted six years ago. Therefore, as held by the Supreme Court in *L. Hriday Narain v. ITO*¹, the petitioner cannot now be asked to go back. Moreover, the main contention of the writ petitioner is that the condition precedent for the exercise of jurisdiction under Section 5(1)(c) of the Act is not present. Therefore, as held by the Supreme Court in *Raza Textiles v. ITO*², no authority much less a quasi judicial authority can confer jurisdiction to itself by deciding a jurisdictional fact wrongly. The Supreme Court held that the question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in

¹ (1970) 2 SCC 355

² AIR 1973 SC 1362

an application for a Writ of *certiorari*. Therefore, the writ petition cannot be held to be not maintainable.

27. In any case, two important substantial questions of law of importance arise in this case. They are – (i) whether the 2013 amendment to Section 8(5) can take retrospective effect and (ii) whether or not there is a conflict between the two statutory regulatory regimes. Therefore, cases of this nature need not be thrown out, asking the petitioner to first go before the Adjudicating Authority and then avail a remedy of appeal under Section 26 to the Appellate Tribunal, before coming to this Court under Section 42 of the Prevention of Money Laundering Act, 2002. Therefore, we overrule the objections of the Enforcement Directorate to the maintainability of the writ petition.

Contentions of merits:

28. The first ground on which the impugned provisional order of attachment is assailed by Mr. S. Ravi, learned senior counsel for the petitioner is that, after all the statutory regulatory agencies like the Company Law Board, the Central Bureau of Investigation and the Serious Fraud Investigation Office (SFIO) have described the company Satyam Computers as a victim of fraud, it is not open to the Enforcement Directorate to treat the petitioner as an accused or as a beneficiary of the proceeds of crime. In support of this contention, Mr. S. Ravi, learned senior counsel for the petitioner, drew our attention (1) to the second final report of the CBI dated 22-11-2009 and the judgment of the Designated Court, wherein it was

recorded that the dividends were paid by the company during the financial years 2007-08, 2008-09, though the company was actually making losses, thereby causing wrongful loss to the company to the tune of Rs.302.57 crores; (2) to the report of the Serious Fraud Investigation Office, dated 13-04-2009 to the effect that the company paid a huge amount of Rs.39.86 crores as tax on the distribution of dividend in the financial year 2007-08, though the payment of dividend itself was illegal; (3) to the report of the CBI, dated 07-10-2010 and the judgment of the Designated Court, which recorded the fact that the accused declared a higher taxable income and made income tax payments on such fictitious and non-existent income to the tune of Rs.126.57 crores; (4) to the report of the Serious Fraud Investigation Office dated 13-04-2009 showing that incentive payments to employees were made based upon inflated overall performance of the company, despite the company making losses, thereby causing an outflow from the company to the tune of Rs.388.47 crores; (5) to the report of Serious Fraud Investigation Office dated 13-04-2009 disclosing payment of commission to the Board of Directors to the tune of Rs.0.42 crores, though the company was making losses; (6) to the report of the Serious Fraud Investigation Office, dated 24-12-2009 disclosing exorbitant remuneration to statutory auditors, who helped the accused in suppressing the falsification of accounts, resulting in funds to the tune of Rs.7.40 crores being drained out of the company; (7) to the CBI report dated 22-11-2009 and the judgment of the Designated

Court showing an outflow of Rs.43.63 crores in the form of interest on an unauthorized borrowal to the tune of Rs.1221.16 crores; (8) to the report of the Serious Fraud Investigation Office dated 13-04-2009 showing an outflow of cash to the tune of Rs.141.50 crores, to resist the claims of the investors who were demanding the return of huge cash balances in the books; (9) to the CBI report and the judgment of the designated Court showing payments to the tune of Rs.65.88 crores to non-existent customers by creating fake identities; (10) to the CBI report dated 22-11-2009, which discloses excess payments to the tune of Rs.229 crores made for the acquisition of shareholding in a loss of making entity by name Nipuna BP Services Private Limited; and (11) to the Serious Fraud Investigation Office report dated 13-04-2009 showing a fictitious purchase of SAP software licence to the tune of Rs.44.00 crores, though such a licence was never acquired.

29. The relevant portions of the reports of the CBI and Serious Fraud Investigation Office and the judgment of the Special Court, to which our attention was drawn, clearly show (i) that there was an illegal outflow of funds from out of the company to the tune of more than Rs.1000 crores; (ii) that the beneficiaries of such illegal outflow of funds included the shareholders, who got dividends on non-existent income, the Income Tax Department, which received tax, on fictitious income, the employees, who received incentives on imaginary performance, the Board of Directors, who received commission probably for making losses, the statutory auditors, who

received remuneration for exhibiting excellence in falsification of accounts and suppliers, who received payments for supplies never made.

30. In fact, even the Enforcement Directorate does not dispute the fact that there was falsification of accounts and that a company, which was making losses, was shown to be making huge profits for the purpose of inflating the value of the shares held by the promoters. The balance sheet of the company to which our attention was drawn shows that the dividends were paid to the share holders to the tune of Rs.94.36 crores in the year 2002-03, Rs.126.72 crores in the year 2003-04, Rs.159.63 crores in the year 2004-05, Rs.228.33 crores in the year 2005-06, Rs.232.41 crores in the year 2006-07, Rs.235.20 crores in the year 2007-08 and Rs.67.37 crores in the year 2008-09. The total amount of dividends paid during the period from 2002-03 to 2008-09, worked out to Rs.1143.37 crores.

Literally, these amounts should actually be treated as proceeds of crime, since the promoters, who were the accused, not only believed in charity beginning and ending at home but also believed in sharing it with the other stakeholders including the Income Tax Department.

31. Interestingly, the company also paid income tax on the distribution of dividends, to the tune of Rs.166.80 crores for the period 2002-03 to 2008-09, when the payment of dividend itself was totally illegal.

32. The payments made in the form of dividends to the shareholders, the payments made to the Income Tax Department, the incentives paid to the employees, the payments made to the Board of Directors by way of commission, the payments made to the statutory auditors and the payment made to suppliers, when such payments were not due at all, clearly showed that the company was the victim of fraud and was actually made to bleed. This is why the Company Law Board, the CBI, Serious Fraud Investigation Office and the designated court repeatedly referred to the company as the victim of fraud.

33. The contention of the learned Additional Solicitor General that the company was not implicated in the criminal case only due to the nature of the offences under the Indian Penal Code for which charges were framed against the individuals is unacceptable. It was not as though the company omitted to be implicated as an accused in the criminal case for technical reasons. There were positive opinions and findings recorded in all the reports and in the judgment to the effect that the company, which was making losses was shown to be making huge profits. As a consequence, a huge outflow of cash was necessitated to investors, shareholders, employees, Directors, statutory auditors, customers and even the Income Tax Department. Therefore, Mr. S. Ravi, learned senior counsel, is right in his contention that one of the Government agencies today cannot turn around and make a victim of fraud, suffer once more, in a classic example of secondary victimisation.

34. The second ground on which the impugned order of provisional attachment is assailed is that after inducing and enticing a strategic investor through an open, fair and transparent competitive bidding process supervised by a retired Chief Justice of India to infuse funds to the tune of Rs.2908 crores, it was not fair on the part of one of the Government agencies to take away the asset of the company, that formed part of the whole deal.

35. While providing the background facts, we have narrated as to how the Government of India intervened with lightening speed to safeguard the interests of more than about 3 lakhs shareholders and 53,000 employees. The D-day on which sathyam (truth) got truly revealed was 07-01-2009, when the Chairman and Managing Director of the company wrote a letter to the Board of Directors, admitting serious irregularities. He claimed that the books of accounts of the company were manipulated to reveal fictitious cash and bank balances to the tune of Rs.5040 crores and an understated liability of Rs.1230 crores. Within 48 hours, the Government of India through the Ministry of Corporate Affairs moved a petition in C.P.001/2009 on the file of Company Law Board, Principal Bench, New Delhi under Sections 388B, 397, 398 and 408 of the Companies Act, for various reliefs. On the very same day, the Company Law Board passed an order suspending the Board of Directors and directing the Central Government to constitute a fresh Board for the company with a further direction to the newly constituted Board to take immediate action to put the company back

on the road. Accordingly, the Central Government inducted six persons as Directors and they first met on 17-01-2009 and then on 22-01-2009. On 22-01-2009, the newly inducted Board secured loan to the extent of about Rs.600 crores for meeting out the immediate requirements. But after finding that the amount was not sufficient, the Board of Directors nominated by the Central Government moved an application before the Company Law Board for induction of a new promoter to pump in equity. This application was allowed by the Company Law Board by an order dated 19-02-2009. By this order the Board was permitted to amend the capital clause of the Memorandum of Association to increase the authorised equity share capital from Rs.160 crores comprising of 80 crores equity shares of Rs.2/- each to Rs.280 crores comprising of 140 crores equity shares of Rs.2/- each. The order of the Company Law Board further directed the newly constituted Board to devise a plan for the induction of a strategic investor.

36. Accordingly, a Request for Proposal was issued on 13-03-2009 indicating that the company needed infusion of Rs.1000 crores. The bidders were put to stringent conditions and the bidding process was supervised by the retired Chief Justice of India. Eventually, a subsidiary of Tech Mahindra Limited became the strategic investor and there is no dispute that they infused a total amount of Rs.2908 crores.

37. As we have pointed out earlier, the Company Law Board remarked in its order dated 16-04-2009 that it was virtually an order

of adoption of an orphan by name Satyam. The underlying truth is that the company was orphaned by the promoters and after the company was adopted by the strategic investor and made healthy, the Enforcement Directorate has come up with a theory that part of the flesh and bone of the orphan company is liable to be attached.

38. It is relevant to point out here that all the successful bidders were given access to the data room during the period from 24-03-2009 to 04-04-2009. Therefore, the amount quoted in the bid was actually on the basis of the data available during the relevant period.

39. A few dates are of importance. As per para 10 of the impugned provisional order of attachment, the complaint under the PMLA was registered in ECIR No.1 of 2009 on 23-01-2009. The Board of Directors nominated by the Central Government moved an application in C.A.84 of 2009 before the Company Law Board seeking permission to devise a plan for the induction of strategic partners, in the second week of February 2009. The application was heard on 18-02-2009 and an order was passed on 19-02-2009 by the Company Law Board, permitting the Board of Directors to increase the authorised equity share capital and to devise a plan to induct a strategic investor through an open, fair and transparent competitive price bid auction. The Request for Proposal was made by the Board of Directors on 13-03-2009 and access to the data room was provided during the period from 24-03-2009 to 04-04-2009. The bids were submitted on 12-04-2009 and they were

opened on 13-04-2009. The Company Law Board approved the entire process by an order dated 16-04-2009.

40. Therefore, if the Enforcement Directorate had issued a provisional order of attachment of the assets of the company, even before the plan for induction of the strategic investor was finalized, the investor would not have come into the picture at all. From the date of registration of the complaint in ECIR No.1 of 2009 on 23-01-2009, the Enforcement Directorate had a full period of two months when the competitive price bid process began and access to the data room was provided from 24-03-2009 to 04-04-2009. After luring the bidders to come up with a quotation, on the basis of the data available during the period March-April, 2009 and after having allowed the investor to infuse funds to the tune of Rs.2908 crores, it is indeed unfair to identify some properties of the company as proceeds of crime.

41. It must be pointed out that the Act empowers the Adjudicating Authority to order the confiscation of the property to the Government under Section 8 (6). After such confiscation, the property would lose the character of "proceeds of crime". Otherwise, the Enforcement Directorate or the Appropriate Authority cannot deal with the property including by way of sale after such confiscation. When the confiscated property is put to sale, by the Government, it is no longer a proceed of crime, so as to enable the Enforcement Directorate to attached it once again. Confiscation of the property is perhaps a purification ceremony.

41. Similarly, if the other regulatory bodies including the Ministry of Corporate Affairs through the Company Law Board had allowed a third party to come up for equity participation, it tantamounts a different kind of purification process. The Board of Directors nominated by the Government of India, who invited Expression Of Interest from intending bidders, owed a duty to the bidders to inform them that there was a likelihood of the properties of the company being attached. Had they did so, no bidder would have come forward to adopt this orphan, (to use the same expression as used by the Company Law Board).

42. In fact, a couple of months before the inviting strategic investors, the Board of Directors nominated by the Central Government borrowed loans to the tune of Rs.600 crores. This money has also gone into the company's kitty. Today, if the lenders seek to recover the said money, it may not be open to the Enforcement Directorate to say that what they are seeking to recover has lost its character of being pure borrowed money.

43. There is no denial of the fact that but for the strategic investor namely Tech Mahendra Limited coming into the picture, the noble intentions of the Ministry of Corporate Affairs of the Government of India of rehabilitating and saving more than 3 lakhs shareholders and 53,000 employees could not have been achieved. The Enforcement Directorate should have kept this mind, before choosing to order the provisional attachment of the fixed deposits.

44. It is too late in the day to question whether the duty to act fairly, is ingrained in every activity of the State or not. As pointed out by the Supreme Court in ***Tata Iron and Coal India Limited v. Union of India***, the doctrine of fairness and the duty to act fairly was developed in the administrative law field to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity. As pointed out by the Supreme Court, unreasonableness is opposed to fairness.

45. Two things ought to have been done by the Enforcement Directorate immediately upon the registration of a complaint in ECIR 1 of 2009 dated 23-01-2009. They should have either attached all the properties of Satyam Computers immediately or at least notified all parties intending to enter into any contract with Satyam Computers that they were running a huge risk. But they did not do so. It was after more than 3 years and 9 months of the registration of the complaint that the Enforcement Directorate ordered the provisional attachment.

46. We can understand some justification on the part of the Enforcement Directorate, at least, if the strategic investor had entered into a deal in private either with the promoters or with the newly constituted Board of Directors. The strategic investor did not get into any private treaty. The whole process was ordered by the Company Law Board and carried out under the supervision of a former Chief Justice of India. Today, the order of the Company Law Board and the entire bidding process has been turned into a

mockery by the Enforcement Directorate ordering the provisional attachment. What is now at stake is the credibility of the Ministry of Corporate Affairs, which moved the application on 09-01-2009 and the validity of the orders of the Company Law Board pursuant to which the strategic investor came into the picture. Therefore, the second contention of the learned senior counsel for the petitioner that after inducing and enticing a strategic investor to become the savior of the company, it is not fair on the part of the Enforcement Directorate to ask the savior to look for a savior for itself.

47. The second contention of the learned senior counsel for the petitioner is sought to be countered by the learned Additional Solicitor General on the basis of the orders of amalgamation passed by the company court in CP 123 of 2013. The learned Additional Solicitor General placed reliance upon Section 394 of the Companies Act, 1956 and some portions of the order of the Company Court wherein it is stated that all pending proceedings against the transferor company shall not abate or discontinued.

48. But we think the reliance placed upon Section 394 of the Companies Act, 1956 and the order of amalgamation, is completely misplaced. In every act of amalgamation, the rights and liabilities of the transferor company would naturally devolve upon the transferee company and the pending proceedings are liable to be continued.

49. But, in this case, the pending proceedings were not against the company. The proceedings initiated by the CBI and Serious Fraud Investigation Office were actually targeted against the

promoters. Actually, what could devolve upon the transferee company are the rights and obligations of the transferor company and not its Directors or Promoters.

50. In fact, the order of provisional attachment impugned in this writ petition is dated 18-10-2012. It was suspended by this Court on 11-12-2012. The order of the learned Judge dated 11-12-2012 was confirmed by the Division Bench of this Court in W.A.No.133 of 2013 by order dated 31-12-2014.

51. But the order of amalgamation was passed on 11-06-2013 when the order of suspension of the provisional attachment order was in force. Therefore, the strategic investor Tech Mahendra Limited cannot be said to have waived their right to continue the writ petition filed in the year 2012 challenging the order of provisional attachment. If the order of amalgamation had to be understood to mean a withdrawal of the claim in the above writ petition, then no further enquiry is necessary. But the clause contained in the order of amalgamation cannot be taken to have extinguished the rights of the petitioner in the writ petition filed much earlier.

52. The third contention of the learned senior counsel for the petitioner is that the impugned order of provisional attachment is full of contradictions. According to the learned senior counsel, the amount of Rs.822 crores, went out of the company with the same amount of swiftness as it had come with.

53. This contention can be appreciated by having a look at the impugned order of attachment.

54. It is stated in paragraph-14 of the impugned order of attachment that an amount of Rs.1,425/- Crores was transferred to the bank accounts of Satyam Computers by 34 front companies during the period from November, 2006 to October, 2008. Out of this amount, a sum of Rs.194.60 Crores was repaid and the balance of Rs.1,230.40 Crores remained with Satyam Computers.

55. As per paragraph-15 of the impugned order, the trail of funds relating to Rs.1,425/- Crores showed that out of the same, an amount of Rs.822/- Crores constituted a part of money derived by pledging of inflated shares of Satyam Computers.

56. After stating so, it is asserted in paragraph-15 of the impugned order that the amount of Rs.822/- Crores was routed through 34 front companies to the petitioner. These 34 companies, according to paragraph-15 of the impugned order, merely transferred the funds received by them as a result of circuitous financial transactions of Satyam Computers.

57. What can be deduced from paragraph-15 of the impugned order is either that an amount of Rs.822/- Crores belonged to 34 front companies of the promoters or that they belonged to Satyam Computers itself, but which went out and came back in a round trip. In either case, the amount cannot represent proceeds of crime.

58. If a company's own funds go out and come back, the company will be guilty of something else. If the company received and retained the money belonging to 34 front companies of the

promoters themselves, those 34 companies become the victims of fraud. But that is not the case of the Enforcement Directorate.

59. In any case, there is an important admission made in paragraph-16 of the impugned order, which reads as follows:

“Investigation revealed that the amount of Rs.822/- Crores has been layered and finally parked with M/s. S.C.S.L. by 34 companies. These funds were later used up by the company for meeting their day-to-day expenses like payment of salaries etc”.

60. Therefore, the learned Senior Counsel for the petitioner is right in contending that there was utter confusion in the impugned order as to what came in and what went out and where the money was.

61. In the second part of paragraph-16 of the impugned order, there is yet another statement which reads as follows:

“This amount has mingled with the other legitimate sources of incomes of M/s. S.C.S.L. and has been put into day-to-day use of M/s. S.C.S.L. But for this amount, an equal amount of negative balance would have existed in the books of account of M/s. S.C.S.L. Hence, an equivalent amount of Rs.822/- Crores with M/s. S.C.S.L. constitutes property involved in money laundering”

62. The above statement in paragraph-16 of the impugned order shows that what is sought to be attached is neither the proceeds of crime nor the property into which the proceeds of crime got converted. What is sought to be attached is a money equivalent of what has allegedly disappeared from the company.

63. The definition of the expression “proceeds of crime” under Section 2(1)(u) shows that what is meant by the expression is the property derived or obtained directly or indirectly by any person as

a result of a criminal activity relating to a scheduled offence or the value of any such property.

64. To come within the definition of “proceeds of crime”, the property sought to be attached should have been derived or obtained directly or indirectly as a result of a criminal activity relating to a scheduled offence. **Assuming that the amount of Rs.822/- Crores constituted the proceeds of crime, the same, even according to the impugned order, had gone out of the company in the form of salaries etc., and it has also mingled with other legitimate sources of incomes.** This money had been put into day-to-day use. Once this is clear, we do not know how the Fixed Deposits could be attached. Therefore, the contention that the impugned order contains contradiction in terms, cannot be brushed aside easily.

65. The fourth and last ground of attack to the impugned order of attachment is that Section 8(5) of the Prevention of Money Laundering Act, 2002, as amended in the year 2013 cannot be applied retrospectively and that therefore the impugned order is liable to be set aside.

66. In order to appreciate this contention, it is necessary to have a look at Section 8 (5) of the PMLA, 2002, as it was before and as it is after amendment:

Section 8 (5) before amendment	Section 8 (5) after amendment w.e.f. 15-02-2013
(5) Where on conclusion of a trial for any scheduled offence, the persons concerned is acquitted,	(5) where on conclusion of a trial of an offence under this Act, the Special Court finds that the

the attachment of the property of the retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.	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.
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67. It may be seen from the above table that prior to the amendment, the attachment of a property will cease to have effect, the moment the persons concerned are acquitted on conclusion of trial for any scheduled offence. But after the amendment, the conviction of a person for a scheduled offence has no nexus to the confiscation of the property. What is now important is to see whether the Special Court finds the commission of an offence of money laundering or not.

68. The contention of Mr. S. Ravi, learned senior counsel for the petitioner is that the petitioner company was not even implicated as an accused in the criminal case. All the accused, who were individuals and who were at the helm of affairs of the petitioner company, were prosecuted and they were convicted by the Special Court by a judgment dated 09-04-2015. Since the charge sheets were filed prior to the amendment and since the petitioner was not one of the accused, the amendment to Section 8 (5) will not apply to the case of the petitioner. That vested rights cannot be taken away by retrospective application of the law (especially quasi criminal) is too well settled. A useful reference may be made in this regard to the judgments of the Supreme Court in **STO v. Oriental Coal**

Corporation³ and in **K.S. Paripoornan v. State of Kerala**⁴. In **Oriental Coal Corporation** the Supreme Court pointed out that where there is no hint of retrospectivity, in the statute itself, it is not possible to read retrospectivity. Similarly, in **K.S. Paripoornan**, the Supreme Court indicated the distinction between a statute dealing with substantive rights and a statute, which relates to procedure or evidence or is declaratory in nature. A statute dealing with substantive rights is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective effect. On the contrary, a statute concerned mainly with matters of procedure, or evidence or which is declaratory in nature has to be construed as retrospective, unless there is clear indication to the contrary.

69. The PMLA is not a statute dealing merely with matters of procedure or evidence or which is declaratory in nature. It is a statute which affects substantive rights of parties. Therefore, by the test indicated in **K.S. Paripoornan**, it cannot have retrospective effect.

70. In fact, the PMLA, 2002 underwent several amendments from the year 2005 onwards. Even the expression “proceeds of crime” defined in Section 2 (1) (u) underwent an amendment by Act 2 of 2013 and later by Finance Act, 2016. Today, the definition includes any property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence.

³ 1988 (Suppl) SCC 308

⁴ (1994) 5 SCC 593

Therefore, even the property in the hands of third parties can be attached and confiscated, if it is shown that they represent proceeds of crime. Hence, by its very nature, the provisions of the Act cannot have retrospective effect.

71. It was contended by the learned Additional Solicitor General that it is not permissible for this Court to decide in a writ petition whether the property of a person comes within the definition of the expression “proceeds of crime” or not. Certain passages from the judgment of this court in *B. Rama Raju v. Union of India* 2011 (3) ALT 443 are relied upon in this regard.

72. But, we are not deciding in this case the question whether a particular property is the proceed of crime or not. What we find here is that a strategic investor roped in by the concerted efforts of the Ministry of Corporate Affairs, the Board of Directors nominated by them and the Company Law Board, cannot be taken for a royal ride, after making them infuse funds to the extent of Rs.2908 crores, to save all the stakeholders such as Investors, Shareholders, Banks, employees and customers. It is the credibility of the various departments of the Union of India, which is put to stake by the impugned action of the Enforcement Directorate.

73. On behalf of the respondents, much was sought to be made out of a letter dated 10-04-2009 sent by the Enforcement Directorate to the CEO of Satyam Computers asking them not to return Rs.1230 crores and the reply given on 06-06-2012 to the

effect that the amount is reflected in the balance sheet and that the company has sufficient cash reserves to meet any obligations.

74. But the above contention loses sight of the timeline of events. To recapitulate, the Board of Directors nominated by the Government of India filed an application on 17-02-2009 before the Company Law Board seeking permission to induct a strategic investor. Permission was granted by order dated 19-02-2009. A Request for Proposal was made on 13-03-2009 and the prospective bidders were given access to the data room from 24-03-2009 to 04-04-2009. The letter of the Enforcement Directorate was dated 10-04-2009 and was received on 11-04-2009. All bidders, without being aware of the said letter, submitted their financial bids on 12-04-2009. The bids were opened on 13-04-2009 and there were three participants. None of them was informed of the letter dated 10-04-2009 issued by the Enforcement Directorate. If the company was obliged, on account of the letter of the Enforcement Directorate to keep aside a sum of Rs.1230 crores, the same should have been informed to the participants in the competitive price bid, as the claim of the Enforcement Directorate had the potential of eroding into the networth of the company. The commercial decision to become a strategic investor is induced by the facts disclosed and the net worth of the company.

75. As a matter of fact, the Enforcement Directorate was part of the Multi Disciplinary Investigation Team and hence, they were in the know of things about the induction of a strategic investor.

Therefore, the Enforcement Directorate could not have kept quiet at the time of competitive price bids and allowed the investors to become victims at their hands, for the purpose of redressing the grievances of the first set of victims. As pointed out by the Supreme Court in **Vadilal Chemicals Limited v. State of Andhra Pradesh**⁵, the State which is represented by various departments should speak only with one voice. When the Ministry of Corporate Affairs swung into action within 48 hours of the disclosure made by the Managing Director of the company, the object was to save more than 3 lakhs shareholders and 53,000 employees. After inducing the petitioner to infuse funds in order to rehabilitate the company, it is not open to another Department of the Government to treat a portion of what was part of the assets of the company at the time of competitive price bids, as proceeds of crime liable for attachment and confiscation.

76. If the amount of Rs.822 crores lying in fixed deposits represented the proceeds of crime, the Ministry of Corporate Affairs could not have auctioned the same through competitive price bids. After one wing of the Government had induced a third party like the strategic investor to come to the rescue of the company, another wing of the Government cannot take an action that will vitiate the entire process. Therefore, we are of the considered view that the impugned order of attachment is liable to be set aside.

⁵ (2005) 6 SCC 292

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No.155 of 2016 in W.A.No.133 of 2013

77. Accordingly, the writ petition is allowed and the impugned order is set aside. There shall be no order as to costs. WAMP.No.155 of 2016 is disposed of directing the other banks to disburse the amounts to the petitioner.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 31-12-2018

Ak/Ksn

Note: L.R. copy to be marked.

B.O./Ksn



W.P.No.37487 of 2012 & WAMP.
No.155 of 2016 in W.A.No.133 of 2013

**HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE MS. JUSTICE J. UMA DEVI**

**Writ Petition No.37487 of 2012 &
WAMP.No.155 of 2016 in W.A.No.133 of 2013**

(per V. Ramasubramanian,J)



31st December, 2018.
(Ksn)