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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 508/2019 & CRL.M.A 7990/2019 & CRL.M.A  
7992/2019**

THE JOINT DIRECTOR DIRECTORATE

OF ENFORCEMENT LUCKNOW & ORS ..... Appellants

Through: Mr Amit Mahajan, CGSC with  
Mr Randeep Sachdeva and Ms  
Mallika Hiremath, Advocates.

versus

NARESH GROVER & ANR.

..... Respondents

Through: Mr R.K. Handoo, Mr Amit  
Shukla, Ms Neha Shukla and Mr  
Deva Shukla, Advocates for R1.  
Mr Pankaj Vivek, Mr Pares  
Shreenath  
Sharma, Mr Bidyarani Yumnum  
and Mr Atul Tripathi, Advocates  
for R2.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**11.12.2019**

**VIBHU BAKHRU, J**

1. The Enforcement Directorate has filed the present appeal under Section 42 of the Prevention of Money Laundering Act, 2002 (hereafter 'PMLA'), *inter alia*, impugning an order dated 22.11.2018 (hereafter

‘the impugned order’) passed by the Appellate Tribunal.

2. By the impugned order, the appeal preferred by the respondent under Section 26 of the PMLA, against an order dated 13.09.2017 passed by the Adjudicating Authority, was allowed. By the said order dated 13.09.2017, the Adjudicating Authority had confirmed the order dated 26.04.2017 passed by the Directorate of Enforcement, whereby the attachment of certain immovable properties (B-42 Ashok Vihar Phase -I, New Delhi and the factory premises at 1703-04 HSIIDC, Rai, Sonapat, Haryana) was confirmed.

3. Before examining the present controversy, it is important to set out the relevant facts necessary to address the same.

4. Super Cardiac Breaths Pvt. Ltd. (through its authorised director, Naresh Grover, respondent no.1 herein) had acquired the property bearing Plot No. 1703-04, HSIIDC Industrial Estate, Rai, Sonapat, Haryana. The consideration for the same was paid in five tranches to Haryana State Industrial and Infrastructure Development Corporation (HSIIDC). These payments were made between the period 09.02.2001 to 08.09.2005. A conveyance deed relating to the said property was executed by HSIIDC in favour of Super Cardiac Breaths Pvt. Ltd on 15.12.2005.

5. Thereafter, equitable mortgage of the said property at Haryana was created by depositing the title deeds with respondent no. 2 bank. This was to secure cash credit facility of ₹5 crores and a bank guarantee of ₹2 crores and the permission was granted by HSIIDC on 14.03.2012.

On 24.02.2012, respondent no.2 bank sanctioned the abovementioned facilities.

6. The Central Bureau of Investigation (CBI) alleges that investigations had revealed that respondent no.1 had conspired with public officials to sell sub-standard products through its companies under the National Rural Health Scheme (NRHM). It is alleged that this had caused a wrongful loss to the Government exchequer. In view of the above, an FIR alleging offences, under Section 120B of the IPC read with Section 409/420 of the IPC, was filed on 02.01.2012. On 25.02.2013, the chargesheet was filed. Since the alleged offences were included in the Part A Paragraph I to the Schedule to the PMLA, an ECIR was registered with the Lucknow Zonal Office of the appellant.

7. By the order dated 26.04.2017, Deputy Director, Enforcement Directorate, Ministry of Finance passed a provisional order of attachment, whereby the two following properties were attached:

| S. No. | Details of Property                                                                | Value (INR)     |
|--------|------------------------------------------------------------------------------------|-----------------|
| 1.     | B-42, Ashok Vihar, Phase-I, New Delhi                                              | ₹17,11,42,000/- |
| 2.     | Factory of M/s Surgicoim Medequip Pvt. Ltd., 1703-04, HSIDC, Rai, Sonapat, Haryana | ₹5,50,00,000/-  |

8. On 13.09.2017, the Adjudicating Authority confirmed the provisional order of 04.11.2017 accepting the view that the attached

properties were proceeds of crime. Thereafter, respondent no. 1 and Bajaj Finance filed separate appeals before the Appellate Tribunal, challenging the orders dated 26.04.2017 and 13.09.2017.

9. By a judgment dated 28.06.2018, the Tribunal allowed the appeal of Bajaj Finance on the ground that the property (B-42, Ashok Vihar, Phase-I, New Delhi) was purchased by respondent no.1 vide a sale deed 17.10.2002 and therefore, the same could not be proceeds of a crime which was allegedly committed in the year 2012. Further, the said property had been mortgaged to Bajaj Finance and thus, it had first charge over it.

10. The controversy in this appeal relates to attachment of property being no. 1703-04, HSIIDC, Rai, Sonapat, Haryana (hereafter 'the factory premises'). As noted above, this property was mortgaged to respondent no.2 (Bank of Baroda) for assistance extended to Surgicoim Medequip Pvt Ltd.

11. The borrower, Surgicoim Medequip Pvt Ltd, failed to re-pay the outstanding amounts to respondent no.2. This led respondent no.2 to issue a statutory notice dated 04.07.2018 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter the 'SARFAESI Act'). Thereafter, respondent no.1 expressed his willingness to settle all disputes and therefore, respondent no.2 refrained from initiating further proceedings under the SARFAESI Act.

12. A tripartite agreement dated 14.09.2018 was entered into

between respondent no.2 bank, the prospective buyer and the borrower (Surgicoim Medequip Pvt Ltd through its director – respondent no.1), wherein it was agreed that the sale consideration of the factory premises and plot would be deposited in the CC account of the borrower. And, the amounts so received would be adjusted against the amounts due from the borrower. The outstanding amount was approximately ₹6,55,11,000/-. Thereafter, a part payment of ₹1,00,00,000/- was made by the prospective buyer and the balance payment was to be made in terms of the said tripartite Agreement.

13. By a judgment dated 22.11.2018, the Tribunal took note of the details of payments made for acquisition of the property bearing no. 1703-04, HSIIDC, Rai, Haryana and held that it was clear that the consideration for acquiring the said property was paid in five instalments during the period 09.02.2001 to 08.09.2005. The Tribunal noted that the payments for the factory premises were made in the regular course of business and thus, could not be considered as “proceeds of crime”. The Tribunal also noted that the date of acquisition of the said property was prior to the date of alleged commission of the scheduled crime. The Tribunal also observed that it was an admitted fact that before passing the provisional attachment order or an order of confirmation, the adjudicating authority was aware that the said property was mortgaged and the Bank of Baroda was the mortgagee of the same. In view of the above, the Tribunal set aside the provisional order of attachment dated 26.04.2017 and the order confirming attachment dated 13.09.2017.

14. Thereafter, the Enforcement Directorate filed an appeal before the High Court of Allahabad, challenging the judgment dated 28.06.2018, whereby the Tribunal had set aside the attachment of the property at B-42, Ashok Vihar, Phase-I, New Delhi. The Enforcement Directorate has filed the present appeal before this Court, challenging the judgment dated 22.11.2018, whereby the Tribunal had set aside the attachment of the factory premises.

15. Admittedly, the factory premises were purchased in the year 2005. Therefore, the Tribunal accepted the contention that the said property, which was mortgaged to Bank of Baroda, could not be subject to attachment as proceeds of crime. Admittedly, the said properties had been acquired prior to the commission of the alleged crime, which is stated to be committed somewhere in 2011-12. Thus, the said properties could not be stated to be assets which were derived from any criminal activity.

16. Section 2(1)(u) of the PMLA, which defines the expression ‘proceeds of crime’, is set out below:

**“2. Definitions.-**

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(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country [or abroad];”

17. It is contended on behalf of the appellant that ‘proceeds of crime’ would not only mean the property derived or obtained directly as a result of criminal activity, but also the value of any such property. It is thus contended that notwithstanding that any asset may not be derived by criminal activity; nonetheless, if it represents the value thereof, it can be attached as proceeds of crime. In addition, it is submitted that the provisions of the PMLA override the provisions of other statutes, including the SARFAESI Act, as well as Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

18. As noticed above, the proceeds of crime are defined to mean any property derived or obtained directly or indirectly by any person, as a result of criminal activity relating to a scheduled offence. Indisputably, the properties involved in this petition were not derived or obtained as a result of any criminal activity as the same had been acquired much prior to commission of the alleged scheduled crime. The contention that the value of any property derived from criminal activity can also be attached as proceeds of crime, is misconceived in the facts of this case. Even if it is accepted that assets, which are not derived or obtained as a result of criminal activity, can be attached in lieu of any assets having equivalent value derived or obtained from any criminal activity, the same can be attached only from the hands of a person who is guilty of committing a scheduled crime or otherwise holds proceeds of crime.

19. It is an admitted fact that the properties, as sought to be attached by the appellant, had been acquired and mortgaged by respondent no.1 prior to the commission of any scheduled offence. Thus, on the date of

commission of the offence and on the date of the attachment order, the said properties did not vest with respondent no.1. Respondent no.1, being the mortgagor, was left with equity of redemption and all interest in the said property stood transferred to the mortgagee (respondent no.2), prior to the order of provisional attachment. There is no dispute that the respondent no.2 bank had acquired the mortgage of the property in question for valuable consideration. Therefore, any interest in the property acquired by them cannot, by any stretch, be considered as proceeds of crime in the hands of the mortgagee bank.

20. In the aforesaid view, the said order dated 26.04.2017 of Provisional Attachment, whereby the properties in question were attached and the order dated 13.09.2017 passed by the Adjudicating Authority confirming the said attachment, are wholly unsustainable.

21. The learned Counsel appearing for the respondent no.2 bank states that in exercise of its powers, the bank has already exercised its rights to enforce its security interest in respect of the factory premises. It had sold the factory premises sought to be attached to a third party and has thereby recovered the proceeds thereof. The said proceeds have since been appropriated towards the amount due by respondent no.1 and there is no surplus for distribution to respondent no.1 or the borrower.

22. In view of the above, this Court finds no reason to interfere with the decision of the Tribunal to set aside the order dated 26.04.2014 passed by the Enforcement Directorate provisionally attaching the aforementioned property and the order dated 13.09.2017 passed by the

Adjudicating Authority confirming the same. The appeal is, accordingly, dismissed.

23. The pending applications are also disposed of.

**VIBHU BAKHRU, J**

**DECEMBER 11, 2019**

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