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

Date of Decision: 16th February, 2023

+ **W.P.(C) 11152/2022 and CM APPL. 32766/2022**

PRPL ENTERPRISES PVT LTD(FORMERLY KNOWN AS
PIRAMAL REALTY PVT LTD) Petitioner

Through: Mr. Vijay Aggarwal, Advocate along
with Mr. Pankush Goyal and Mr.
Anuj Kapoor Advocates (M:
8800192008).

versus

DIRECTORATE OF ENFORCEMENT Respondent

Through: Mr. Anurag Ahluwalia CGSC for ED
(M: 9811418995).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition is connected with *Writ Petition Civil 11473/2022* titled '*Omkar Realtors and Developers Private Limited v. Adjudicating Authority, Prevention of Money Laundering through its Registrar and Ors.*' The Petitioner is aggrieved by the impugned Provisional Attachment Order dated 14th January, 2022 i.e., PAO No. 1/2022 by which one of the properties which was mortgaged with the Petitioner was attached/seized by the Directorate of Enforcement (ED) under Section 5 of the Prevention of Money Laundering Act (hereinafter 'PMLA'). The basis of the PAO is FIR No. 109/2020 dated 7th March, 2020 registered with City Chowk Police

Station Aurangabad invoking Sections 420, 406 and 34 of the Indian Penal Code, 1860. The details of the properties attached in the impugned PAO are set out below:-

6.2 *Ms. Loveleen Behera, Vice President, Yes Bank Ltd. during her statement recorded on 01.09.2021 under the provisions of Section 50 of PMLA, has interalia stated that during the year 2015, the then saleable area of Omkar 1973 Project was mortgaged with Yes Bank Ltd. and M/s Piramal Realty Pvt. Ltd; that in the year 2016, M/s Surana Developers (Wadala) LLP, a company of M/s ORDPL, approached the Yes Bank Ltd. for an additional loan of Rs. 410 crores for Anand Nagar SRA CHS Scheme; that Yes Bank Ltd. disbursed an amount of Rs. 410 crores and against the said loan, a saleable area of 3.5 lakhs sq ft. to be loaded in Omkar 1973 project, Worli, was mortgaged with the Yes Bank Ltd and therefore, the specific saleable area of 3.5 lakhs sq ft. of M/s Surana Developers (Wadala) LLP for Anand Nagar SRA CHS Scheme was mortgaged only with the Yes Bank Ltd. and the other saleable area of identified units of area 5 lakhs sq ft. in Omkar 1973 Worli was mortgaged with M/s Piramal Realty Pvt. Ltd. only with residual charge on Yes Bank Ltd. and the rest of saleable area of Omkar 1973 project, Worli was mortgaged with both Yes Bank Ltd. and M/s Piramal Realty Pvt. Ltd. She further stated that earlier the saleable area of 3.5 lakhs sq ft of Anand Nagar SRA CHS Scheme was mortgaged only with the Yes Bank Ltd; that by the year 2019, the development right of Surana Developers (Wadala) LLP's LOI for Anand Nagar SRA CHS Scheme, was also cross collateralised for Rs. 1300 crores which was the other loans of Yes Bank Ltd. and therefore, the total saleable area mortgaged for Rs. 1300 crores and the total saleable area of Anand Nagar SRA CHS Scheme were now mortgaged with both Yes Bank Ltd. and M/s Piramal Realty Pvt. Ltd. due to cross*

collateral; that Yes Bank Ltd. has primary charge on the Omkar 1973 Project for an outstanding amount of Rs. 1300 crores and a residual charge for Rs. 410 crores of Surana Developers which means if Rs. 1300 crores given as loan to M/s ORDPL is paid by them and still there are some more saleable area left to be sold, then the same could be used for the payment of Rs. 410 crores given as loan by Yes Bank Ltd. to M/s Surana Developers; that Yes Bank Ltd. and M/s Piramal Realty Pvt. Ltd. has entered into Inter Creditor Agreement dated 02.03.2021; that Yes Bank Ltd. loan exposure of Rs. 1810 crores was classified as NPA in the year 2019; that the loan exposure of Rs. 872 crores of M/s Piramal Realty Pvt. Ltd. was not paid by M/s ORDPL and the same were still outstanding.

6.3 From the above, it is revealed that for the constructions of Tower A, B & C in Omkar 1973 Worli, the Project has been financed by M/s Yes Bank Ltd. and M/s Piramal Realty Pvt. Ltd. and accordingly both have created their charges on the said project.

6.4 From the investigation conducted so far it is revealed that the Proceed of Crime to the extent of Rs. 330 crores has been spent for the constructions of Tower A, B & C in Omkar 1973 Worli. However, as per the statement given by Shri Pradeep Jain, the construction work in all the three towers was going on simultaneously and the vendors were common in all the towers, and thus the tower-wise utilization of Rs. 330 crores could not be identified. In view of the above, it is impossible to earmark any specific flats in any of the Towers where the said Proceed of Crime could have been utilized, hence the property as mentioned below have been identified as the Proceed of Crime as per the concept of value of such property as defined under Section 2(1)(u) of the PMLA, 2002 to the extent of Rs. 330 crores (approx.):

Table No. 9

Sr. No.	Name of holder	Detail of Properties	Value of Properties (in Rs.)	Source of Fund
1	M/s ORDPL (Mortgaged with Yes Bank and M/s Piramal Realty Pvt. Ltd.	Flat No. C-1601, C-1602, C-1701, C-1702, C-1801, C-1802, C-1901, C-1902, C-2101, C-2201, C-2202, in Tower C in Omkar Worli 1973 Project situated in CTS No. 286(pt), Lower Parel Division, Ward G/S, Pandurang Marg, Worli, Mumbai.	330,57,79,200	Yes Bank Loan of Rs. 410 crores vide letter dated 31.12.2015 to M/s Surana Developers, Wadala LLP

3. The petition was first listed before this Court on 27th July, 2022, when *status quo* was directed. The relevant extract of the said order reads as under:

“3. Till the next date of listing, the respondent shall stand restrained from taking further steps as contemplated under Section 8 of Prevention of Money Laundering Act, 2002. The petitioner shall also stand restrained from disposing of or creating any third party rights or encumbering the property which forms subject matter of the provisional order of attachment.”

4. It is submitted by Id. Counsel for the Petitioner that on 18th January, 2023, the closure report has been filed by the Mumbai Police has been accepted by the Id. Trial Court and that even the case instituted by the Enforcement Directorate has been closed.

5. The case of the Petitioner is that it was merely one of the lenders to M/s Omkar Realtors and Developers Pvt. Ltd. (“ORDPL”), which extended credit facility to ORDPL for construction of the ‘Worli Project’ and in a completely improper manner, its flats have been attached by the ED in the

impugned PAO.

6. It is submitted by Id. Counsel for the Petitioner the ECIR i.e., ECIR/MBZO-II/20/2020 which was registered against M/s Omkar Realtors and Developers Pvt. Ltd. (“ORDPL”) has itself been closed and ORDPL has been discharged.

7. The Court has considered the submissions of the parties. A perusal of the impugned PAO in the present case shows that the origin of the said PAO is an **FIR No. 109/2020** which was registered in the PS: City Chowk, Aurangabad, Maharashtra under Sections 420, 406 and 34 of the Indian Penal Code, 1860.

8. A perusal of the order dated 18th October, 2022 passed by the Special Court under PMLA, Greater Bombay shows that M/s Omkar Realtors and Developers Private Limited which was arrayed as A-2, to whom the Petitioner had extended credit facility for the construction of the ‘Worli Project’, has also been discharged. Owing to this connection, the assets of the Petitioner were attached. The relevant extract of the said order reads as under:

“2. Sum and substance of all these applications is that City Chowk Police Station, Aurangabad filed Closure Report (C Summary) in respect of FIR No.109/2020 relating to the scheduled offence and the same was accepted by the Ld.3rd J.M.F.C., Aurangabad vide order dt.12.02.2021. Thereafter, the case relating to Scheduled Offence had been closed noting no objection of the informant of the said FIR No.109/2020. After that, the Hon’ble Supreme Court of India in Spl.Leave to Appeal (Crl.)No.5720/2022, Babulal Varma & Anr. Vs. Enforcement Directorate, Mumbai & Anr. passed an order dt.23.08.2022 permitting petitioners to withdraw the said Spl.Leave

to Appeal in light of recent judgment passed in Vijay Madanlal Choudhary & Ors. Vs. Union of India and Ors. [SLP (Criminal) No.4634 of 2014, decided on 27.07.2022], with liberty to avail appropriate remedies as per law.

3. In all these applications it is specifically contended that, the term 'Proceeds Of Crime' defined under the Prevention Of Money Laundering Act (hereinafter referred to as 'the PML Act') is based upon the criminal activity relating to Scheduled Offence. When Predicate Offence then there can be no offence under the PML Act as held by the Hon'ble Supreme Court. It is further contended that, when the Scheduled Offence itself is not in existence, there cannot be any tainted money and without which there is nothing to be laundered. With this, all the applicants in the respective applications Exh.166 to 173 prayed their discharge.

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11. The Prosecution Complaint indicates that, companies Accused No.1, 2, 12 to 17 are arrayed by ED for Mr. Babulal Varma (A3) and Mr.Kamalkishor Gupta (A4). These companies allegedly got status of legal entities because of Mr.Babulal Varma (A3) and Mr.Kamalkishor Gupta (A4). Both of them (A3 & A4) were discharged after as 'C Summary' acceptance order dt.12.02.2021 passed by the Ld. 3Rd J.M.F.C. became absolute and final. Therefore, the present PMLA case against Accused No.1, 2, 12 to 17 cannot survive continue. These entities cannot be prosecuted for the PMLA offence in the absence of Scheduled Offence. There are no sufficient grounds for proceeding against Accused No.1, 2, 12 to 17 in the instant PMLA case relating to ECIR/MBZO-II/20/2020 based on the FIR No.109/2020 for Predicate Offence. In this way, upon consideration of record of the case and the documents submitted therewith, and after hearing the submissions of the

Accused persons (A1,A2, A12 to A17) and the prosecution in this behalf, I consider that there is not sufficient ground for proceeding against the accused persons. **Hence, I am of the opinion to discharge them for the detailed reasons referred above for doing so, as per Sec.227 Cr.P.C.** Hence, Point No.1 is answered in the affirmative and following order is passed.

ORDER

1 Applications Exhibits 166 to 173 preferred on behalf of Accused No.1, 2 and 12 to 17 are allowed.

2 **Entities /Companies Accused No.1, 2 and 12 to 17 for themselves and for Babulal Varma (A3) and Kamalkishor Gupta (A4) are hereby discharged as per Sec.227 Cr.P.C. from PMLA Special Case No.377 of 2021 in respect of ECIR/MBZO-II/20/2020 from offences under Sec.3 punishable under Sec.4 of the PML Act.**

9. The Supreme Court in *Vijay Madanlal Choudhary & Ors. v. UOI & Ors., 2022 SCC OnLine SC 929*, has categorically held that when the accused person has been discharged/acquitted in the scheduled offence or the criminal case against the accused person has been quashed, there can be no offence of money laundering against the accused person. Further, in the said judgement it has also been stated that no offence of money laundering can be made out against any person having property linked to the person accused in the scheduled offence. The relevant extract of the judgement is this regard reads as under:

“467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:

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(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of

criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of moneylaundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

Therefore, in the event that the accused person is discharged in the PMLA case itself, the impugned PAO and the attachment of such property linked to the accused person, from the said PAO, deserves to be quashed.

10. This legal position has been subsequently affirmed by the Supreme Court in the following cases.

- i. ***Parvathi Kollur v. Enforcement Directorate*** [Criminal Appeal No. 1254/2022, decided on 16th August, 2022],
- ii. ***Adjudicating Authority v. Shri Ajay Kumar Gupta & Ors.*** [Criminal Appeal Nos. 391-392/2018, decided on 2nd December, 2022],
- iii. ***Directorate of Enforcement v. M/s Obulapuram Mining Company Pvt. Ltd*** [Criminal Appeal No.1269/2017, decided on 2nd December, 2022].

11. Vide order dated 16th August, 2022, in ***Criminal Appeal No.154 of 2022*** titled '***Parvathi Kollur v. Enforcement Directorate***', the Supreme Court also specifically referred to the paragraph as mentioned above in ***Vijay Madanlal Choudhary (supra)*** and held that when the accused person has been acquitted in the scheduled offence under the PMLA, the closure of the proceedings under the PMLA against persons said to connected to the accused person would be the natural consequence. The relevant portion of the said judgment reads as under:

"2. The Appellants herein have questioned the judgment and order dated 17.12.2020 as passed by the High Court of Karnataka at Bengaluru in Criminal Revision Petition No. 590 of 2019 whereby, the High Court allowed the revision petition filed by the Respondent and set aside the discharge order passed by the IIIrd Additional District and Sessions Judge, D.K., Mangaluru (Karnataka) for the offence Under Section 3 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as 'the Act of 2002').

3. The Appellants herein are wife and son of the accused No. 1 against whom the allegations had been that during his tenure as Deputy Revenue Officer, he amassed assets disproportionate to his known source of income to an extent of Rs. 42,25,859/-. For this, the Lokayukta Police registered a case Under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act of 1988'). During the pendency of trial, the Directorate of Enforcement registered a case against the accused No. 1 and the Appellants under the Act of 2002 and filed a complaint on 08.06.2016 before the Special Court for trial of the offence Under Section 3 thereof.

4. In the meantime, the Special Judge (Lokayukta) acquitted the accused No. 1 of the offences aforesaid

under the Act of 1988 while observing that the evidence produced by the prosecution was insufficient to hold him guilty. Then, the accused No. 1 as also the present Appellants moved an application Under Section 277 of the Code of Criminal Procedure, 1973 seeking discharge in the case pertaining to the Act of 2002. Before the said application was considered and decided, the accused No. 1 expired on 08.05.2018.

5. Thereafter, the Trial Court, by its judgment and order dated 04.01.2019, allowed the application and discharged the Appellants from the offences pertaining to the Act of 2002 while observing that occurrence of a scheduled offences was the basic condition for giving rise to “proceeds of crime”; and commission of scheduled offence was a pre-condition for proceeding under the Act of 2002.

6. Aggrieved by the said discharge order, the Directorate preferred a revision petition before the High Court. The High Court proceeded to set aside the discharge order while observing that the allegations made in the complaint and the material produced, prima facie, made out sufficient ground for proceeding against the Appellants for offences under the Act of 2002.

7. Learned Counsel for the Appellants has contended that the issue as involved in this matter is no more res integra, particularly for the view taken by a 3-Judge Bench of this Court in the case of Vijay Madanlal Choudhary and Ors. v. Union of India and Ors. decided on 27.07.2022 where, the consequence of failure of prosecution for the scheduled offence has been clearly provided in the following terms:

187.(d) The offence Under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the

offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

8. Learned ASG appearing for the Respondent, in all fairness, does not dispute the above position of law declared by this Court.

9. The result of the discussion aforesaid is that the view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence.

10. In view of the above, this appeal succeeds and is allowed. The impugned judgment and order dated 17.12.2020 is set aside and the order dated 04.01.2019 as passed by the Trial Court, allowing discharge application of the appellants, is restored”

12. The Id. Division Bench of this Court, in ***Harish Fabiani and Ors. v. Enforcement of Directorate and Ors.***, 2022 SCC OnLine Del 3121 has also

taken a similar view. The relevant portion of the said judgment is set out below:

“22. The Hon’ble Supreme Court has been clear and categorical in its reasoning as evident from the para extracted above. The undeniable sequitur of the above reasoning is that firstly, authorities under the PMLA cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed; secondly, the scheduled offence must be registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum; thirdly, in the event there is already a registered scheduled offence but the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or quashing of the criminal case of the scheduled offence, there can be no action for money laundering against not only such a person but also any person claiming through him in relation to the property linked to the stated scheduled offence. In other words no action under PMLA can be resorted to unless there is a substratum of a scheduled offence for the same, which substratum should legally exist in the form of a subsisting (not quashed) criminal complaint/inquiry or if it did exist the accused has since been discharged or acquitted by a Court of competent jurisdiction.”

13. The Supreme Court in ***W.P.(C) 368/2021*** titled ‘***Indrani Patnaik & Anr. v. Enforcement Directorate and Ors.***’ has recently held that there cannot be any prosecution in relation to an offence for which the accused person has already been discharged. The relevant portion of the said order of the Supreme Court reads as:

*Learned senior counsel has submitted that in the present case, prosecution of the petitioners in relation to the scheduled offence, on which the proceedings under the Prevention of Money-laundering Act, 2022 (PMLA) were based, have already come to an end with the petitioners having been discharged from V.G.R. Case No. 59 of 2009(T.R. Case No. 80 of 2011) by the order dated 27.11.2020, as passed by the High Court of Orissa in Criminal Revision No. 831 of 2018. Learned counsel would submit that in the given state of facts and the law declared by this Court, **there cannot be any prosecution for the alleged offence of money-laundering in relation to the said offence for which, the petitioners have already been discharged.***

Learned Additional Solicitor General appearing for the respondents though has not disputed the order dated 27.11.2020 passed by the High Court, discharging the petitioners from the scheduled offence but has submitted that he has not received further instructions as to whether the prosecuting agency has challenged the said order or not.

*The record as it stands today, **the petitioners stand discharged of the scheduled offence and therefore, in view of the law declared by this Court, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence.***

That being the position, we find no reason to allow the proceedings against the petitioners under PMLA to proceed further.

14. This position of law in terms of proceedings under the PMLA has been recently considered by this Court in ***EMTA Coal Limited and Ors. v. The Deputy Director of Directorate of Enforcement, 2023/DHC/000277.*** In the said judgement it was held that once the closure report in the offences under respective FIRs has been filed, no criminality is ascertainable and the

respective PAOs as well as the ECIRs are liable to be quashed.

15. After hearing all the Id. Counsels for the parties and considering the judgements of the Supreme Court as also this Court, the Court is clearly of the opinion that the impugned PAOs against the properties of Piramal cannot continue as the Petitioner was not arrayed as an accused and was merely a lender to M/s Omkar Realtors and Developers Pvt. Ltd. (“ORDPL”). Accordingly, the flats which were attached by the ED, as extracted in Table No. 9 extracted above are thus, released.

16. With these above observations, the present petition with all pending applications, if any, is disposed of.

17. The Court grants liberty to the ED to seek revival of the PAO in accordance with law, if there is any change in the circumstances. Liberty is also granted to the Petitioner to move an appropriate application if the properties are not released.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 16, 2023

MR/Am