

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1309 OF 2024

Union of India
Through Deputy Director,
Directorate of Enforcement,
Mumbai Zone – I, 1st Floor,
Kaiser-I-Hind Building,
Currimbhoy Road, Ballard Estate,
New Delhi – 400001.

... Appellant

V/s.

1. Shri Nilesh J. Thakur
Having its address at Flat No. 1C,
Viceroy Court, Thakur Village,
Kandivali (East), Mumbai – 101.
2. M/s. ACE Card Trading Pvt. Ltd.
3. M/s. ACE Card HR Pvt. Ltd.
4. M/s. ACE Card Export Pvt. Ltd.
5. M/s. Dhan Share Trading Pvt. Ltd.
6. M/s. ACE Card Infrasol Pvt. Ltd.
7. M/s. ACE Card Power Pvt. Ltd.
8. M/s. ACE Card Media Pvt. Ltd.
9. M/s. ACE Card Construction Pvt. Ltd.
10. M/s. ACE Card Hotels & Resorts Pvt. Ltd.
11. M/s. ACE Card Agro Industries Pvt. Ltd.
12. M/s. ACE Card Reality Pvt. Ltd.

Through its Director Shri. Nilesh J. Thakur
Having its Address at 202, Sapphire,
Opp. Tilak Hall, M. G. Road, Vile Parle (East),
Mumbai – 57.

... Respondents

**WITH
INTERIM APPLICATION NO. 2694 OF 2025
IN
CRIMINAL APPEAL NO. 1309 OF 2024**

Union of India
Through the Deputy Director,
Directorate of Enforcement,
Mumbai Zonal Office – I, Mumbai,
Having Office at 4th Floor,
Kaiser-I-Hind Building,
Currimbhoy Road, Ballard Estate,
Mumbai – 400001.

... Applicant

V/s.

1. Shri Nilesh J. Thakur
Age : 60.
Having its address at Flat No. 1C,
Viceroy Court, Thakur Village,
Kandivali (East), Mumbai – 101.
2. M/s. ACE Card Trading Pvt. Ltd.
3. M/s. ACE Card HR Pvt. Ltd.
4. M/s. ACE Card Export Pvt. Ltd.
5. M/s. Dhan Share Trading Pvt. Ltd.
6. M/s. ACE Card Infrasel Pvt. Ltd.
7. M/s. ACE Card Power Pvt. Ltd.
8. M/s. ACE Card Media Pvt. Ltd.
9. M/s. ACE Card Construction Pvt. Ltd.
10. M/s. ACE Card Hotels & Resorts Pvt. Ltd.
11. M/s. ACE Card Agro Industries Pvt. Ltd.
12. M/s. ACE Card Reality Pvt. Ltd.

Through its Director Shri. Nilesh J. Thakur, Age – 40
Having its Address at 202, Sapphire,
Opp. Tilak Hall, M. G. Road, Vile Parle (East),
Mumbai – 57.

13. State of Maharashtra
Through its Public Prosecutor,
High Court, Appellate Side.

... Respondents

**WITH
CRIMINAL APPEAL NO. 79 OF 2020**

Union of India
Through Deputy Director,
Directorate of Enforcement,
Mumbai Zone – I, 1st Floor,
Kaiser-I-Hind Building,
Currimbhoy Road, Ballard Estate,
New Delhi – 400001.

... Appellant

V/s.

1. M/s. Kalyani Education Pvt. Ltd.
2. Shri Ravindra G Sapkal,
3. M/s. Kalyani Charitable Trust
All Having its office at 1201,
Shubhada, Pochkhanwala Road,
Worli, Mumbai – 400030.

... Respondents

**WITH
INTERIM APPLICATION NO. 3083 OF 2025
IN
CRIMINAL APPEAL NO. 79 OF 2020**

Union of India
Through the Deputy Director,
Directorate of Enforcement,
Mumbai Zonal Office – I, Mumbai,
Having Office at 4th Floor,
Kaiser-I-Hind Building,
Currimbhoy Road, Ballard Estate,
Mumbai – 400001.

... Applicant

V/s.

1. M/s. Kalyani Education Pvt. Ltd.
2. Shri Rabindra G Sapkal, Age – 41
3. M/s. Kalyani Charitable Trust
Having its office at 1201,
Shubhada, Pochkhanwala Road,
Worli, Mumbai – 400030.
4. The State of Maharashtra.

... Respondents

**WITH
CRIMINAL APPEAL NO. 1051 OF 2019**

Union of India
Through Deputy Director,
Directorate of Enforcement,
Mumbai Zone – I, 1st Floor,
Kaiser-I-Hind Building,
Currimbhoy Road, Ballard Estate,
New Delhi – 400001.

... Appellant

V/s.

- 1) M/s. Shapoorji Pallonji and Co. Pvt. Ltd.
Having its office at S. P. Centre,
41/44, Minoo Desai Marg, Colaba,
Mumbai – 400005.
- 2) M/s. SRB Developers
Having its office at 2218/219, Raheja
Arcade, Plot No. 61, Sector – 11,
CBD Belapur, Navi Mumbai – 400 614.

... Respondents

**WITH
INTERIM APPLICATION NO. 3140 OF 2025
IN
CRIMINAL APPEAL NO. 1051 OF 2019**

Union of India
Through the Deputy Director,
Directorate of Enforcement,
Mumbai Zonal Office – I, Mumbai,
Having Office at 4th Floor,
Kaiser-I-Hind Building,
Currimbhoy Road, Ballard Estate,
Mumbai – 400001.

... Applicant

V/s.

1. M/s. Shapoorji Pallonji and Co. Pvt. Ltd.
Having its office at S. P. Centre,
41/44, Minoo Desai Marg, Colaba,
Mumbai – 400005.
2. M/s. SRB Developers
Having its office at 2218/219, Raheja
Arcade, Plot No.61, Sector – 11,
CBD Belapur, Navi Mumbai – 400614.

3. The State of Maharashtra
Through Public Prosecutor,
High Court, Appellate Side,
Mumbai.

... Respondents

**WITH
INTERIM APPLICATION NO. 724 OF 2021
IN
CRIMINAL APPEAL NO. 1051 OF 2019**

Shapoorji Pallonji and Co. Pvt. Ltd.
Having its office at S. P. Centre,
41/44, Minoo Desai Marg, Colaba,
Mumbai – 400005.

... Applicant/ (Org.
Respondent No.1)

V/s.

1) Union of India,
Through Deputy Director,
Directorate of Enforcement,
Mumbai Zone – I, 1st Floor,
Kaiser-I-Hind Building,
Currimbhoy Road, Ballard Estate,
Mumbai – 400001.

.... Appellant

2) M/s. SRB Developers
Having its office at 2218/219, Raheja
Arcade, Plot No.61, Sector – 11,
CBD Belapur, Navi Mumbai – 400614.

... Respondent No.2

Ms. Manisha Jagtap a/w Ms. Mansi Joshi for Appellant-ED in all Appeals.
Mr. Gaurang Mehta a/w Mr. Shahzad A. K. Najam-ES-Sani and Ms. Rhea
Mehta i/by Maneksha & Sethna for Respondent No.1 in APEAL/1051/2019
a/w IA/724/2021 and IA/3140/2025.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 9th SEPTEMBER 2025

PRONOUNCED ON : 23rd DECEMBER 2025

JUDGMENT [Per : RANJITSINHA RAJA BHONSALE, J] :-

1) By the present Appeals filed under section 42 of the Prevention of Money Laundering Act, 2002 (PMLA), the Appellant i.e. Union of India, seeks to challenge the Order dated 17th January, 2019 (Impugned Order) passed by the Learned Appellate Tribunal, New Delhi under the PMLA in FPA-PMLA-1407/MUM/2016, FPA-PMLA-1104/MUM/2015, FPA-PMLA-1105/MUM/2015, FPA-PMLA-1406/MUM/2015, FPA-PMLA-1408/MUM/2015, FPA-PMLA-1409/MUM/2015, FPA-PMLA-1410/MUM/2015, FPA-PMLA-1479/MUM/2016, FPA-PMLA-1211/MUM/2016 filed by Shapoorji Pallonji & Company Private Limited and in FPA-PMLA-1491/2016 filed by SRB Developers, the Respondent No.2. The Impugned Order also disposes 3 Appeals filed by the Kalyani Group (Respondent No.1) being FPA-PMLA-1220/MUM/2016, FPA-PMLA-1221/ MUM/2016 and FPA-PMLA-1213/MUM/2016.

1.1) By the Impugned Order the learned Appellate Tribunal, PMLA, New Delhi held that, the offence under Section 13 of the Prevention of Corruption Act, was not a predicate/scheduled offence under the PMLA prior to 1st June, 2009 and since SPCL/Respondent No. 1 herein had advanced the monies to Nilesh Thakur and his Group companies to the tune of Rs 111.50 crores prior to 1st June 2009, the provisions of PMLA could not have been applied to the said monies or the properties acquired out of the said monies and that the said monies/properties cannot be treated a proceeds of crime. The Impugned Order further holds that there is no connection between the

monies and discharge of public duties by Nitesh Thakur i.e the brother of Nitesh Thakur and the attachment was beyond the power and jurisdiction of authority of the Enforcement Directorate/Authorities under the PMLA Act and that the PAO's could not have been issued or original complaint be filed in respect of Rs 111.50 crores or properties acquired out of the said monies. The Impugned Order, set aside Provisional Attachment Orders (PAO) and directed to release certain properties. The Impugned Order, further directed the Appellant/Enforcement Directorate to refund the detained amounts with interest which had already accrued thereon.

2) Shapoorji Pallonji and Company Limited (SPCL/Respondent No.1 in Appeal 1051 of 2019) preferred an Criminal Interim Application No. 724 of 2021 in Criminal Appeal No 1051 of 2019 inter alia seeking the recall of the Order of admission dated 11th March, 2020, by raising preliminary objections as to the maintainability of the Criminal Appeal as recorded in Orders dated 18th December 2019, 20th January 2020 and 4th February 2020 and for deposit of Rs 45 crores with this Court. The Appellants have since deposited an amount of Rs. 45 Crores and Rs. 1.15 Crores with the Registry of this Court.

3) Considering, the factual matrix and the issues and rights of the parties involved, we deemed it appropriate, to hear, the Applications and Appeals, together for final disposal.

The facts as emerged from record and relevant to be considered in

deciding the present proceedings are as under:-

3.1) M/s. Shapoorji Pallonji and Co Private Limited (SPCL), is a company incorporated under the Companies Act, inter alia with the object to deal in land and carry on land development activities. In or around July 2007, SPCL and M/s. PRS Enterprises, a concern related/connected to Mr Nilesh Thakur entered into an agreement to procure land for SPCL. The SPCL, vide its letter dated 16th July, 2007, awarded to M/s PRS Enterprises/Nilesh Thakur, the task of acquisition 900 acres of land, at the maximum price of Rs 30.00 Lakhs per acre. The acquisition was to be carried out within a period of 5 years. M/s. PRS Enterprises/Nilesh Thakur by letter dated 19th July, 2007 accepted the terms recorded in SPCL's letter dated 16th July, 2007. The letters dated 16th July, 2007 and 19th July, 2007 together constituted an Agreement between SPCL and M/s. PRS Enterprises/Nilesh Thakur for acquisition of land (the Agreement).

3.2) From the record it appears that, Mr Nilesh Thakur is a sole proprietor of M/s. PRS Enterprises, M/s. PRS Developers, M/s. Siddhivinayak Enterprises. Nilesh Thakur is also the Promoter/Director of companies namely viz. M/s. PRS Enterprises, M/s. PRS Developers, M/s. Aishwarya Investments, M/s. Ace Card Infrastol Pvt. Ltd, M/s. Shoreline Exports, Ace Card Trading Pvt. Ltd, Ace Card Agro Industries Pvt. Ltd, Ace Card Power Pvt. Ltd, Ace Card Media Pvt. Ltd, Ace Card HR Pvt. Ltd, Ace Card Hotel & Resorts Pvt. Ltd, Ace Card Construction Pvt. Ltd, Ace Card Reality Pvt. Ltd. and Dhan Share Trading

Pvt. Ltd. All the aforesaid entities are under the control of Mr Nilesh Thakur and are known as the Nilesh Thakur Group. Mr Nilesh Thakur is also a Trustee of the Thakur Family Trust.

3.3) During the year 2007 and 2008, based on the agreement, SPCL advanced amounts aggregating to Rs.84.50 Crores to M/s. PRS Enterprises/Nilesh Thakur by way of cheques drawn on Standard Chartered Bank and Deutsche Bank, which amount, is received by M/s. PRS Enterprises/Nilesh Thakur in its bank account held with Greater Bombay Co-operative Bank, Andheri, Mumbai (GBCB). SPCL made payments of Rs.57.00 Crores to M/s. Ace card Infrasolet Pvt. Ltd./Nilesh Thakur (AIPL), which amount, is also received by AIPL in its bank account with GBCB. The total amount of Rs 141.50 crores amounts i.e Rs. 84.50 crores and Rs.57.00 Crores, were paid by SPCL, under the said agreement, for the purchase of the properties, for and on behalf of SPCL. The payments are reflected/accounted for in the annual accounts of SPCL as “Loan and Advances” for the financial years 2006–2011.

3.4) From the record, it appears that, PRS Enterprises/AIPL/Nilesh Thakur group companies, used/utilized the aforesaid sum of Rs.141.50 Crores to purchase:- (i) immovable properties at Panvel, Raigad District; (ii) ownership Flats at Mumbai; (iii) vehicles; and (iv) make Fixed Deposits in the names of various companies of Nilesh Thakur Group. Certain amounts, have been retained in the bank accounts of various companies of Nilesh Thakur Group.

3.5) In or around December 2007, SPCL appointed M/s. PRS Enterprises and PRS Developers as Project Management Consultants (PMC), for one of its redevelopment project in Samata Nagar, Kandivali, Mumbai (Samata Nagar Project) and for the said purpose, advanced a sum of Rs 131,04,70,0291/-. Shri. Nilesh Thakur engaged Mr. Mukesh Waghela and Mr Pandurang Thakur for the liasioning work, for which Mr. Nilesh Thakur, agreed to pay 5% commission to each of them.

3.6) M/s. PRS Enterprises/Nilesh Thakur, by letter dated 22nd March, 2010, informed SPCL that, immovable properties/FDRs, acquired from the monies transferred pursuant to the agreement, would be transferred to the name of SPCL.

3.7) On 7th February, 2011, FIR No.56/2011 was registered, by the Crime Branch, CID, Chembur, Unit-VI of Mumbai Police (First FIR) against Shri. Nitish J Thakur, his brother Shri. Nilesh J. Thakur, Shri. Sunil Bhayade, Shri. Santosh Konekar, Shri Ganibhai and others for having committed offences of forgery, cheating and extortion under Sections 387, 467, 471 & 420 of Indian Penal Code. The complainants, Mr. Mukesh Waghela and Mr. Pandurang Thakur, contended that each of them, were cheated by the accused to the extent of 5% commission on the total amount of Rs.131,04,70,0291/- received by M/s. PRS Enterprises and PRS Developers as PMC, from SPCL, for the Samata Nagar Project. SPCL is not made an accused in this FIR.

3.8) On 7th May, 2011, chargesheet was filed before the learned

Additional Chief Metropolitan Magistrate, 37th Court Esplanade, Mumbai, under Section 387, 467, 471, 40 of Indian Penal Code against Nilesh Thakur and others. The said case is numbered as C. C. No. 403/PW/2011. On 10th May, 2011 on the basis of first FIR the Directorate of Enforcement started proceedings under PMLA Act and registered crime namely ECIR No. 03/2011 dated 10th May, 2011 under Sections 3 and 4 of the PMLA Act.

3.9) Since, M/s. PRS Enterprises/Nilesh Thakur and Ace card Infrasol Pvt. Ltd. had not transferred properties in the name of SPCL, SPCL filed a Suit bearing No.2576/2011, in this Court against Nilesh Thakur, Sole Proprietor of M/s. PRS Enterprises, Ace card Infrasole Pvt. Ltd., Nilesh J. Thakur, Chhaya Thakur *inter alia* for seeking payment of Rs.219,39,19,165/- along with further interest at the rate of 18% per annum on the principle amount of Rs.141,500,000/-, for declaration that the agreement executed by and between the SPCL and M/s. PRS Enterprises/Nilesh Thakur is valid and that the Defendants are bound/liable to handover and transfer to SPCL the immovable properties and the fixed deposits, cars and monies standing to the credit of the said bank accounts, as more particularly described in Exh. F, G, G1 and G2 of the plaint.

3.10) On 6th September, 2011, the parties in Suit No.2576 of 2011 entered into Consent Terms, under which the Defendants in the said Suit No.2576 of 2011 (Respondent Nos.3, 5, 6 and 9 in Appeal No.1407 of 2006) submitted to a Decree on admission for Rs.141.50 Crores with interest and

also bound themselves to transfer to SPCL, the properties which were listed Exhibit A to D of the Consent Terms. This Court by its Order dated 19th October, 2011, decreed the suit in terms of the Consent terms. Paragraphs 3 and 4 of the said Order, record the facts and circumstances under which the Consent terms were entered, the fact that the same have been duly executed by the parties, confirmed by their respective advocates, that there is no collusion between the parties and that the suit has been filed on the basis that there is a valid and subsisting agreement.

3.11) On 14th March, 2012, FIR No.07/2012 (Second FIR) was registered by the Anti-Corruption Bureau, Raigad at Alibaug against Shri. Nitesh Janardan Thakur, Ex-Deputy Collector, and other co-accused invoking Sections 13(1) (e) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of Indian Penal Code. Nitesh Thakur is the brother of Nilesh Thakur. As per the FIR, the case of the prosecution is that, Nitesh J Thakur misused his official position/powers vested upon him as Government Servant, and amassed properties and monies to the tune of Rs.118,39,22,816/-, during the period of his government service from 1993, as Section Officer GR-I in Rural Development of Ministry of State of Maharashtra to 23rd March 2010 as Deputy Collector, which was in excess of his legal remuneration. On the basis of this second FIR, ECIR No. 6/M20/2012 dated 18th June, 2012, was registered under Sections 3 and 4 of the PMLA Act. It is Pertinent to note, that the offence under Prevention of Corruption Act was made a predicate offence

vide an amendment and was effective from 1st June 2009.

3.12) Based on the FIR and investigation under PMLA, Directorate of Enforcement, between period April, 2012 to January, 2013 issued three Provisional Attachment Orders i.e. PAO No. 3 of 2012 dated 17th April, 2012, PAO No.7 of 2012 dated 27th November, 2012 and PAO No.2 of 2013 dated 24th January, 2013. Said PAO's pertinent to or are related to the first FIR/ECIR No. 03/2011.

3.13) In the Assessment Proceeding under the Income Tax Act, pertaining to SPCL for the period January to March 2013, the Assessing Officer passed an Order dated 11th February, 2013, expressing doubts about the nature of transactions relating to payment made by SPCL to M/s. PRS Enterprises/Nilesh Thakur for acquisition of the land under the agreement.

3.14) In the meantime Original complaint Nos.140/2012 dated 15th May, 2012, 169/2012 dated 24th December, 2012, 174/2013 dated 21st June, 2013 in respect of provisional Attachment Order Nos.03/2012, 07/2012, and 02/2013 were filed before the learned Adjudicating Authority under PMLA.

3.15) The order of the Assessing Officer, dated 11th February, 2013, was carried in appeal, by SPCL. The CIT Appeals, vide order dated 17th May, 2013, after considering the documents and record, including the Consent Term dated 6th September 2011 and the Order dated 19th October, 2011 passed therein, recorded that, the transactions for advances for purchase of land under the agreement were lawful and correct. SPCL's appeal was allowed for

the assessment years 2008-09, 2009-10, 2010-11.

3.16) In the meantime, the Adjudicating Authority under the PMLA vide Orders dated 31st August, 2012, 5th April, 2013 and 21st June, 2013 confirmed the provisional Attachment Order Nos.03/2012, 07/2012, and 02/2013 respectively.

3.17) Chargesheet No.05/2014 in FIR No. 07/2012 (Second FIR) was filed on 15th March, 2014, by the Anti Corruption Bureau, Thane before the Special Judge, Special Court, District and Sessions Court, Alibaug, District Raigad against Nitesh J. Thakur, his brother Nilesh J. Thakur & others. The chargesheet, proceeds on the basis that, Nitesh J. Thakur during his service in the Government of Maharashtra, misused his official position and powers as a Government Servant and amassed properties and monies to the tune of Rs.166,79,72,985/-, which was 92779.54 times disproportionate of his known source of income. That, M/s. S. D. Corporation Limited and Shapoorji Pallonji Company Limited both reputed Indian companies have paid Rs.258,62,28,468/- to the companies and firms of Nitesh J. Thakur and Nilesh J. Thakur without any valid/legal agreement. Out of the said amount, Rs.141.50 Crores was paid by SPCL (Respondent No.1 in Appeal No.1104). That, investigation under the PMLA revealed that, part of the proceeds of crime to the tune of Rs.61,42,00,000/- were traced in the bank of account M/s. Kalyani Charitable Trust, Kalyani Education Pvt. Ltd., Ravi Construction and Ravindra Sakpal. Investigation under PMLA revealed that, certain

properties were purchased/acquired out of proceeds of crime of Rs.166,79,72,985/- by Nitesh Thakur and Nilesh Thakur, contending that the same are untainted.

3.18) The Anti-Corruption Bureau, Thane filed chargesheet bearing No. 5/2014 on 15th March, 2014, *inter-alia*, against Respondent No.2 and 3 under Sections 13(1) (e) 13(2) of the Prevention of Corruption Act read with Section 109 of the Indian Penal Code. According to the Directorate of Enforcement, all properties of SPCL, which were acquired by the aggregate sum of Rs. 141.50 Crores advanced by SPCL to Respondent No.3 under the subject agreement for land aggregation, were alleged to be disproportionate assets of the Nitish Thakur.

3.19) SPCL received summons from Director of Enforcement requiring SPCL to produce certain documents. SPCL by its letter dated 25th June, 2014 forwarded the documents including the copy of the Consent Decree passed by this Hon'ble Court to the Enforcement Director and requested to the Enforcement Director not to attach the properties under the Consent Decree, which belong to SPCL.

3.20) The Directorate of Enforcement, between, September,2014 to March-2015, on the basis of second FIR/ECIR No. 6/MZ20/2012 dated 18th June, 2012, issued Provisional Attachment Orders being PAO No.19 of 2014 dated 30th September, 2014 and PAO No. 23 of 2014 dated 31st December, 2014.

3.21) The prosecution complaint vide PMLA Special Case No. 01/2015 was filed before the learned PMLA Special Judge, Sessions Court, Mumbai on 12th January, 2015.

3.22) In and around February, 2015 Respondent No. 3 (Nilesh Thakur) informed SPCL that some properties of SPCL's entitlement/ownership under consent terms have been attached by the Directorate of Enforcement and proceedings in respect thereof were pending before Adjudicating Authority. In March, 2015, SPCL filed, execution application in this Court being Execution Application No.1580/2015 for enforcing the consent terms. Notice, to the Defendants, therein, under Order XXI Rule 22 of the CPC is issued.

3.23) The Directorate of Enforcement issued following further four Provisional Attachment Orders namely PAO No.13 of 2015 dated 26th March, 2015; PAO No.16 of 2015 dated 31st March, 2015; PAO No.18 of 2015 dated 21st July, 2015 and PAO No.3 of 2016 dated 30th March, 2016.

3.24) In respect of PAO 13/15, PAO 16/15, PAO 18/15 and PAO 3/16, Respondent No.1 filed Original Complaint No. 465 of 2015, Original Complaint No. 495 of 2015 Original Complaint No. 512 of 2015 Original Complaint No. 596 of 2016, respectively with the Adjudicating Authority.

3.25) On 10th April, 2015, the Income Tax Appellate Tribunal dismissed Appeal of the Income Tax Department filed against order dated 17th May, 2013 of the CIT (Appeals). The Order dated 17th May, 2013 was confirmed and transaction/Agreement of SPCL or the acts of advancing monies under the

agreement and it being shown as “loans and advances” was in effect declared valid.

3.26) SPCL filed five Appeals with Appellate Tribunal, PMLA being (i) FPA-PMLA 890 of 2015 arising out of O.C.No.140 of 2012 and PAO 3 of 2012; (ii) FPA-PMLA 888 of 2015 arising out of O.C.No.174 of 2013 and PAO 2 of 2013; (iii) FPA-PMLA 889 of 2015 arising out of O.C.No.169 of 2012 and PAO 7 of 2012; (iv) FPA-PMLA 895 of 2015 arising out of O.C.No.370 of 2014 and PAO 19 of 2014 and (v) FPA-PMLA 896 of 2015 arising out of O.C.No.408 of 2015 and PAO 23 of 2014. The learned Appellate Tribunal, PMLA by its Order dated 17th May, 2015 permitted SPCL to withdraw the Appeals with liberty to file applications before the Adjudicating Authority under Section 8(2) of PMLA Act in respect of the Attachment Orders.

3.27) In August, 2015, the Adjudicating Authority by separate Orders both dated 27th August, 2015 passed in O.C. 465/15 held that properties attached by way of the PAO's are proceeds of crime, involved in money laundering and therefore confirmed the PAO No. 13/15 and PAO No. 16/15. Said Order dated 27th August, 2015, was challenged by SPCL, by filing Appeal No. FPA/PMLA Nos.1104/2015 and 1105/2015.

3.28) Pursuant to the order dated 17th May, 2015, SPCL, filed 5 Miscellaneous Applications with Adjudicating Authority under Section 8(2) of the PMLA Act challenging Order passed by Adjudicating Authority in the Original Complaint relating to the PAO's i.e O.C. No. 140 of 2012 and PAO 3

of 2012; O.C. No. 174 of 2013 and PAO 2 of 2013; O.C. No. 169 of 2012 and PAO 7 of 2012; O.C. No. 370 of 2014 and PAO 19 of 2014; and O.C. No. 408 of 2015 and PAO 23 of 2014.

3.29) Between June, 2015 and January, 2016, SPCL filed Miscellaneous Applications under the proviso of Section 8(2) of PMLA objecting to the other attachments. SPCL brought on record, all the facts and documents, based on which it contended that, it was the legal and beneficial owner of the properties sought to be attached by Directorate of Enforcement by way of said PAO's. SPCL sought to vacate the attachments in original complaint Nos. 465/2015 and 495/15 pertaining to the PAO No. 13/15 and PAO No.16/15 respectively. Certain entities of Nilesh Thakur Group also filed reply statement and thereby bringing on record that the properties being subject matter of the said PAO's were of SPCL ownership and entitlement and were purchased out of SPCL's funds under the Agreement.

3.30) In December, 2015, the Adjudicating Authority, by separate Order dated 30th December 2015, passed in O.C.No.512/15 held that, properties attached by way of the PAO's are proceeds of crime, involved in money laundering and therefore confirmed the PAO No. 18/15. The Order dated 30th December, 2015, was challenged, by SPCL, by filing Appeal No. FPA/PMLA No.1211/2016.

3.31) On 27th April, 2016 the Deputy Director, Mumbai Zone passed Provisional Attachment Order No.19/2014, No.23/2014, No.13/2015,

No.16/2015, No.18/2015 and No.03/2016. In the meantime, Original Complaints Nos. 370/2014 dated 29th October, 2014, 408/2014 dated 29th January, 2015, 465/2015 dated 24th April, 2015, 495/2015 dated 24th April 2015, 512/2015 dated 19th August, 2015 & 596/2016 dated 27th April, 2016 in respect of Provisional Attachment Order Nos. 19/2014 dated 30th September, 2014, 23/2014 dated 31st December, 2014, 13/2015 dated 26th March, 2015, 16/2015 dated 31st March, 2015, 18/2015 dated 21st July, 2015 & 03/2016 dated 27th April, 2016 respectively were filed before the Learned Adjudicating Authority under PMLA.

3.32) The Adjudicating Authority, PMLA, vide Orders dated 01.01.2015, 1st April, 2015, 27th August, 2015, 27th August, 2015, 30th December, 2015 & 27th April, 2016 confirmed the Provisional Attachment Order Nos. 19/2014, 23/2014, 13/2015, 16/2015, 18/2015 & 03/2016 respectively.

3.33) SPCL, in the Miscellaneous Applications filed before the Adjudicating Authority, filed a further Affidavit dated 12th January, 2016, bringing on record the fact that Nitish Thakur, the Public Servant had been absent from his duties from December 2002. That, he had not discharged any official function from December 2002 onwards. That, SPCL advanced monies to Nilesh Thakur Group, for acquisition of land under the Agreement only during the period 2007 to 2009. That, the advances made by SPCL to Nilesh Thakur Group companies could not have had any nexus with the discharge of duties by the public servant Mr Nitish Thakur.

3.34) By its Order dated 16th June 2016, passed in the Miscellaneous Applications, it was directed that the Directorate of Enforcement considers SPCLs claim/applications under Section 8(2) of the PMLA Act and that SPCL shall be heard. The Provisional Attachment Orders remained in force. SPCL, preferred 5 Appeals, before the learned Appellate Tribunal PMLA against the Order dated 16th June 2016, being FPA-PMLA Appeal Nos. 1406 of 2016; FPA-PMLA Appeal Nos. 1407 of 2016; FPA-PMLA Appeal Nos. 1408 of 2016; FPA-PMLA Appeal Nos. 1409 of 2016; FPA-PMLA Appeal Nos.1410 of 2016. The Appellate Tribunal, by Order dated 19th October 2016, stayed effect and operation of the Order dated 16th June, 2016. Appeals were also filed by SPCL, before the learned Appellate Tribunal, PMLA being Nos. FPA-PMLA-1104-1105, 1406-1410, 1479/MUM/2016, FPA-PMLA-1211 and 1491/MUM/2016 to set aside the Orders of the Adjudicating Authority confirming the Provisional Attachment Orders passed in the two ECIRS.

3.35) In August, 2016, the Adjudicating Authority, by separate Order dated 11th August, 2016 passed in O.C.No.596/16 held that, the attached properties are proceeds of crime involved in money laundering and therefore confirmed PAO No. 03/16. The Order dated 11th August, 2016, was challenged, by SPCL, by filing Appeal No. FPA/PMLA Nos.1479/2016.

3.36) Pursuant to a request made by the Deputy Director, Directorate of Enforcement Mumbai Zonal Office-I, Mumbai, through the Government of India, a Red Corner Notice dated 24th October, 2017 was issued by the

INTERPOL. Nitish J. Thakur, being absconding, was arrested on 21st January, 2018, by the United Arab Emirates Police.

3.37) After multiple rounds of litigations, the Adjudicating Authority confirmed the Provisional Attachment Orders. In Appeal, the learned Appellate Tribunal, PMLA after hearing the parties by its Order dated 17th January, 2019 was pleased to allow all the Appeals filed by SPCL and set aside all the Orders under the said Appeals. The Provisional Attachment Orders were quashed and it was directed that the attached properties, movable and immovable properties, were released forthwith.

4) Aggrieved by Order dated 17th January, 2019, Directorate of Enforcement has filed present Criminal Appeal being Criminal Appeal No. 1051/2019, Criminal Appeal No. 1309 of 2024 and Criminal Appeal No. 79 of 2020. Said Appeal being Appeal No. 1051/2019 was admitted by Order dated 11th March, 2020. The SPCL filed the Criminal Application being Application No. 724/2021 in Criminal Appeal No. 1051/2019 seeking recall/modification of the Order dated 11th March, 2020 admitting the present Appeal. SPCL has further prayed that preliminary objections as to the maintainability of Criminal Appeal No. 1051/2019 be heard and decide first in time.

5) SPCL, in the said Application, contends that Appeal filed by Directorate of Enforcement being Criminal Appeal No. 1051 of 2019 is not maintainable, as a specific submission/statement was made, on behalf of Directorate of Enforcement before Learned Appellate Tribunal, that the

properties attached are not purchased out of proceeds of crime. That the impugned Order dated 17th January, 2019, is also based on the statements made by the Advocates for the Enforcement Directorate. That, in the review filed by the Enforcement Directorate, to clarify the statements was withdrawn. The present Appeal was then filed, wherein pursuant to Order dated 4th February, 2020, the Enforcement Directorate amended the Appeal and sought to raise the grounds before this Court.

6) This Court, is called upon, to decide preliminary objections of SPCL, before considering the Directorate of Enforcement's aforesaid Appeals on merits. In factual background of the present proceedings and various Orders passed therein and considering the seriousness/gravity of the offences, we are of the opinion that both the proceedings need to be heard together. We are of the considered view, that both the proceedings i.e Criminal Application and Criminal Appeals ought to be decided together, on merits.

7) Mr. Mehta, learned Counsel appearing for SPCL, in Criminal Application No 724 of 2021 contends that, the Impugned Order dated 17th January, 2019, apart from being based on merits, is also based on certain concessions or statement/admission, given by the Appellant-Directorate of Enforcement, through its appearing Advocate. The Advocate for the Directorate of Enforcement, has admitted and agreed that, the amounts advanced by the SPCL to the Nilesh Thakur Group of companies is not proceeds of crime nor is it tainted money. That, there is absolutely no

connection between the monies paid by SPCL to Nilesh Thakur and/or his Group of Companies and the discharge of public duties by Nitish Thakur (i.e brother of Nilesh Thakur). That, the FIR is based on the order of the Assessing Officer dated 11th February, 2013, which, raised doubts, as to whether the transactions relating to the payments made by SPCL to Nilesh Thakur and Group Companies, could be shown under the head “loans and advances” in the books of account of SPCL. That, the Order dated 11th February, 2013 has been set aside by the CIT (Appeals) by an Order dated 17th May, 2013. That, the foundation on which the prosecution story is based is now, non-existing and non-est.

7.1) Mr. Mehta submits that, the amount of Rs.141.50 Crores, is advanced to Respondent No. 3/Nilesh Thakur on the basis of the Agreement for acquisition of 900 acres of land at the maximum price of Rs.30 Lacs per acre which was to be done within a period not exceeding five years. That, the advances/money paid by SPCL during the years 2007 and 2008 is duly accounted for and reflected in the annual accounts of the SPCL. That, on 6th September, 2011, SPCL, filed Suit against Thakur Group wherein consent Decree has been passed under which the Defendants/Nilesh Thakur Group agreed to transfer the properties mentioned in the Exhibit A to D to the Consent terms. That, all queries of the Enforcement Directorate have been replied to by SPCL, vide letter dated 25th June 2014 and all documents and Consent Decree have been provided. That, the Enforcement Directorate has

not challenged the said Decree or intervene in the Suit filed by SPCL.

7.2) Mr. Mehta, submits that Mr Nitish Thakur, the ex-government employee/public servant has been absent from his official duties, and not discharged any official function/duty, at least from December, 2002. That, the amounts were advanced, in the year 2007 and 2009 and therefore cannot have any relation with the discharge of the duties by the Public Servant Mr. Nitish Thakur.

7.3) Mr Mehta would submit that, alleged documents produced in the compilation of documents (referred in Para 36.2 of the Order) did not form part of the material, based on which “reasons to believe” were arrived at or formed by the Deputy Directorate of Enforcement, for passing the Provisional Attachment Orders (PAO). That, the documents produced by the way of compilation of documents cannot be looked into. That, the alleged statements of Nilesh Thakur and Nitish Thakur were never produced by the Appellant-Directorate of Enforcement on any earlier occasion in the proceedings. That, there is no material at all before Directorate of Enforcement to arrive at “reason to believe” that the subject properties were proceeds of crime involved in the money laundering.

7.4) Mr Mehta, would contend , that the Appellant has not taken any steps to seek a clarification of the statements/admissions made by the Advocates of the Appellant before the learned Appellate Tribunal, PMLA. He relied on paragraphs 9, 10 and 11 of the Judgment and Order of Hon’ble

Supreme Court *dated 17th April, 2003* passed in the matter of *Shankar K. Mandal Vs. State of Bihar* reported in *(2003) 9 SCC 519* to submit that the corrections, clarifications or actions requiring the rectification of the statements, if any, was to be done before the learned Appellate Tribunal and not before this court.

7.5) Learned counsel for the SPCL further relied upon Order and Judgment of Hon'ble Supreme Court dated 8th December, 2017 passed in the case of *Joint Director, Directorate of Enforcement and ors. Vs. Tech Mahindra Limited and Anr.* in *Special Leave Petition (Criminal). Diary No.(s) 34143/2017*, and whilst referring to paragraphs 12, 24, 33, 65, 66, 68, 71 and 81 submitted that the offence under the Prevention of Corruption Act, 1988, was included in the schedule offence w.e.f. 1st June 2009. That, the present transaction was in the year 2007 to 2009, and therefore a substantial part of the transaction has taken place when the offence was not included as the Schedule Offence.

8) Learned Advocate Ms. Manisha Jagtap appearing for Appellant/ Union of India submits that, the preliminary objection as raised, cannot be sustained and is in fact untenable. That, as the period of limitation for filing the present Appeals was fast expiring, the Review Petition was withdrawn and the present Appeals were filed. That, subsequent amendments have incorporated the grounds raised in the Review Petition, i.e. regarding withdrawal of the concessions given by the Advocate and therefore the

question of maintainability of the Appeal cannot be sustained.

8.1) Learned Advocate for the Appellant, submits that pursuant to ECIR No.03/2011 dated 10th May, 2011 and ECIR No. 6/M20/2012 dated 18th May, 2012, certain Provisional Attachment Orders were made to attach the properties in the name of Nilesh Thakur and Nitish Thakur and their Group companies. The attachments are of properties, which form part of proceeds of crime. That, properties, mentioned in the Consent Decree had been attached prior to the Consent Decree. That, it was open for SPCL to have purchased the said properties directly. That, the Appellate Tribunal did not have jurisdiction to pass the Impugned Order, as it is only the Special Court, under Section 8(8) of the PMLA, that would have the jurisdiction to deal with the said properties.

8.2) Learned Advocate for the Appellant also filed on record a List of Dates and Events and a note titled Gist of the Case. Relying on the same, the Advocate submits that the amounts transferred from SPCL are Proceeds of Crime.

9) We have heard the arguments of the learned Advocates for the parties, perused the record and carefully gone through the Order under challenge. After considering arguments and record, in our opinion, the main questions which fall for our consideration are as follows:-

- (i) Whether the contention of a party, that its submissions/stand has been wrongly recorded by the Court, be taken up in the Appeal which seeks to challenge the very judgment and order?

(ii) Whether the amount of Rs.141.50 Crores advanced by SPCL to the Nilesh Thakur Group of Companies can be termed as 'proceeds of crime.

QUESTION NO. (i):

10) The Supreme Court in the case of *Daman Singh and others Vs. State of Punjab and Ors.* reported in (1985) 2 SCC 670, has in paragraph 13 observed as follows:

"13. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memorandum of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not?"

10.1) The Supreme Court in the case of *State of Maharashtra v. Ramdas Shrinivas Nayak & Anr.* reported in (1982) 2SCC 463 has in paragraph No.4 observed that:

4. "... We are afraid that we cannot launch into an enquiry as to what

transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

10.2) The Supreme Court in the case of *Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd.* and others reported in (2003) 2 SCC 111 has observed in Paragraph No.61 that :-

61. “..... We are not prepared to go into the said contentions inasmuch assuming the same to be correct, the remedy of the appellants would lie in filing appropriate application for review before the High Court. Incidentally, we may notice that even in the special leave petition no substantial question of law in this behalf has been raised nor has any affidavit been affirmed by the learned advocate who had appeared before the High Court or by any officer of the appellant who was present in court that certain other submissions were made before the High Court which were not taken into consideration.”

The Supreme Court in the case of *Bhavnagar University V/s Palitana Sugar Mill Pvt Ltd & Others*, after referring to the judgments in the matter of *Daman Singh and others (supra)* and *State of Maharashtra v. Ramdas Shrinivas Nayak (supra)*, has observed that a statement of fact as to what transpired at the hearing, recorded in the order are conclusive of the facts so stated and no one can contradict such statements or recording of facts.

10.3) The Supreme Court in the case of *Shankar K. Mandal Vs. State of Bihar* reported in (2003) 9 SCC 519 has observed that: -

“10. It is not open for the appellants to take such stand before this Court, as they are bound by the observations of the High Court. If there was any wrong recording of the stands, the course to be adopted is well known.

11. If really there was no concession, or a different stand was taken, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak and another (1982(2) SCC 463). In a recent decision Bhavnagar University v Palitana Sugar Mill (P) Ltd and others (2002 AIR SCW 4939) the view in the said case has been reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary.”

10.4) The Supreme Court in its Order dated 7th November, 2025 in the case of Savita V/s Satyabhan Dixit (Petition for Special Leave to Appeal No 31322/2025 has in paragraphs 2 and 3 observed that :

“2. Learned counsel for the petitioner states that the statement/concession made by the petitioner/defendant’s counsel was wholly unauthorised and contrary to her instructions.

3. This Court has repeatedly held that the High Courts in India are Courts of record and what is recorded in the Courts are correct and cannot be contradicted by the counsel for the parties (see State of

Maharashtra v. Ramdas Shrinivas Nayak & Anr”

11) The aforesaid observations and the pronouncements of the Supreme Court are having binding effect on all Courts. It is only prudent and matter of judicial discipline that the clarifications, corrections or mis-recordings be clarified before the same Authority/Court. This may be done by filing appropriate proceedings before the said Court. If there are incorrect concessions or statements or the same are misquoted or fact or admission misreported or a different stand was taken by the Advocate for Appellants before learned Appellate Tribunal, the only option or remedy available to the Appellant was to approach the Appellate Tribunal and seek a clarification by filing appropriate proceedings.

12) We note that, the Review Application filed by the Appellant, to withdraw/modify the said statements/contentions was withdrawn. The Appellant, had made a statement that, the required Affidavit of the concerned Advocate would be filed, but the same never saw the light of the day. It was never filed. This was, in spite of the fact that, the Appellants themselves made a statement that, it will take steps to rectify the said statements/observations before the learned Appellate Tribunal. Nothing has been done, before the learned Appellate Tribunal. The said statements, admissions or concessions given by the learned Advocate for Directorate of Enforcement for Appellate Tribunal, still stand.

13) The Appellant has, instead now raised the said challenge by way

of amendments in the present Appeal. Even during the present hearing, we have repeatedly asked and enquired with the Advocate appearing for the Appellants, to take instructions and inform the Court, if there is any material on record to contradict the said statements or concessions or admissions made before the learned Appellate Tribunal, PMLA. On instructions, the reply is, a categorical no. A perusal of the Impugned Order, passed by the learned Appellate Tribunal, PMLA clearly indicates that certain admissions or statements made by the Advocate of the Appellants, are recorded in the Impugned Order. The same till date are a part of the record. We have noticed some instances in paragraphs 32, 35, 51 and 62 which are as under:

- (i) “32. Since the transfer has been made by the Appellant Company to Nilesh Thakur under an agreement and for lawful purposes, the same does not become proceeds of crime in the hands of Nilesh Thakur. This fact has been admitted by the respondent no.1 as well as Nilesh Thakur, his brother Nitish Thakur and other parties.”
- (ii) “35. as even admitted by the counsel for the respondent that entire money paid to Nilesh Thakur was clear and untainted amount. SPCL is admittedly not arrayed in FIR, no charge-sheet is filed nor any prosecution complaint under PML Act, 2002 is filed against the SPCL.”
- (iii) “52. It is an undisputed and accepted fact that the attached properties had been purchased out of funds provided by the Appellant Company / SPCL. The funds provided by Appellant Company/ SPCL to the Nilesh Thakur Group are not proceeds of crime. Hence the attached properties, acquired out of the same,

cannot be termed in any manner as “proceeds of crime”. All these factual position is not controverted by the counsel of ED and he admits that nothing contrary is available with ED. In view of admitted fact, I am of the view that the Provisional Attachment Order ought not to have been confirmed by the Adjudicating Authority.”

- (iv) “61. Even counsel for the respondent no. 1 has admitted that there is no cogent evidence gathered to the effect which may link SPCL and Nitish Thakur directly or indirectly and any evidence to show where the SPCL has tried to take any favour from Nitish who was the Government employee.”

13.2) The statements and admissions thus form a part of the record, as no steps have been taken to have them corrected or withdrawn. The parties are bound by the record. Raising the said ground, in the present Appeal will be of no consequences.

QUESTION NO (ii):

14) The Prevention of Money Laundering Act, 2002, is an act enactment which seeks to prevent money-laundering and to provide for confiscation of the property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The object of the Act is to deal with and confiscate property derived from, or involved in, money-laundering.

15) Some of the provisions, which are relevant for considering the present case are as under:

15.1) Section 3 of the PMLA Act deals with the offence of money laundering. Section 3 reads as under;

Section 3. Offence of money-laundering.

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the ¹[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation.--For the removal of doubts, it is hereby clarified that,--

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:--

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or

possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]

15.2) The term “proceeds of crime” is defined under Section 2(U) of the Act which reads as under;

"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 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)]”

15.3) Section 2(y) defines Scheduled Offence to mean the offences specified in Part A of the Schedule or offences specified in Part B of the Schedule if the total value involved in such offences is one crore rupees or more or offences specified under Part C of the Schedule. Before the amendment of 2015, the amount/total value was thirty lacs.

16) Section 3 of PMLA deals with the offence of money laundering. Under PMLA the definition/meaning of offence of money laundering is very wide. It includes within its fold any person who directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in one or more the processes or activities connected with the proceeds of crime namely including its concealment, possession, acquisition or use or projecting or claiming property to be untainted property in any manner

whatsoever shall be guilty of the offence of money laundering. We note that, intention, does form an important part and ingredient of the definition. The acts or conduct has to be with knowledge.

17) Section 2(1) (u) defines the term “proceeds of crime”. It is a foundational aspect or core, on which the offence under PMLA rests and proceeds. A proceed of crime, is and includes any property, which is derived or obtained, directly or indirectly, as a result of criminal activity relating to or relatable to the scheduled offence, defined under section 2(y) of the PMLA Act. According to us, the definition has broadly three ingredients/attributes (i) there should be a property (ii) it should have been derived from criminal activity and (iii) the criminal activity should relating or relatable to a scheduled offence. The said three aspects are interconnected and must appear and exist together so as to term a property as a proceeds of crime. It cannot be that the property is only derived from a criminal activity or a criminal activity not related to a scheduled offence.

18) For an offence of money laundering to be made out, there has to be a “proceeds of crime”, which in turn has to be and include a property generated/derived directly or indirectly by and from a criminal activity, which criminal activity is relating to or relatable to a scheduled offence. We have also noted that in the definition of “Proceeds of Crime”, a proviso/ explanation was inserted in the year 2019, to include a property which is a result of a criminal activity relatable to a scheduled offence. “Proceeds

of crime”, is a must to constitute an offence of money-laundering. To be proceeds of crime, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating or relatable to a scheduled offence. The term “proceeds of crime” is related to and linked with the term criminal activity and to a scheduled offence. There cannot be proceeds of crime without a criminal activity and/or a Scheduled Offence. The term “proceeds of crime”, in any prosecution under the PMLA Act is the basis and foundation for the said action. It being the foundation of the offence of money laundering, it is required to be interpreted and construed in a strict sense. If any of the aforestated ingredients i.e property, derived out of a criminal activity, relating or relatable to a schedule offence is missing, then in that event the property cannot be termed as a “proceeds of crime”.

19) We also note that, one of the vital ingredient and condition to attract or invoke an offence of money laundering, is that the concerned person has knowledge or is knowingly involved in any process or activity which is related to the proceeds of crime.

20) From a perusal of the record, the factual position/uncontroverted position which now emerges is summarized as under:

20.1) That, SPCL under the agreement (SPCL letter dated 16th July, 2007 and M/s. PRS Enterprises letter dated 19th July, 2007) entrusted the task of procuring 900 acres of land at maximum price of Rs.30 Lakhs per acre within a period not exceeding five years.

20.2) That, based on the agreement, between the year 2007 and 2009, SPCL advanced Rs. 84.50 Crores to M/s. PRS Enterprises and Rs. 57 Crores to M/s. Ace Card Infrastol Pvt. Ltd. The said transfer is through banking channels and is reflected in the books of accounts of the SPCL, on the asset side under the head "loans and advances".

20.3) That the Assessing Officer had expressed doubts about the nature of the transaction relating to the aforesaid payments made by the SPCL and passed the Order dated 11th February, 2003. That the same is now set aside by the CIT (Appeals) by its order dated 17th May, 2013. The Appeal filed by the Income Tax Department, challenging the Order dated 17th May, 2013 has been dismissed by the Income Tax Appellate Tribunal on 10th April, 2015. There is therefore no doubt or question which is raised in respect of the transaction or transfer/ advance. It is now ruled and confirmed that the transaction between SPCL and Nilesh Thakur Group is a normal business transaction.

20.4) That Civil Suit No.2576 of 2011, was filed in this Court and pursuant to the Consent Terms filed therein Consent Decree has been passed, wherein the properties of SPCL and its entitlement has been mentioned. Execution proceeding have been initiated pursuant to the consent Decree. The Orders passed therein still stand as valid and legal.

20.5) That the CIT Appeals, after considering all the documents, records and consent Decree, by its Order dated 17th May, 2013 recorded findings that transaction of advances for the purchase of land under subject

agreement were lawful and correct. The observations of the Assessing Officer, which had been heavily relied upon by the Enforcement Directorate are now non-existent. The observations and findings of the Assessing Officer have been set aside by the Order dated 17th May 2013. The material on which opinion of “reason to believe” was formed is either non existing or set aside. The Order dated 17th May, 2013 has been upheld by the Income Tax Appellate Tribunal by its Order dated 10th April, 2015.

20.6) That pursuant to the summons received from the Appellant, SPCL by its letter dated 25th June, 2014 informed the Directorate of Enforcement of the Consent Terms and also subject Agreement.

20.7) That Advocate of the Directorate of Enforcement appearing before the Appellate Tribunal, PMLA has accepted and admitted that (i) amounts transferred by SPCL for the purchase of land under the agreement are not tainted money, and therefore not proceeds of crime (ii) that there is nothing on record available with Directorate of Enforcement to show that the said funds are part of any proceeds of crime. The said position also does not change.

20.8) That from December 2002 and during the period the amounts were transferred by SPCL, Nitish Thakur, the Government Servant was not attending his official duties. This is as per the letter issued by the Government i.e Divisional Commissioner, Kokan Division.

20.9) That, SPCL paid monies to Nilesh Thakur Group between 2007 to

2009 under the agreement. The said monies could not have any connection or nexus with Nitish Thakur who was not attending his office/Government duties from December-2002.

21) We have also noted the fact that, SPCL and/or its employees have not been made co-accused in the said FIR's, nor that any proceeding has been initiated against SPCL. The amounts transferred have been reflected in the books of account of SPCL. The CIT, Appeals by its order dated 17th May, 2013, have set aside the Assessment Officers Order and held that the transaction is valid and legal. The Order dated 17th May, 2013 is confirmed by the Income Tax Appellate Tribunal. In this background, there is no reason available to doubt the fact that, the amount of money transferred by SPCL which has been disclosed in its books of account is from the business activities of SPCL. Further, it is also noted that the amount has been advanced pursuant to the agreement and through the banking channels. The amount is accounted for, is generated from and in legitimate businesses and accounted for in the audited accounts. We are of the opinion, that viewed from any angle of the matter, said amount of Rs.141.50 Crores cannot be said to be "proceeds of crime" as there is no property which is derived or obtained, directly or indirectly as result of criminal activity relating to or relatable to Schedule offence as is envisaged under PMLA Act. The question of being "derived or obtained, directly or indirectly," and "as a result of criminal activity" in our opinion, does not and cannot arise, as the monies has been transferred by SPCL from

its own source and account, through banking channels and under an Agreement for a specific purpose i.e purchase of land at a predetermined price and within the specified period. The transaction was clearly known. We have also noted the fact that, it is not even the case of the Appellant that the monies have been transferred indirectly or through some sort of a layering transactions. As stated above, the record indicates that amount is in fact transferred to M/s. PRS Enterprises and M/s. Ace Card Infrasel Pvt. Ltd for specific purpose i.e. purchase of land and not received from them.

22) We may also note that, even during the course of the arguments before us, the Advocate for the Appellant was unable to point out any document, material or evidence from the record, to show that said amount can be termed as 'proceeds of crime'. Nor was the officer who was present in Court able to instruct the Advocate in that regard. The Order of Assessing Officer, wherein doubts was raised in regards to the nature of transaction of advancing monies to M/s. PRS Enterprises and M/s. Ace Card Infrasel Pvt. Ltd has been set aside and no longer survives. The Order has been set aside by the CIT (Appeals) vide order dated 17th May, 2013, which has now attained finality. As noted earlier, the Income Tax Appellate Tribunal has on 10th April, 2015 dismissed the challenge to the said Order. The source of the money is SPCL itself. The Income Tax Authorities have also not found any fault or questioned the source of the money. To our mind, it cannot be said that the money is a "result of criminal activity relating to a scheduled offence" or even

simplicitor “result of criminal activity”. None of the ingredients of the definition of “proceeds of crime” are attracted. As a result, the question of an offence of money laundering under section 3 of the PMLA being made out does not and cannot arise.

23) We also note that, the Consent Terms/Consent Decree, passed by this Court, have not been challenged. Nor has any party made an application for withdrawing the Consent Terms. There is nothing on record to indicate the same. The Consent terms, Consent Decree and Order stand even as of today.

24) It appears from the record and also the Impugned Order that, out of the Rs 141.50 crores, nearly Rs 111.50 crores appear to have been advanced between September 2007 to May 2009, and an amount of Rs.30 Crores was advanced after 1st June, 2009. This fact, is not disputed by the Appellant. We have noted that, the offence under Prevention of Corruption Act came to be notified as Schedule offence of the PMLA, by the PMLA Amendment Act which came into force on 1st June, 2009. Before 1st June, 2009, the offence under Section 13 of the Prevention of Corruption Act was not predicate/scheduled offence under PMLA. Therefore, before 1st June 2009, offence under Section 13 of the Prevention of Corruption Act, was not a scheduled offence. It is settled law that, no person can be prosecuted for an allegation/act which occurred earlier by applying law which has come into force at a later date after the act/allegation is made. There can be no retrospective application of criminal liability for an act/offence which has

taken place or committed prior to introduction of the liability in the statute books. Even otherwise, the Enforcement Directorate, does not have any material to show that the money is covered under the definition of “Proceeds of Crime” under section 2 (u) of the PMLA.

25) Without a criminal activity and/or a scheduled offence there cannot be a “proceeds of crime”. Pertinent to note, that it is not even the case or allegation of the Enforcement Directorate that the monies advanced by SPCL are generated from or of a criminal activity, let alone the same being relating or relatable to a schedule offence.

26) We find that, even in the Appeal before us and at the hearing thereof, the fact that the properties are not proceeds of crime, is not being seriously disputed by the Appellant. We find that, there is absolutely no material to connect or relate the monies paid by the SPCL to Nilesh Thakur, as being paid as a favour or to the discharge of public duties, by Mr Nitish Thakur or to term them as “proceeds of crime”. There is no evidence, on record to that effect. Only being brothers or the fact that, a persons brother is a public servant would not be enough to doubt and/or find fault with the transaction between SPCL and Nilesh Thakur or presume that all transactions of Nilesh Thakur are nothing but fronts of Nitesh Thakur. We find that the entire action is based on the said untenable fact. Basing the entire prosecution on the said fact, would amount to drawing an untenable inference and be a classic case of basing a prosecution on surmises and conjecture. The same in

our view is not permissible. Doing so, will be too far fetched and simply untenable.

27) Attaching properties under the PMLA, without any legal evidence or basis or when the basic requirements/ingredients under the PMLA are not fulfilled is misplaced and misconceived. Considering the facts and documents on record, and the same viewed from any angle or in any manner, the conclusion can only be one that, the Appellant has incorrectly attached the properties especially in the absence of any criminal activity.

28) In view of the afore-noted deliberation, we find there are no merits in the Appeal. We are inclined to dismiss the Appeals and uphold the impugned Order dated 17th January, 2019 with modification to the extent of refund of the accrued interest to Shapoorji Pallonji and Co. Pvt. Ltd. The Appellate Authority by the impugned Judgment, as far as the interest accrued is concerned, has directed that it be paid to the Shapoorji Pallonji and Co. Pvt. Ltd.

29) We are therefore inclined to modify the said directions of refund of interest accrued on the said principal amount. We are of the considered opinion that, 50% of the interest accrued on the said principal amount be paid to the Shapoorji Pallonji and Co. Pvt. Ltd. and 50% of the interest be paid to the Armed Forces Battle Casualties Welfare Fund (AFBCWF).

The reasons for adopting such a view are :-

29.1) Shapoorji Pallonji and Co. Pvt. Ltd. is part of the Shapoorji Pallonji Group which is one of the oldest business houses in the country with variety of business interest including Real Estate, infrastructure development, Water, Energy Ports and Financial services. As would be evident from the track record of the company, the said companies had all times whilst pursuing its own objectives has strived to develop economic activities in the interest of the nation and charitable works for benefit of the society.

29.2) Considering the overall facts, we are inclined to issue directions to pay 50% of the accrued interest on the principal amount to the Armed Forces Battle Casualties Welfare Fund (AFBCWF). We have done this in view of dedication of the soldiers of the Armed Forces of our Country. It is a known fact that, the casualties are being suffered by the Indian Armed Forces while serving the Nation. There is a urgent and pressing need to provide for the families and widows of the soldiers who have lost their lives on the battlefield and in protecting the borders of the nation. In modifying the condition of refund of accrued interest we have considered the sacrifices of the soldiers for protecting the country and borders and also difficulties faced by the widows and the families of the soldiers who have sacrificed their lives for the country. We therefore, deem it fit to transfer 50% of the interest accrued on the said FD's to the Armed Forces Battle Casualties Welfare Fund (AFBCWF). We do this in a manner and with an object of balancing the equities.

29.3) As the present Appeals are being dismissed the Order Dated 17th

January, 2019 passed by the PMLA, Appellate Tribunal, New Delhi is confirmed with the aforesaid modification. We are directing that the amount of Rs. 45 Crores and Rs. 1.15 Crores as deposited by the Appellants in the Registry of the Court pursuant to the Order of this Court and placed as Fixed Deposits be liquidated and returned to Shapporji Pallonji and Co. Pvt. Ltd.

29.4) After taking overall view of the matter and in the interest of justice we direct that, 50% of the interest which has accrued on the said Fixed Deposits of Rs. 45 Crores and Rs. 1.15 Crores, be given to the Armed Forces Battle Casualties Welfare Fund (AFBCWF).

29.5) After expressing our views as regards the payment of the 50% accrued interest to the Armed Forces Battle Casualties Welfare Fund (AFBCWF), learned Advocate for the Shapporji Pallonji and Co. Pvt. Ltd. did not have any serious objection in that regard.

30) Hence the following order:-

(i) All the Appeals i.e. Criminal Appeal No. 1309 of 2024, Criminal Appeal No. 79 of 2020 and Criminal Appeal No. 1051 of 2019 are dismissed. The Order dated 17th January, 2019 passed by the Appellate Tribunal, PMLA, New Delhi is confirmed.

(ii) In view of dismissal of the Appeals, Interim Applications filed by the Appellant in the Appeals being Interim Application No. 2694 of 2025 in Criminal Appeal No. 1309 of 2024, Interim Application No. 3083 of 2025 in Criminal Appeal No. 79 of 2020, Interim Application No. 3140 of 2025 in

Criminal Appeal No. 1051 of 2019 do not survive and are accordingly disposed off.

(iii) Interim Application No. 724 of 2021 in Criminal Appeal No. 1051 of 2019 is disposed off with the following directions i.e.

(a) Amount of Rs. 45 Crores as deposited by the Appellants with the Registry of this Court pursuant to Order dated 18th December, 2019 is hereby directed to be returned to Shapoorji Pallonji and Co. Pvt. Ltd.

(b) Amount of Rs. 1.15 Crores as deposited by the Appellants with the registry of this Court pursuant to Order dated 18th December, 2019 is hereby directed to be returned to Shapoorji Pallonji and Co. Pvt. Ltd.

(c) 50% of the interest which has accrued on the said deposits of (i) Rs. 45 Crores and (ii) Rs. 1.15 Crores be refunded to the Shapoorji Pallonji and Co. Pvt. Ltd. and the balance 50% of the accrued interest is directed to be transferred/paid to 'Armed Forces Battle Casualties Welfare Fund' (AFBCWF).

(c.1) Details of the Bank account to which the amount is to be transferred is as under :-

Account Name :- Armed Forces Battle Casualties
Welfare Fund (AFBCWF)

Account Number :- 90552010165915

Bank Name :- Canara Bank

IFSC Code :- CNRB0019055

Branch :- South Block, Defence Headquarters,
New Delhi – 110 011.

(d) The said amount of interest be transferred in the said account within a period of two weeks from the date of uploading of this Order on the official website of High Court of Bombay.

(e) Registrar Judicial-II is directed to verify the said amount transferred and submit a compliance report to this Court.

30) Stand over to 23rd January, 2026.

30.1) To be listed under the caption 'For Reporting Compliance.' of present Order.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)