IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1206 OF 2025
IN
FIRST APPEAL NO.335 OF 2022

Aditya Birla Capital Limited .. Applicant

In the matter of:-

Aditya Birla Capital Limited .. Appellant

Versus

Directorate of Enforcement .. Respondent

Mr.Cyrus Ardeshir, Senior Advocate a/w Rohan Kelkar, Lalit Katariya, Ashrita Chindarkar, Pooja Jhaveri i/b Katariya & Associates, Advocates for the Appellant/Applicant.

Mr.Piyush Pande h/f Neha Bhide, SPP for the Respondent (ED).

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : SEPTEMBER 16, 2025

P. C.

1. The above matter has been moved for speaking to the minutes of the order dated 26th August 2025. It is stated that in paragraph 13(a) the words “or a Scheduled Bank” have been missed out after the words “a Nationalized Bank”. Therefore, the applicant before us seeks these words to be inserted.

2. In light of the aforesaid mistake, the words "**or a Scheduled Bank**" shall be inserted after the words "**a Nationalized Bank**" appearing in paragraph 13(a) of the order dated 26th August 2025.

3. No other correction is sought. The correction shall be carried out in the original order as well as in the copy uploaded on the server.

4. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

For the sake of convenience, the order dated 26th August 2025 (as corrected) is reproduced hereunder:-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1206 OF 2025
IN
FIRST APPEAL NO.335 OF 2022

Aditya Birla Capital Limited .. Applicant.

In the matter of

Aditya Birla Capital Limited .. Appellant.

Versus

Directorate of Enforcement .. Respondent.

Mr. Venkatesh Dhond, Sr. Advocate with Mr. Cyrus Ardeshir, Sr. Advocate with Adv. Rohan Kelkar, Adv. Ashutosh Thipsay, Adv. A. Shroff, Adv. Lalit Katariya, Adv. Ashrita Chindarkar and Adv. Pooja Jhaveri i/b. Katariya & Associates, for the Applicant/ Appellant.

Adv. Neha Bhide, **SPP with Adv. Piyush Pande,** for the Respondent.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: AUGUST 26, 2025

P. C.

1 The above Interim Application was originally filed, sought the following reliefs:-

> *"(a):- This Hon'ble Court directs that, paragraphs 6 (a) & (b) of the Order dated 11 January 2023 in Interim Application No. 9864 of 2022 (Exhibit "A"; "said Order") continue to apply in relation to the Varadrajapuram Property [described in paragraph 1(a) of this Application];*
> *(b)This Hon'ble Court recalls paragraphs 6 (a) & (b) of the said Order in relation to the Kalyanamandapam Property [described in paragraph 1(b)] and permits Applicant, subject to such terms and conditions as the Court deems fit and proper, to retain the Sale Proceeds from the sale of that Property subject to the outcome of the captioned Appeal."*

2 Thereafter, the above Interim Application was amended and prayer clause (b) was substituted as under:-

> *"(b):- The Court may, subject to such terms and conditions as it deems fit and proper, permit the Applicant to withdraw the sum of Rs.52,01,42,105/- (Rupees Fifty Two Crores One Lakh Forty Two Thousand One Hundred and Five only) deposited in Court alongwith accrued interest, if any, thereon."*

3 Today, Mr. Dhond, the learned Senior Counsel appearing on behalf of the Applicant/ Appellant, has pressed the above Interim Application only in terms of the substituted prayer clause (b).

4 The Applicant before us, and who is the Appellant in the above First Appeal, is a Non Banking Finance Company incorporated under the provision of the Companies Act, 1956. A scheme of Amalgamation is sanctioned by the NCLT, Ahmedabad between the Aditya Birla Finance Limited (for short "ABFL") and the Applicant/ Appellant. ABFL, pursuant to the scheme of Amalgamation, merged with the Applicant/ Appellant. As per the said scheme, ABFL along with its undertaking was merged with the Appellant as a going concern, together with all its properties, assets, rights, benefits, interest, duties,

obligations, liabilities, contracts etc., as more specifically described in the said scheme.

5 Prior to its merger with the Applicant, ABFL, on 30th March 2016, issued a sanction letter granting a line of credit and a term loan facility to the Nathella Group. To secure the aforesaid facility, (in the total sum of Rs.45 Crores) *inter alia,* two properties were mortgaged with ABFL. One property is known as the *Kalyanamandapam Property* and the other is the *Varadarajapuram Property*. The subject matter of the present Interim Application is only the *Kalyanamandapam Property*.

6 It appears that after the loans were disbursed by ABFL, there was a default in repayment of the loans and one of the members of Nathella Group was declared as a Non-Performing Assets (NPA). Thereafter, a notice under Section 13 (2) was also issued and symbolic possession of the *Varadarajapuram Property* was also taken. It appears that thereafter, ABFL came to know that the *Varadarajapuram Property* as well as the *Kalyanamandapam Property* were attached by the Respondent under the provisions of the Prevention of Money Laundering Act, 2002 (for short "PMLA, 2002") by passing a provisional Attachment Order dated 31st July, 2018. This

attachment was levied on the basis that the properties in question were *"the proceeds of crime"*. This provisional Attachment Order dated 31st July 2018 was thereafter confirmed by the Adjudicating Authority vide its order dated 16th January 2019 under Section 8 of the PMLA, 2002. The aforesaid order of the Adjudicating Authority [dated 16th January, 2019] was challenged by ABFL before the Appellate Authority under the provisions of the PMLA, 2002 (under Section 26). The Appellate Authority also agreed with the view of the Adjudicating Authority and dismissed the Appeal filed by ABFL. Being aggrieved by this dismissal, ABFL, under Section 42 of the PMLA 2002, preferred the present Appeal.

7 In this Appeal, an order was passed on 11th January, 2023, wherein, it was ordered that the properties which are mortgaged/ charged to the Applicant/ Appellant may be sold by the ABFL under the provisions of *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short the "SARFAESI Act") and the sale proceeds be deposited with this Court. Certain other directions were also given for depositing the said sale proceeds in Fixed Deposits with a Nationalized Bank for an initial period of 13 months and to be renewed for the same period until disposal of the appeal, unless otherwise ordered. Pursuant to these directions, the

Kalyanamandapam Property was sold by ABFL under the provisions of the SARFAESI Act and the sale proceeds of Rs.52,01,42,105/- were deposited in this Court.

8 After all this, as mentioned earlier, ABFL merged with the Appellant and hence, it is the merged entity (i.e. Aditya Birla Capital Limited) that is before us making the present application.

9 As mentioned earlier, Mr. Dhond, the learned Senior Advocate appearing on behalf of the Applicant/ Appellant, pressed the above Interim Application only in terms of the substituted prayer clause (b), namely – to permit the Applicant to withdraw the sum of Rs.52,01,42,105/- along with accrued interest, if any, on such terms and conditions as this Court may deem fit.

10 Mr. Dhond submitted that the Applicant/ Appellant, is not a fly by night operator and is a company with substantial assets. He submitted that the net assets of the Appellant are over Rs.1,39,000/- Crores and its profit after the tax was for Financial Year 2024-25 was more than Rs.3,000/- Crores. He, therefore, submitted that the Applicant/ Appellant be permitted to withdraw this amount on merely

giving an undertaking to this Court that in the event the above Appeal fails, the said money will be brought back together with interest at such rate as this Court may determine.

11 On the other hand, the learned Counsel appearing on behalf of the Enforcement Directorate, vehemently opposed the grant of this relief. She submitted that firstly, there are concurrent findings of fact by two lower authorities why the mortgaged properties were attached under the provisions of the PMLA, 2002. The authorities, on facts, came to the conclusion that the mortgaged properties are "proceeds of crime", and therefore, liable for attachment. These concurrent findings of fact are yet to be adjudicated in the above First Appeal. In these circumstances, it would not be correct to allow the Applicant/ Appellant to withdraw the aforesaid amount, pending the Appeal, was the submission. Without prejudice to the aforesaid submission, she submitted that if one were to allow the Applicant/ Appellant to withdraw the aforesaid amount, it would virtually be allowing the Appeal at this stage, and that too without any adjudication. For all these reasons, she submitted that the Applicant ought not to be allowed to withdraw any amount whatsoever.

12 Without prejudice to the aforesaid arguments, the learned Advocate for the Directorate of Enforcement submitted that if this Court is inclined to allow the Applicant/ Appellant to withdraw any amount, they should be put to strict terms and conditions so as to ensure that the amount withdrawn by them is available to be brought back, if the above Appeal fails.

13 We have heard the learned Counsel for the parties and we have also perused the papers and proceedings in the above Interim Application. It is not in dispute that the *Kalyanamandapam Property* was mortgaged with the Applicant/ Appellant and which has thereafter been sold under the provisions of SARFAESI Act. It is also not in dispute that sale proceeds thereof have been deposited in this Court. Rather than this amount lying in this Court, we are of the view that the Applicant/ Appellant, being a Non Banking Finance Company, ought to be allowed to withdraw this money subject to the terms and conditions we propose to impose in this order. We say this for the simple reason that neither party would benefit if the money is simply deposited in this Court and earning interest. Considering the aforesaid facts and circumstances, we pass the following order:-

(a) The Applicant/Appellant is permitted to withdraw the sum of Rs.52,01,42,105/- together with accrued interest, on the Applicant/Appellant furnishing a bank guarantee of a Nationalized Bank **or a Scheduled Bank** to the Registrar, Appellate Side, High Court, Bombay which shall be kept alive till the disposal of the above First Appeal;

(b) In the event the bank guarantee is not renewed, the Registrar shall invoke the bank guarantee and bring the sale proceeds back to this Court;

(c) Over and above this, the Applicant/Appellant shall file a written undertaking (pursuant to a Board Resolution) before the Registrar, Appellate Side, High Court, Bombay, stating therein that the Applicant/Appellant undertakes not only to bring back the amount withdrawn pursuant to this Order, but also undertakes to pay interest on the said amount at such rate as this Court may determine at the hearing and final disposal of the above First Appeal.

14 The above Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

15 We fix the above Appeal along with First Appeal No. 338 of 2022 at 3.00 p.m. on 26th September 2025 for admission.

16 We put the parties to notice that we may dispose of the said Appeals at the admission stage itself, time permitting.

17 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Utkarsh