IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

WPA 22312 of 2024

M/s. Arissan Energy Limited
-vs.-
Enforcement Directorate & Ors.

For the Petitioner	:	Mr. Ratnanko Banerji, Sr. Adv. Mr. Sandipan Ganguly, Sr. Adv. Mr. Ayan Bhattacharjee, Sr. Adv. Ms. Sutapa Sanyal, Mr. Siddhartha Datta, Ms. Trisha Mukherjee, Mr. Depanjan Dutta Roy, Ms. Sanjana Jha, Mr. Chetan Kr. Kabra
For the Enforcement Directorate	:	Mr. Arijit Chakraborty., Mr. Deepak Sharma. Ms. Swati Singh.
Reserved On	**:**	**14.10.2024**
Judgment on	**:**	**03.12.2024**

Tirthankar Ghosh, J:-

The present writ petition has been preferred challenging the actions taken by the Enforcement Directorate under Section 17 of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as 'PMLA') including the Order of Freezing dated 13th August, 2024 (with regard to DMAT accounts/holdings linked with PANs); Order of Freezing dated 13th August,

2024 (with regard to DMAT accounts/holdings of the entities); Order of Freezing dated 13th August, 2024 (with regard to mutual funds of the PAN holders); Order of Freezing dated 13th August, 2024 (with regard to bank accounts linked with PANs); and Order of Freezing dated 14th August, 2024 (with regard to bank accounts) passed under Section 17(1-A) of the PMLA.

Learned Advocate appearing for the petitioner contended that the petitioner is a company incorporated under the Companies Act, 1956, having its registered office at 10 Princep Street, Kolkata, 700072 and is engaged in the business of investment in shares and securities. The company has been incorporated on 29th June, 2006 and has been operational since then. It was submitted on behalf of the petitioner that on 12th August, 2024, the office premises of M/s Bahubali Properties Ltd., M/s Niharika India Ltd., and Mangalam India Ltd. at 10 Princep Street, 2nd Floor, Kolkata, 700072 was searched in an arbitrary manner and as the petitioner company had its registered office at the same premises, the respondents arbitrarily and illegally named the petitioner in the enclosure to the impugned orders of freezing and illegally and arbitrarily and without any legal justification froze Rs.31.46 crores. Neither the Order of Freezing passed under Section 17(1-A) of the PMLA nor the Panchnama drawn on 14th August, 2024, provide for any legal justification as to why the petitioner's properties have been treated as proceeds of crime within the meaning of Section 2(1)(u) read with Section 17 of the PMLA. The petitioner contended that the genesis of the case purportedly relate to ECIR/NGSZO/02/2023 which was registered by the Enforcement

Directorate (respondent no.1). Petitioner has no access to the ECIR and verily believes that the same has been registered by the respondent pursuant to the FIR, being RC. 2232022A008, dated 20th December, 2022, under Sections 120B read with Section 420, 468, and 471 of the Indian Penal Code read with Section 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988, against M/s Corporate Power Limited (in liquidation) along with its Directors and Officers. Arguments were advanced that a bare perusal of the FIR reflects that a complaint was made by the Union Bank of India (Consortium of Banks) on the basis of declaration of the account of M/s Corporate Power Limited (in liquidation) as fraud on 25th October, 2019, pursuant to Chapter 8 of the Master Direction on Fraud bearing RBI/DBS2016-17/28DBS.CO.CFMC.BC.No.1/23.04.001/2016-17 dated 1st July 2016, issued by the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949. It was emphasized that the petitioner company is neither named in the FIR nor they had any transactions with the accused mentioned in the FIR. Additionally, it was brought to the notice of the Court that the petitioner company was neither a subsidiary nor an associate company nor a group company of M/s Corporate Power Limited (in liquidation) and/or of the associates concerned as mentioned in the FIR.

The petitioner company was not named in the Panchnama as a company whose premises were being searched under section 17 of the PMLA and the officers were not even authorized to conduct search and seizure under Section 17 of PMLA so far as the present petitioner is concerned.

Learned advocate drew the attention of the Court to the freezing orders passed under Section 17 of PMLA and the relevant provisions of Section 17 and Section 17(1-A) of the Act and emphasised that petitioner company do not fall with the ambit of 'person' referred to in Section 17 and no reasons were assigned by the Officer who passed the freezing orders under Section 17(1-A) of the PMLA, thereby calling for interference of this Court for setting aside and/or quashing the freezing orders dated 13.08.2024. It was lastly submitted that the act and actions of the Enforcement Directorate are against the settled proposition of law and in order to fortify his argument petitioner relied upon a number of precedents which are dealt with hereinbelow.

Attention of the Court was drawn to Reshmi Metaliks Limited & Anr. –Vs. – Enforcement Directorate & Anr., 2022 SCC OnLine Cal 2316 and reference were made to paragraphs, 7 to 14 and 23 and 24 which are as follows:

> ***"7.*** *The above facts therefore begs the question as to the basis on which the ED proceeded to initiate action under Sections 17 and 17(1-A) of The PMLA for freezing the bank accounts of the petitioner no. 1. The ECIR case of 2012 shows that the impugned orders can be traced to the 2009 Rates Circular and the show-cause notices issued to the petitioner no. 1. Significantly, the Summons produced by the parties also mentioned the same ECIR case number of 2012. The Summons are of February-September, 2014. Hence, the Summons were issued prior to the stay order of the Supreme Court which was passed in 2015. It is also not the case of the ED that the ED initiated action against the petitioner no. 1 or proceeded to take steps pursuant to any new case filed or show-cause notices issued after 2012. The contention*

of the ED that the impugned freezing orders were passed on incriminating material being found in the premises of the petitioner no. 1 also does not reveal that the searches were made pursuant to a new ECIR case filed against the petitioner no. 1 after 2012.

8. *It can therefore reasonably be presumed that the ED took steps for search and seizure and freezing of the petitioners bank accounts after 7 years from the date on which all pending proceedings were stayed by the Supreme Court. It may also not be out of place to come to a finding that the Rates Circular of 2009 is at the top of the pyramid of proceedings travelling down through the sprouting of challenges to the Circular with the orders passed by the Courts forming the base of the triangle.*

9. *This Court is therefore inclined to hold that the ED could not have initiated any action against the petitioners during the subsistence of the order of stay of the pending proceedings against the petitioner no. 1 by the Supreme Court dated 14th December, 2015.*

10. *The second part deals with the position under The Prevention of Money-Laundering Act, 2002, in relation to search and seizure under Section 17 of the Act.*

11. *The pre-requisite for an authorised officer of a certain rank being entitled to search and seize is that such officer has information in his possession and a reason to believe, expressed in writing that a person:—*

i) committed any act of money-laundering, or

ii) is in possession of any proceeds of crime involved in money laundering, or

iii) is in possession of records relating to money-laundering, or

iv) is in possession of any property related to crime.

12. *Section 17(1)(a)-(f) delineates the measures which the authorised officer can take for entering, searching and seizing any record or property subject to the satisfaction of the four pre-requisites stated above. The pre-requisites not only indicate that the authorised officer must have reason to believe (reduced to writing) on the information in his possession but also that the person in relation to the premises is guilty of an offence defined in Section 3 of The PMLA - "money-laundering".*

13. *Section 3 entails a separate set of requirements and evidence including that the person who is found guilty of the offence of money-laundering has knowingly indulged or assisted in the commission of an activity connected with "proceeds of crime" and has concealed, possessed, acquired or used the same. The term "proceeds of crime" has been defined in Section 2(1)(u) as any property derived directly or indirectly by any person as a result of criminal activity related to a scheduled offence as well as any property which is used in the commission of an offence under The PMLA or any of the scheduled offences. Besides, commission of an offence would only qualify as money-laundering if the offence generates proceeds of crime and tainted property (Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929).*

14. *Therefore, the search and seizure under Section 17(1) must also satisfy the defining characteristic of "money-laundering" and "proceeds of crime" as well as their respective procedural requirements as separately stipulated in The PMLA. In other words, the power to enter and search any place or to seize any record or property must be predicated by the satisfaction of all the requirements under Section 17(1) which should find a particularized statement in the written "reason to believe" component by the authorised officer under Section 17(1). It is only on the fulfillment of the*

conditions stipulated under Section 17(1) together with the satisfaction of the conditions of Sections 2(1)(u) and 3 that the power to search and seize is crystallized.

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23. *The discouragement of the Supreme Court with regard to passing orders of stay of criminal investigation in Siddharth Mukesh Bhandari v. The State of Gujarat passed on 2nd August, 2022, relying upon Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, 2021 SCC OnLine SC 315 was in light of the Gujarat High Court granting the very same interim relief which was earlier set aside by the Supreme Court. In the recent judgment of a 3-Judge Bench of Supreme Court in Vijay Madanlal Choudhary v. Union of India the expression "proceeds of crime", is described as the core of the offence of money-laundering and has been defined as a portion or whole of the property derived by any person as a result of criminal activity relating to a stated scheduled offence. The Supreme Court drew a distinction between possession of unaccounted property acquired by legal means which may otherwise be actionable for tax violation but may not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence in the Schedule to The PMLA. The Supreme Court also cautioned that the 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 unless the same is registered with the jurisdictional police or pending enquiry in a competent forum. More important, Vijay Madanlal Choudhary carved out a further area of exception for a 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 against the*

person. An analogy can be drawn to the present facts where the stay of proceedings ordered by the Supreme Court on 14th December, 2015 is continuing till date.

24. *The above reasons persuade this Court to hold that the impugned orders cannot be sustained either in law or in fact. There shall accordingly be an order of stay of the impugned freezing orders dated 13th July, 2022. The respondents are directed not to act in terms of the said orders or take steps in furtherance thereto. WPA 17454 of 2022 is disposed of in terms of the above.***"**

It was further submitted that the Enforcement Directorate assailed the aforesaid order in Enforcement Directorate & Ors. –Vs. – M/s. Reshmi Metaliks Ltd. Anr. (MAT 1446 of 2022 with CAN 1 of 2022), wherein the Hon'ble Court presided over by the then Chief Justice was pleased to held as follows:

"11. Considering the nature of controversy involved in the matter, we find that the appellants are entitled to an opportunity before the learned Single Judge and to file the requisite documents along with affidavit-inopposition. The order of the learned Single Judge is interlocutory in nature, therefore, the conclusions drawn therein and findings recorded therein are only tentative in nature.

12. Thus, we dispose of the appeal by setting aside the last sentence of paragraph 21 of the order of the learned Single Judge which states "WPA 17454 of 2022 is disposed of in terms of the above" and permit the appellants to file affidavit-in-opposition within two working weeks from today before the learned Single Judge in WPA 17454 of 2022 and thereafter, affidavit-in-reply be filed within two working weeks.

13. The learned Single Judge is requested to decide the writ petition expeditiously. Meanwhile, the parties are directed to maintain the status quo existing as on today in respect of the accounts in question which were subject matter of orders of freezing dated 13th of July, 2022."

The petitioner also relied upon the judgment passed in WPO 1772 of 2023 (M/s Kedia Fintrade Pvt. Limited & Ors. –Vs. – Union of India & Ors.), particularly with regard to the authority of the Officer issuing freezing orders, however, I find that the Co-ordinate Bench was pleased to observe as follows:

"13. *Under Section 17(1) of the PML Act, it was primarily the Director who was required to have the reason to believe for the search and seizure and thereafter, he could authorise any subordinate officer to execute the Act. Hence, the format of Form II appended to the Rules of 2005 was providing for such option. However, the Director could delegate such authority upon any officer not below the rank of Deputy Director for the purpose of having reason to believe and whenever such delegation took place, the seizure memo in Form II would be deemed to substitute the word director with the designation of the officer authorised by the Director. In the instant case, the Director had authorised the Deputy Director and after having the reason to believe the Deputy Director duly authorised the Assistant Director, being subordinate to him, to execute the acts of search, seizure and freezing at the office premises. In fact, the Assistant Director so authorised issued the freezing order dated 10.09.2023 and the seizure Memo dated 10.09.2023.*

> ***14.*** *Besides, the authority of the so authorised Assistant Director was derived from the statutory provision of Section 17(1) and/or 17(1-A) of the said Act and even if there was any apparent inconsistency with the Rules, it is the Act that would prevail.*
>
> ***15.*** *In this context, it may be germane to mention that in Vijay Madanlal Chowdhury (supra), the Hon'ble Apex Court, inter alia, held that the precondition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment.**"***

Learned advocate for the petitioner also referred to Arvind Kejriwal –Vs. – Directorate of Enforcement, 2024 SCC OnLine SC 1703, reliance was placed on paragraphs 36, 56, 57 and 60 which are as follows:

> ***"36.*** *Once we hold that the accused is entitled to challenge his arrest under Section 19(1) of the PML Act, the court to examine the validity of arrest must catechise both the existence and soundness of the "reasons to believe", based upon the material available with the authorised officer. It is difficult to accept that the "reasons to believe", as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19(1) are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the "reasons to believe". In reality, this would effectively prevent the accused from challenging their arrest, questioning the "reasons to believe". We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the "reasons to*

believe" should be furnished to the arrestee to enable him to exercise his right to challenge the validity of arrest.

56. *Undoubtedly, the opinion of the officer is subjective, but formation of opinion should be in accordance with the law. Subjectivity of the opinion is not a carte blanche to ignore relevant absolving material without an explanation. In such a situation, the officer commits an error in law which goes to the root of the decision making process, and amounts to legal malice.*

57. *A contention raised by the DoE, and accepted in Vijay Madanlal Choudhary (supra), was that the order of arrest under Section 19(1) of the PML Act is a decision taken by a high ranking officer. Thus, it is expected that the high ranking officer is conscious of the obligation imposed by Section 19(1) of the PML Act before passing an order of arrest. We are of the opinion that it would be incongruous to argue that the high ranking officer should not objectively consider all material, including exculpatory material.*

60. *In Amarendra Kumar Pandey v. Union of India, this Court elaborated on the different facets of judicial review regarding subjective opinion or satisfaction. It was held that the courts should not inquire into correctness or otherwise of the facts found except where the facts found existing are not supported by any evidence at all or the finding is so perverse that no reasonable man would say that the facts and circumstances exist. Secondly, it is permissible to inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In simple words, the conclusion has to logically flow from the facts. If it does not, then the courts can interfere, treating the lack of reasonable nexus as an error of law. Thirdly, jurisdictional review permits review of errors of law when constitutional or statutory terms, essential for the exercise of*

*power, are misapplied or misconstrued. Fourthly, judicial review is permissible to check improper exercise of power. For instance, it is an improper exercise of power when the power is not exercised genuinely, but rather to avoid embarrassment or for wreaking personal vengeance. Lastly, judicial review can be exercised when the authorities have not considered grounds which are relevant or has accounted for grounds which are not relevant.***"**

Petitioner also relied upon the celebrated judgment of the Hon'ble Supreme Court in Vijay Madanlal Choudhary & Ors. – Vs. – Union of India & Ors., 2022 SCC OnLine SC 929, emphasis was made on paragraphs 184, 185, 186, 188, 188.1 & 188.2 of the said judgment which are as follows:

"184. *After having traversed through the provisions of Chapters I to III, we may now turn to other contentious provision in Chapter V of the 2002 Act, dealing with summons, searches and seizures, etc.*

185. *Section 16 provides for power of survey bestowed upon the authorities under the 2002 Act. They have been empowered to enter upon any place within the limits of the area assigned to them or in respect of which, has been specifically authorised for the purposes of Section 16 by the competent authority, for inspection of records or other matters, in the event, it has reason to believe on the basis of material in possession that an offence under Section 3 of the 2002 Act has been committed.*

186. *However, when it comes to search and seizure, Section 17 of the 2002 Act permits only the Director or any other officer not below the rank of Deputy Director authorised by him to exercise that power on the basis of information in his possession and having reason to believe that any person has committed some act which constitutes money laundering or is in possession of proceeds of crime involved in money*

laundering, including the records and property relating to money laundering.

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188. *As noticed from the amended provision, it has been amended vide Act 21 of 2009, Act 2 of 2013 and finally by the Finance (No. 2) Act, 2019.*

188.1. *The challenge is essentially in respect of deletion of the proviso vide Finance (No. 2) Act, 2019 — which provides that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 157 of the 1973 Code or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or ministry or department or unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.*

188.2. *Further, the challenge is about no safeguards, as provided under the 1973 Code regarding searches and seizures, have been envisaged and that such drastic power is being exercised without a formal FIR registered or complaint filed in respect of scheduled offence. The provision is, therefore, unconstitutional.****"***

Mr. Arijit Chakraborty, learned advocate appearing on behalf of the Enforcement Directorate opposes the contention advanced on behalf of the petitioner and submitted that in connection with the investigation carried out

by the Enforcement Directorate, money amounting to multiple crores were transferred from the bank accounts of M/s Corporate Power Ltd to bank accounts of M/s Abhijeet Projects Ltd, Abhijeet Ventures Ltd and other Abhijeet Group entities. From Abhijeet Group entities, they were routed to bank accounts of various Kolkata based companies/entities including M/s Bahubali Properties Ltd, M/s Mangalam India Ltd, M/s Niharika India Ltd, which are all owned and controlled by one Santosh Kumar Jain of Kolkata. Such layered funds were utilized for accumulation of immovable/movable assets, including listed and unlisted shares by such entities and also in regular business transactions of such entities by Santosh Kumar Jain in collusion with Manoj Jayaswal in an attempt to project proceeds of crime as untainted. Pursuant to search proceedings under Section 17 of PMLA, 2002 being held at various premises related to Santosh Kumar Jain at Ballygunge Circular Road and 10 Princep Street, Kolkata from 12.08.2024 to 14.08.2024, the role of Santosh Kumar Jain was revealed. During post search investigation, details were sought for from Santosh Kumar Jain under the relevant provisions of PMLA, 2002 where he gave evasive answers and failed to submit the required details. The details amongst others included the source of credit received from various Abhijeet Group Companies into individual accounts of Mangalam India Ltd, Niharika India Ltd, Arissan Energy Ltd, Arissan Power Ltd, Arissan Infrastructure Private Ltd and other entities which were operated by him during the period from 2009 till the date of search.

In order to explain the money trail, a tabular chart has been presented before the Court in respect of Arissan Energy Limited which reflects that from Corporate Power Limited, amounts were transferred to Abhijeet Projects and from Abhijeet Projects to Parikshit Tie Up and from Parikshit Tie Up to the account of Arissan Energy Limited.

It was emphasized by the learned advocate that the writ petitioners are in receipt of proceeds of crime and as such the authorized officer of the Enforcement Directorate was well within his power to exercise and invoke the same under Section 17 and Section 17 (1A) of the PMLA, 2002. Learned advocate submits that the contentions of the petitioners are based on facts and the word "reason to believe" has been explained as the authorized officer has referred to the ECIR number in the freezing order as also stated regarding the purpose of investigation of the case for which they have passed the freezing order. According to the learned advocate, no further reasons are required in course of investigation to be furnished and it would be the adjudicating authority who would be in know how of the reasons and the purpose for which the freezing order has been passed and which has already been communicated to the adjudicating authority. In order to substantiate his contentions, learned advocate relied upon the judgment of the High Court of Bombay wherein Herald Commerce Ltd, one of the entities involved in connection with the investigation of the present case approached the Bombay High Court, wherein the Hon'ble Bombay High Court in Herald Commerce Ltd. Thr. Its Authorized Signatory –Vs. – Enforcement Directorate, thr. Its Deputy Director and Ors.

(Criminal Writ Petitioner No. 761 of 2024) has been pleased to dismiss the prayers so advanced on the grounds of an effective efficacious remedy available to the petitioner(s), paragraph 7 and 8 has been relied upon which are as follows:

> ***"7."*** *At the instance of written complaint filed by the Deputy General Manager of the Union Bank of India against the Company M/s Corporate Power Limited and its Directors, the predicated crime has been registered for the offence of Criminal conspiracy, cheating, forgery and thereby causing wrongful loss to the Consortium of Banks led by the Union Bank of India to the extent of Rs.4037.87 Crore. The copy of the FIR along with annexure discloses that M/s Corporate Power Limited was formed as a Special Purpose Vehicle (SPV) promoted by Abhijeet Group for setting up Coal based power project. The Company has availed the finance from the Consortium Banks. It is alleged that the borrower has manipulated project cost statements and also diverted the bank funds to its subsidiaries. The reasons stated in the order under Section 17(1) of the PML Act also indicates that the accused of predicated offence carried out diversion and layering of the POC through related parties and dummy entities for the accumulation of the assets. It is not in dispute that the parties are related with the Directors of M/s Corporate Power Limited as well as registered office is one of the same. In this background, by resorting the powers under Section 17 of the PML Act, the Assistant Director, Enforcement Directorate has passed freezing orders and by the time, the matter has been referred to the Adjudicating Authority. The Authority on receipt of an application under Section 17(4) of the PML Act, has already issued summons to the petitioners seeking their explanation.*

> ***8.*** *Preliminary investigation paper indicates that during search various property documents, electronic record were recovered on the same registered premises. It was primarily revealed that the seized assets were diversion of proceeds of crime of the accused company in dummy entities of the relatives of accused. Primary search indicates that crores of rupees have been transferred from accused company to the faulty companies. Prima facie we see no deficiency to invoke writ jurisdiction in either of the petitions. The Magnitude of the investigation is quite vast as allegedly huge sum to the extent of Rs.4037.87 crores has been siphoned through various shell entities. In the wake of above position, the petitioners have to satisfy the Adjudicating Authority, which is the mechanism set up for its redressal. Apparently, an effective efficacious remedy is available for the petitioners. In view of above, at this stage, we see no propriety in passing interim order. The Authority to expedite the proceeding contemplated under Section 8(2) of the PML Act.***"**

Learned advocate for the Enforcement Directorate also relied upon the judgment of R.S. Seth Gopikisan Agarwal –Vs. – R.N. Sen, Asstt. Collector of Customs and Central Excise, Raipur & Ors. [1983 (13) E.L.T. 1434 (S.C.) and emphasized that the Hon'ble Supreme Court, in the said case held that the High Court in order to sustain the reasonable belief of the Assistant Collector of Customs relied upon the material placed before it and as such refused to interfere. To that effect, paragraph 11 of the judgment has been referred to, which is as follows:

> ***"11.*** *Lastly, it is contended that the Assistant Collector of Customs in fact has not placed any material before the High Court to sustain his reasonable belief. The High Court, on the material placed before it, held that the Assistant Collector had acted with reasonable belief in the*

facts mentioned in that section. There is no justification for our interference with the findings of the High Court."

I have considered the submissions advanced by the learned advocate appearing for the petitioners as well as the learned advocate appearing for the Enforcement Directorate. Before analysing the submissions advanced by both the parties, it would be worthwhile to deal with the decisions relied upon by the learned advocate for the petitioner in the background of the facts of the present case. In Reshmi Metaliks Limited (supra) the Court was dealing with the factual circumstances in a case where the Hon'ble Supreme Court stayed the proceedings in respect of an affected party relating to the ECIR and consequently the freezing orders passed under Section 17 of the PMLA, 2002 by the Authorized Officer was dealt with by the Court. Thus, the factual circumstances of the present case is completely different from the case which has been referred to, as in the present case the investigation of the case is continuing and there has been no interference by any Court of law when the freezing order has been passed by the Authorised Officer. An appeal was preferred by the Directorate of Enforcement before the Hon'ble Division Bench, in respect of the aforesaid order, wherein the Appeal Court was prayed to interfere and modify the order directing the learned Single Judge to hear the writ petition after exchange of affidavits. As such, the findings of the learned Single Judge by the Hon'ble Division Bench cannot be considered as an authoritative finding in respect of Section 17 or Section 17(1-A) of the PMLA, 2002.

In M/s. Kedia Fintrade Pvt. Limited & Ors. (supra) in fact, the question which was raised related to the authority of the Assistant Director in issuing the freezing orders and the same was approved by the Hon'ble Court, as such there is no dispute regarding the authorization of Assistant Director in issuing the freezing orders under Section 17 and Section 17(1-A) of the PMLA, 2002.

The decision of Arvind Kejriwal (supra) referred to by the petitioner was in respect of an application for bail being considered by the Hon'ble Apex Court and the reasons assigned therein. So far as the reference made by the petitioner in the case of Vijay Madanlal Chaudhary (supra) is concerned, the Hon'ble Apex Court has only observed that the authorized officer, if he has reason to believe that any person has committed some act which constitutes money laundering or is in possession of proceeds of crime involved in money laundering including the record and property relating to money laundering, shall be authorized to exercise his power.

In the judgment referred to by the Enforcement Directorate in Herald Commerce Ltd. (supra) decided by the Hon'ble Bombay High Court, the findings arrived was that where an effective efficacious remedy is available there was no requirement for passing any interim order. Thus, the case which was relied upon is in respect of consideration of an interim order. So far as the judgment referred to by the opposite party in R.S. Seth Gopikisan Agarwal (supra) it was held that if the material placed before the High Court has led to

the conclusion that the authorities acted with reasonable belief, there would be no justification for interference with the findings of the High Court.

At this stage, it would be apposite to consider the judgment of H. N. Rishbud –Vs. – State of Delhi, reported in (1954) 2 SCC 934, wherein the Hon'ble Supreme Court was pleased to consider the scope and ambit of the word "investigation" in paragraph 8 which is as follows:

> ***"8.*** *Thus, under the Code investigation consists generally of the following steps:*
>
> *(1) Proceeding to the spot,*
>
> *(2) Ascertainment of the facts and circumstances of the case,*
>
> *(3) Discovery and arrest of the suspected offender,*
>
> *(4) Collection of evidence relating to the commission of the offence which may consist of*
>
> *(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,*
>
> *(b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and*
>
> *(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173……."*

Thus, investigation would include within its ambit, ascertainment of facts and circumstances, examination of various persons, search of places and seizures of things considered necessary for the investigation which is to be produced at the stage of trial. From the documents placed by the Investigating

Agency/Enforcement Directorate it is seen that there is a money trail which has been processed from Corporate Power Limited to Abhijeet Projects Ltd and from Abhijeet Projects Ltd to Parikshit Tie Up and then to the account of the petitioner company. Once such a money trail has been established by the investigating agency and the investigating agency in its freezing order dated 13.08.2024 has assigned the reason "for the purposes of investigation" requires to be frozen and in the said freezing order there is a reference to ECIR/MGSZO/02/2023, it would be enough information furnished. It would be then for the petitioner to explain the circumstances as to how it has received the money from the source. The documents submitted by the investigating agency reflect that notices under Section 50 of the PMLA, 2002 have been issued to the persons responsible for the day-to-day activities of the company. It would therefore be the responsibility of the persons who have been called to explain in respect of the proceeds which they have acquired in regular course of their business transactions. The petitioner is also not without any option as they are entitled to take up their plea before the adjudicating authority.

Now Section 17(1-A) of the PMLA, 2002, postulate that where it is not possible to seize any record or property, the authorized officer may pass an order to freeze such property so that the property is not transferred or otherwise dealt with except without prior permission of the officer passing such freezing order and a copy of the order should be served upon the person concerned.

Again Section 17(2) of PMLA, 2002 states that immediately after search, seizure or issuance of freezing order the authorized officer/authority referred to in Section 17(1) of the PMLA, 2002 shall forward a copy of the reasons so recorded along with material in his possession to the Adjudicating Authority in a sealed envelope.

Thus, there is a difference in the implementation of the provisions of Section 17(1-A) and Section 17(2) of the PMLA, 2002, otherwise the phrase "reasons so recorded along with material in his possession referred to in that Sub-section, to the Adjudicating Authority in a sealed envelope, in the manner,……." – would be redundant. What follows therefore is that while Section 17(1-A) of the PMLA, 2002 is in the nature of intimation to the affected party/person on the other hand Section 17(2) of PMLA, 2002 is a mandate to assign the reasons for implication with regard to the property being freezed and which involves the power to maintain secrecy, otherwise the term 'sealed envelope' referred in Sub-section (2) of Section 17 of PMLA, 2002 would be futile.

In light of the materials which have been placed by the investigating agency, especially the financial/monetary trail, which links the petitioner company with Corporate Power Limited, which is under investigation, I am inclined to hold that the phrase 'for the purposes of investigation' in the notice under Section 17(1-A) of the PMLA, 2002 is sufficient and do justify the act of

the Enforcement Directorate/Investigating Agency. As such no interference is called for in respect of the prayers advanced before this Court.

Accordingly, WPA 22312 of 2024 is dismissed.

Pending connected applications, if any, are consequently disposed of.

Confidential Report so submitted be returned to the learned advocate representing Enforcement Directorate.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)