2025:DHC:7898-DB

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

% ***Judgment reserved on: 22.05.2025***
Judgment pronounced on: 12.09.2025

\+ MISC. APPEAL (PMLA) 03/2023 & CRL.M.A. 34701/2019 & CRL.M.A. 38804/2019

DIRECTORATE OF ENFORCEMENT THROUGH ASSISTANT DIRECTOR DELHI .....Appellant

Through: Mr. Samrat Goswami, Advocate.

versus

RAJESH KUMAR AGARWAL .....Respondent

Through: Mr. Amit Khemka, Mr. Sandeep Dash, Ms. Himani Singh and Ms. Jeevika Dhyani, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The Appellant/ **Directorate of Enforcement**[1] has preferred the present appeal under Section 42 of the **Prevention of Money Laundering Act, 2002**[2], challenging the **Order dated 06.02.2019**[3] passed in FPA-PMLA-1973/DLI/2017 by the learned **Appellate Tribunal (PMLA), New Delhi**[4]. By the said order, the learned AT set

[1]ED
[2]PMLA/ Act
[3]Impugned Order
[4]AT/Tribunal

aside the Order dated 21.08.2017 passed by the learned **Adjudicating Authority (PMLA)**[5], which had allowed Original Application No. 106/2017 dated 15.06.2017 filed under Section 17(4) of the PMLA, seeking retention of seized properties of the Respondent.

BRIEF FACTS:

2. The Appellant registered ECIR No. 01/DZ-II/2017 dated 11.02.2017 pursuant to Criminal Complaint No. 57463 of 2016 dated 29.11.2016 filed by the **Serious Fraud Investigation Office**[6] under Section 420 read with Section 120B of the **Indian Penal Code, 1860**[7], before the learned Additional Chief Metropolitan Magistrate (Central) Special Acts, Tis Hazari Courts, Delhi.

3. The investigation related to allegations that **Mr. Surendra Kumar Jain and Mr. Virendra Jain**[8], through the accounts of corporate entities controlled by them, had indulged in the offence of money laundering. It was also alleged that the said operation was carried out with the assistance of certain professionals who acted as mediators/ co-conspirators in carrying out the money laundering operations. The *Modus Operandi* of carrying out the said laundering was alleged to be by infusion of cash from M/s Jagat Projects into the bank accounts of the corporate entities controlled by the Jain Brothers, in the guise of the same being share subscription money at a huge premium to the tune of Rs. 64.70, during the Financial Year 2008-2009. The Respondent herein, a Chartered Accountant, was alleged to be one of the professionals who acted as a mediator/ co-conspirator.

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[5] AA
[6] SFIO
[7] IPC
[8] Jain Brothers

4. Post the investigation, on a strong reasonable belief, that proceeds of crime, documents/ records related to offence of money laundering could be recovered, a search under Section 17(1) of the PMLA was conducted on 18.05.2017 at the office premises of the Respondent, being, 202, 18/12, Jain Bhawan, WEA, Karol Bagh, New Delhi- 110060.

5. As recorded in the Seizure Report (*Panchanama*) dated 18.05.2017, the search led to the seizure of 59 files, one laptop, three computer hard drives, and Rs. 6,00,000/- in Indian currency.

6. In compliance with Section 17(2) of the PMLA, the ED submitted the recorded reasons for the search in a sealed envelope to the learned Chairman of the AA on 22.05.2017. On the same day, the Respondent was arrested and later granted bail by the **Special Court (PMLA), New Delhi**[9], on 04.09.2017.

7. On 15.06.2017, the Appellant filed Original Application No. 106/2017 under Section 17(4) of the PMLA before the learned AA, seeking retention of the seized property.

8. On 20.07.2017, the Appellant also filed a prosecution complaint before the learned Special Court, against the Respondent for the offence under Section 3, punishable under Section 4 of the PMLA. The learned Special Court took cognizance of the offence on 04.09.2017.

9. *Vide* Order dated 21.08.2017, the learned AA allowed the Original Application No. 106/2017.

10. Aggrieved by the said order, the Respondent filed an appeal under Section 26 of the PMLA before the learned AT.

[9]Special Court

11. The Tribunal, *vide* Order dated 06.02.2019, set aside the Order dated 21.08.2017 on the grounds that it lacked any substantive consideration or discussion on merits, particularly regarding the retention of the Respondent's properties. While holding that the order of the learned AA was sans reasons, the learned Tribunal also examined the manner in which the property was sought to be retained and held that the manner in which the seized property was retained did not conform to the scheme of the Act and examined the relevant provisions in respect of the same, and in particular, Sections 17, 20 and 8 of the PMLA and the interplay of the said Sections for the purpose of examining the retention of the properties seized in the present case.

12. It is this order dated 06.02.2019, of the learned AT, setting aside the Order dated 21.08.2017 passed by the learned AA, is under challenge before us.

SUBMISSIONS OF THE APPELLANT:

13. The learned Counsel for the Appellant would submit that the prosecution complaint was filed on 20.07.2017 and was pending consideration before the learned Special Court at the time the learned AA passed the order of retention dated 21.08.2017; and therefore, in accordance with Section 8(3)(a) of the PMLA, which was in force at that time, the seizure ought to have continued due to the pendency of the complaint before the said Court. The Appellant, in support of the said proposition, relies upon paragraphs 178.1 to 178.4 of the Judgment of the Hon'ble Supreme Court in ***Vijay Madanlal***

Choudhary v. Union of India[10], to contend that as the prosecution was pending before the learned Special Court, the retention had to continue.

14. The learned Counsel would further contend that the alleged procedural non-compliance under Section 20 of the PMLA was never raised before the learned AA by the Respondent and that this objection was raised for the first time only at the appellate stage before the learned AT, when the retention of the seized property had already been confirmed by the learned AA.

15. It would also be the submission of the Appellant that Sections 17(4) and 20 or 21 of the PMLA operate differently in as much as Section 17(4) applies when the ED, immediately after search and seizure, elects to seek the learned AA's approval through a formal application for continued retention, while Sections 20 and 21 apply where the authorised officer may retain the seized property or documents for up to 180 days without initially seeking such approval, subject to recording written reasons and forwarding them to the learned AA for information.

16. The learned Counsel for the Appellant would further argue that, in the factual circumstances of the present case, there was no necessity to invoke Section 20 of the Act, as the adjudication proceedings under Section 8 had already been concluded well before the expiry of the 180-day period from the date of seizure; and therefore, compliance with Section 20 of the PMLA became redundant.

17. It would also be submitted by the learned counsel for the Appellant that the issuance of an order under Section 20 is neither a legal precondition nor a procedural necessity for filing an application

[10] (2023) 12 SCC 1

under Section 17(4) of the PMLA, as both provisions function independently and are not mutually dependent; and consequently, the absence of an Order for Retention under Section 20 of the PMLA would not vitiate the continued retention of the property.

18. The learned counsel for the Appellant, in his oral arguments, also submitted that the procedural requirements laid down under Section 20 of the PMLA are merely directory in nature and not mandatory, as the provision establishes a procedural framework rather than imposing a binding obligation.

19. It would also be contended by the learned counsel for the Appellant that the learned AT committed an error in setting aside the Order dated 21.08.2017 passed by the learned AA solely on the ground of non-consideration; and instead of quashing the order, the learned Tribunal ought to have remanded the matter back to the learned AA for fresh consideration.

SUBMISSIONS OF THE RESPONDENT:

20. *Per Contra*, the learned Counsel for the Respondent, at the very outset, would raise objection regarding the maintainability of the present appeal on the ground of delay, contending that while the statute permits 60 days for filing an appeal before this Court, the instant appeal has been filed after an inordinate delay of 143 days.

21. Learned Counsel for the Respondent, while supporting the Impugned Order, would submit that the order passed by the learned AA was erroneous and legally unsustainable, as it lacked any substantive reasoning or detailed consideration on the merits of the issue, and had been passed in a mechanical manner without any application of the mind.

22. With reference to the statutory scheme, the learned Counsel for the Respondent would argue that upon seizure of property or records, within a period of 30 days, an application under Section 17(4) would necessarily have to be filed praying for retention of the seized property/ records or continuation of freezing before the learned AA.

23. The Respondent would contend that the wording of Section 17(4) of the PMLA does not provide for the provision of any reasons or material to be appended to such an Application,

24. He would contend that Section 20 of the PMLA and the provisions thereof, and in particular Section 20(1), provide for "*Reasons to Believe*" to be recorded for the purpose of retention of what is seized. He would further contend that under Section 20(2), the order for retention has to be immediately forwarded along with the material on the basis of which the Retention Order has been passed to the learned AA.

25. He would thus contend that a reading of Section 17(4), with Sections 20(1) and 20(2), would suggest that the same was to ensure that the learned AA would have all the necessary inputs for the purpose of making an adjudication under Section 8, which adjudication would have to be a fresh/ independent adjudication, made on the basis of the inputs received being the Application under Section 17(4) along with the Retention Order with the Reasons to Believe under Section 20(1) as well as the relevant material on the basis of which the said order was passed as prescribed under Section 20(2) of the PMLA.

26. He would contend that such an order under Section 8(3) of the PMLA, once passed, would be valid for 365 days from the date of seizure.

27. The Respondent would thus contend that unless such a retention order under Section 20(1) & (2) or 21(1) is passed, the learned AA cannot proceed under Section 8(1) and thereafter make a determination under Section 8(2) of the PMLA. He would further submit that it is only after such a determination under Section 8(2), the learned AA can proceed to the next step, which is, confirmation of the retention of what is seized or frozen, and upon confirmation, continue for 365 days and if decided otherwise, would have to be released after a period of 180 days, as prescribed under Section 20(3) of the PMLA.

28. It would thus be submitted that the procedure as has been statutorily prescribed has not been complied with, making the continued retention bad in law.

29. The Respondent would also submit that when the law prescribes a specific procedure for doing an act, that procedure must be followed strictly and exclusively, and in support of this, the Respondent would upon the judgment of the Hon'ble Supreme Court in ***State of Rajasthan v. Mohinuddin Jamal Alvi*** [11] and state that the failure of the ED to comply with the requirements of Section 20 renders the action legally flawed, justifying the decision of the learned AT to set aside the retention order passed by the learned AA.

30. The Respondent would further rely on the judgment of the Hon'ble Supreme Court in ***State of Orissa v. Mamta Mohanty***[12], wherein it was held that any order that is legally bad at its inception cannot be cured or legitimized at a later stage, thereby reinforcing the argument that the retention order, being vitiated by procedural illegality, was rightly quashed by the learned AT.

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[11](2016) 12 SCC 608
[12](2011) 3 SCC 436

31. The learned Counsel for the Respondent would also contend that the PMLA is a special Act and the provisions need to be followed strictly and relies upon the Judgment of the Hon'ble Supreme Court in ***Anita Malhotra v. Apparel Export Promotion Council***[13].

32. The Learned Counsel would controvert the arguments regarding the contention of the Appellant that the present matter was one where the learned AT should have remanded the matter back, by contending that neither Section 26 nor Section 42 of the PMLA provides for remand and that the same cannot be read into the provisions by implication.

33. It is also contended that no remand is possible after the passage of 180 days, as the learned AA becomes *functus officio* by virtue of Section 20(3). He would state that if the matter is remanded back, the Order under Section 8(3) would result in the kicking in of the provisions under Section 20(3) mandating the return of what is seized or unfreezing of what is frozen.

ANALYSIS & FINDING:

34. This Court has heard the parties at length and has carefully examined the pleadings, the Impugned Order, and the written submissions filed post-hearing by both sides.

35. At the outset, it is pertinent to note that the present appeal was initially filed by the Appellant on 06.04.2019, and *vide* order dated 30.08.2019, after allowing the Appellant's application seeking condonation of delay in re-filing, the notice was issued in this matter. Subsequently, the Respondent filed an application seeking the recall of the said order dated 30.08.2019.

[13] (2012) 1 SCC 520

36. The said application, which raises the issue of limitation, has been pending consideration before this Court along with the present Appeal. In the said application, the Respondent has contended that there was a delay of 143 days beyond the period prescribed under Section 42 of the PMLA, and therefore, the appeal is liable to be dismissed as barred by limitation.

37. It is an undisputed fact that the appeal was originally filed on 06.04.2019 and was subsequently re-filed from time to time by the Appellant after curing defects. The initial filing was within the statutory limitation period of 60 days, as prescribed under Section 42 of the PMLA. Section 42 provides for an appeal to be filed within 60 days from the date of the impugned order, extendable by a further period of 60 days upon sufficient cause being shown.

38. The preliminary issue in the present case is limited to the delay in re-filing the appeal after curing defects, and not the delay in the original filing itself. It is well settled in law that the standards for condonation of delay in initial filing of an appeal and those applicable to delay in re-filing after curing defects are distinct. The rigour applicable to condonation of delay in the initial institution of an appeal is not to be applied with equal strictness to delay in re-filing. However, even in the case of re-filing, the party seeking condonation has to show sufficient cause for the delay. In ***Perumon Bhagvathy Devaswom v. Bhargavi Amma***[14], the Hon'ble Supreme Court aptly observed:

> **"13.** …….
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> (*iv*) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of

[14] (2008) 8 SCC 321

> the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.
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> ……."

39. Similarly, in ***Northern Railway v. Pioneer Publicity Corpn. (P) Ltd***[15], although in the context of Section 34(3) of the Arbitration and Conciliation Act, 1996, the Hon'ble Supreme Court reiterated the principle that delays in re-filing should be assessed with greater leniency, considering overall circumstances. The relevant paragraphs of the said judgment are as follows:

> "**4.** We find that said Section 34(3) has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing.
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> 5. We are not inclined to accept this contention, particularly since the petitioner has offered an explanation for the delay for the period after the extensions.
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> 6. Having regard to the overall circumstances of the case, we consider it appropriate in the interest of justice to set aside the impugned order.
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> **7.** Accordingly, the appeal is allowed and the impugned order [*Northern Railway* v. *Pioneer Publicity Corpn. (P) Ltd.*, 2015 SCC OnLine Del 11646] of the High Court is set aside. We further direct that the objections of the appellant under Section 34 be taken on the file of the court and the matter be disposed of in accordance

[15] (2017) 11 SCC 234

with law. The parties are directed to appear before the appropriate court on 28-11-2016 after obtaining certified copy of this order."

40. In the present case, the Appellant, in the application seeking condonation of delay in re-filing (which was allowed *vide* order dated 30.08.2019), had attributed the delay primarily to administrative difficulties. Taking into account that the Appeal has remained pending for almost six years and that notice was already issued *vide* order dated 30.08.2019 after considering the application seeking condonation of delay in re-filing, this Court is of the considered opinion that, at this belated stage, it may not be necessary to undertake the exercise of a detailed scrutiny into the alleged 143-day delay in re-filing. Accordingly, without getting into the aspect of the objection regarding the delay in the re-filing, we propose to examine the matter on merits.

41. We are of the view that the core issue for adjudication in the present matter pertains to the applicability of Section 20 of the PMLA, which governs the retention of property and records following search and seizure operations conducted by the ED under Section 17 of the PMLA. We are also of the view that the fact that, this point was not raised by the Appellant before the learned AA and was raised only before the learned AT, is of no significance since the same is a pure question of law relating to the statutory scheme of the Act, which can be raised at any point in time. The non-raising of the same before the learned AA does not prejudice the Respondent or vitiate the Judgment of the learned AT.

42. Section 17 of the PMLA lays down the procedure for search and seizure. Sub-section (1) permits the search and seizure of any record or property, after forming a "reason to believe", based on the material

in his possession. This, in our opinion, is the first procedural safeguard provided to a person before his property or records are seized.

43. Sub-section (1A) of Section 17 provides an alternative where immediate search and seizure of the property or record is not practicable. In such cases, the authorized officer may pass an order to freeze the property. However, the officer retains the discretion to seize the frozen property later, provided it becomes practicable to do so before the relevant adjudicatory stage.

44. Sub-section (2) provides that the ED must immediately forward the material and the order passed by the authorized officer to the learned AA, following the search and seizure or the issuance of the freezing order.

45. Sub-section (3) empowers the authority to carry out seizure where, during a survey conducted under Section 16 of the PMLA, there arises a reasonable apprehension regarding concealment, transfer, or tampering with the property.

46. Section 17(4) requires the authorized officer of the ED to file an application before the learned AA within 30 days of the search, seizure, or freezing order, seeking permission for retention of the seized or frozen property.

47. Section 17 (as amended up-to-date) states as follows:

> "**17. Search and seizure**. — (1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—
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> (i) has committed any act which constitutes money-laundering, or
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> (ii) is in possession of any proceeds of crime involved in money-laundering, or
>
> (iii) is in possession of any records relating to money-laundering, or

(iv) is in possession of any property related to crime,

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record of property, if required or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

[***]

(1-A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section (2-A) of Section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the 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, as may be prescribed and such adjudicating authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under Section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1-A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1-A), before the adjudicating authority."

(emphasis supplied)

48. The second limb pertains to Section 20 of the PMLA, which deals with the retention of property seized or frozen under Section 17. Before delving into its substantive applicability, it is appropriate to reproduce Section 20 (as amended up-to-date), which reads as under:

*"**20. Retention of property.**— (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.*

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, Special Court, shall direct the release of all property other than the property involved in money-

> laundering to the person from whom such property was seized or the persons entitled to receive it.
> (6) Where an order releasing the property has been made by the Special Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of receipt of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.
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> ***(emphasis supplied)***

49. Section 20 comprises six sub-sections, which prescribe a detailed mechanism concerning the retention of seized or frozen property. Sub-sections (1) and (2) set out the essential preconditions and procedures for retaining such seized or frozen property, for a period not exceeding 180 days from the date of seizure or freezing, by the ED.

50. Sub-section (3) prescribes the consequences of the lapse of the initial 180-day period and Sub-section (4) prescribes the manner in which the learned AA is to approach any retention for a period beyond the 180 days. We add a caveat here that the said "*prima facie*" satisfaction is not by itself the procedural requirement and this aspect will be made clearer in the later part of this Judgment.

51. Sub-sections (5) and (6) address the subsequent course of action to be taken upon the final decision of the Special Court concerning the seized or frozen property and are not really relevant for the present purposes.

52. At the outset, it needs to be borne in mind that the entire Scheme of Search and Seizure is set out in Chapter V of the PMLA. It is evident that the fact that all the provisions set out in the said Chapter deal expressly with the said subject of Search and Seizure and

the Headings of the said Sections, though not conclusive, given the express provisions contained in the Sections themselves and the fact that all these Sections are contained in the Chapter which expressly purport to be dealing with matters relating to Search and Seizure, the Heading of the Chapter is the first indicator that the provisions in the Chapter are a ring fenced set of provisions. Further, the procedure as provided in the provisions is very elaborate and deals expressly with the subject of "Search and Seizure", without lending itself to any ambiguity or doubt or need for a reference to a provision outside the said chapter, till so occasioned and provided by the provisions themselves.

53. Sub-section (1) of Section 20 concerns retention of property that is either seized or frozen under Section 17 or 18, and in which event, the authorized officer, duly empowered by the Director of ED, based on the material in his possession, forms a reason to believe that that the said property is required for adjudication under Section 8 of the PMLA, and proceeds to pass an order for its retention/ continued freezing.

54. Sub-section (2) of Section 20 further mandates that the officer who passes the order for retention or continuation of freezing shall immediately forward a copy of such order, along with the material or evidence on which the order is based, to the learned AA in the manner prescribed under the *Prevention of Money Laundering (the Manner of Forwarding a Copy of the Order of Retention of Seized Property along with the Material to the Adjudicating Authority and the Period of its Retention) Rules, 2005*.

55. It is here that the Appellant sets up a two-pronged challenge:

(a). The Appellant would contend that Sections 17(4) and 20 operate differently since the provision of Section 17(4) comes into play when the Appellant would decide to immediately retain the property, for which purpose he makes an application under the said provision and thereby seek an adjudication by the learned AA in this regard; meaning thereby that the Appellant can make an application for "Retention" of property, in respect of which the learned AA can pass an order under Section 8(3) and thereby retain the same. The concomitant to the same would be that the Respondent can directly seek an adjudication under Section 8(3) for "Retention" of seized goods/ property without resort to the provisions of Section 20 of the PMLA.

(b). The second challenge is more factual in nature, and wherein the Appellant would contend that, in the facts of the present matter, since the adjudication process was completed before the period of 180 days, there was no need to resort to Section 20 of the PMLA.

56. We are afraid that we believe both prongs of the challenge are toothless and unacceptable.

57. Since the Order sought to be defended herein was one passed under Section 8, we propose to start by examining Section 8 of the PMLA, which reads as under:

> "**8. Adjudication.—** (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section

5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a). considering the reply, if any, to the notice issued under sub-section (1);

(b). hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c). taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under subsection (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;

Explanation. — For the purposes of computing the period of three hundred and sixty-five days under clause (a), the

period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

> Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed."

58. As is manifest, Section 8 is a provision for the purposes of "Adjudication". Section 8(3) does not deal with the act of simpliciter "Retention". In fact, a plain reading of Section 8(3) makes it evidently clear that it provides that the learned AA will "*...by an order in writing confirm the attachment of the property made under sub-section (1) of Section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall - (a) continue during investigation for a period not exceeding three hundred and sixty five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be ....*".

59. In its plain terms, the Section deals with the circumstance where the learned AA is to "confirm" the "retention of property". It cannot be read in a manner such as to translate into the order of Retention itself, which, in our opinion, is the subject matter of Section 20.

60. Therefore, on a plain reading, it is manifest that the power under Section 8(3), being one for confirming any retention, there needs to be, in the first instance, an order for such retention, which can be confirmed under Section 8(3).

61. The other aspect is that, the power of confirmation, once exercised, would entitle the retention of the seized or frozen property

for a period beyond 180 days and up to 365 days. The provision, therefore, is clearly not exercisable for the purpose of retention of the property for the period of 180 days, as is sought to be contended.

62. If we were to accept the contention of the Appellant, it would mean that any property so seized, upon the making of an application under Section 17(4), would, on the basis of an order passed by the learned AA, be able to be retained from the date of seizure for a period of 365 days (during investigation).

63. Chapter V of the Act deals with "Summons, Searches and Seizures, etc." and as already dwelt upon earlier, it is manifest that the said Chapter would necessarily have to be held to govern any such action.

64. We take note of the fact that both Sections 17 and 20 form an intrinsic and integral part of the said Chapter. Both Sections have been reproduced earlier and are not being reproduced again.

65. Section 17(1) provides for the officer authorised in that behalf, on the basis of information in his possession, formulating a reason to believe, in respect of any person regarding the various aspects related to money laundering as set out therein, either by himself or by authorising an officer subordinate to him, to seize any record or property and under Section 17(2), immediately after so doing, forward a copy of the reasons so recorded for the purpose of seizing, along with the material in his possession to the learned AA, who shall keep the same, for the period as prescribed.

66. Interestingly, Section 17(2) does not state that the material that is being sent to the learned AA is for the purpose of making any adjudication. It would appear that, it is the intent of the legislature, that the learned AA should have access to all relevant material for the

purpose of adjudication. However, the fact that Section 8 is clearly for the purpose of adjudication and also the fact that Section 17 is completely silent on the aspect of adjudication, makes it apparent that Section 17, in fact, does not contemplate a procedure where immediately after a seizure or freezing being effected, the adjudicatory powers of the learned AA could be resorted to. In the succeeding paragraphs, relating to Section 20, this aspect will be further elaborated upon.

67. Section 17(4) of the PMLA, which has been reproduced in the preceding paragraphs of this judgement, is what is sought to be relied upon by the Appellant to contend that the same allows the Appellant to file an application *"…. requesting for retention of such record or property seized…"* before the learned AA and upon the filing of such an application, the learned AA, without having an order of retention under Section 20(1) can proceed to pass an order permitting the retention of the same.

68. We are of the view that the same is clearly against the plain reading of the Statute itself. Section 17(4) cannot confer upon Section 8(3), a power to pass an order of Retention. Section 8(3) is confined to the confirmation of an order of retention. Surely, one cannot contend that the authority which is statutorily conferred the power to "confirm" an order can also pass the order. That is precisely what will be the case in the event that the contentions of the Appellant were to be accepted.

69. Moving now to an examination of Section 20 of the PMLA, the provisions of which have already been extracted herein above. The opening lines of Section 20(1) of the PMLA, "*Where any property has been seized under section 17…*" and the words, "*from the day on*

which such property was seized", taken together, to our mind, clearly establish that Section 20 comes into play from the day of any seizure and will have to be applied for any retention of seized goods upto a period of 180 days. Put simplistically, post the action of seizing or freezing under Section 17, the baton would be handed over to the provisions of Section 20.

70. Further, this provision also clearly indicates that the said retention is to be for the purpose of adjudication under Section 8; meaning thereby that the retention is for the purpose of the exercise of the power of adjudication by the learned AA under Section 8, which, as indicated earlier, is to be exercised for the purpose of "confirmation" of retention. A plain reading of Sections 20 (1) and (2) leads us to firmly opine that the provisions of Section 20(1) will necessarily have to be brought into play, before the adjudication under Section 8, since the said retention can only be for the purposes of an "adjudication" under Section 8.

71. Section 20(1) makes it evident that the authorised officer would, under it, pass an order for retention.

72. Section 20(2) clarifies that an Order for Retention is to be passed under Section 20(1) and further reiterates that the Order under Section 20(1) is for the purposes of adjudication under Section 8.

73. The provisions of Section 20(1) apply for the period from the day of seizure for a period upto 180 days. This is further clarified by the provisions of Section 20(3), which provides that in the event that the learned AA does not permit the retention or continuation of freezing, the goods would be returned.

74. Section 20(2) mandates that the copy of the order of retention passed under Section 20(1), along with the material in his possession,

is to be sent to the learned AA, once again, for the purposes of adjudication under Section 8.

75. We also believe that the fact that Sub-section (3) of Section 20 stipulates that, upon the expiry of 180 days from the date of seizure or freezing, the property shall be returned to the person from whom it was seized or whose property was frozen, unless the learned AA grants permission for continued retention or freezing, also clarifies the entire issue further.

76. A plain reading of this provision makes it evident that the learned AA exercises power only in respect of the retention of the seized property beyond the period of 180 days, meaning thereby that the power to retain the seized goods for a period of 180 days, was never conferred upon the learned AA.

77. Section 20(4), which has been reproduced in the preceding paragraphs of this judgment, fortifies our view even further, as a reading of the said provision clearly indicates that, this is the juncture from where the starting point of the exercise of powers of the learned AA, under Section 8, which power, it is reiterated, is exercisable only for the purposes of retention beyond the 180-day period, would have to be considered to commence.

78. At this stage, the learned AA would have, the relevant material under Section 17(2) and the material under Section 20(2). The learned AA would thus, under Section 20(4), first satisfy itself, on the basis of the material available with it for the purpose of exercising its powers of adjudication, whether a *prima facie* case exists.

79. The satisfaction of the existence of a *prima facie* case is the precursor to the exercise of the adjudicatory power under Section 8,

exercisable by the learned AA for the continuation of the retention of the seized property beyond the period of 180 days.

80. The power under Section 8(3) of the PMLA, being one, which permits the retention of property of a person, meaning thereby, permitting the continuance of the deprivation of property from a person who otherwise would be entitled to enjoy it to the fullest, the same would necessarily have to be exercised in a manner only after the person who is being deprived of the same is given the maximum possible safeguards. We are also of the opinion that the lay of the Statutory land, is clearly indicative of this and the contentions of the Appellant in this regard would effectively circumvent, what we believe are safeguards statutorily provided by the Legislature.

81. Regulations 21 to 25 of the Adjudicating Authority (Procedure) Regulations, 2013 provide the procedural framework for conducting adjudication under Section 8. These regulations empower the learned AA to examine witnesses, mark exhibits, issue commissions, and undertake other procedural steps necessary for a fair adjudication. Regulations 21 to 25 of the Adjudicating Authority (Procedure) Regulations, 2013 state as follows:

> "**21. Examination of witness and the issue of commissions.** The provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to the issuing of commissions for examination of witnesses and documents shall, as far as may be applicable, apply in the matters of summoning and enforcing attendance of any person as witness and issuing a commission for examination of such witness.
>
> **22. Recording of deposition.** The deposition of the witness whenever necessary shall be recorded in Form 8. A Certificate of attendance, if requested for, will be issued in Form 9.
>
> **23. Numbering of witness.** The witness called by the applicant shall be numbered consecutively as P.Ws and those by the defendant or any other persons not being applicants as D.Ws. and

any witness examined at the instance of the complainants shall be numbered consequently as C.Ws, and the witness called by the Adjudicating Authority shall be numbered as A.Ws.

24. Witness expenses payable. The Adjudicating Authority may, if it considers necessary, direct the concerned party for the payment of expenses to the witness, as the case may be.

25. Marking of documents. Every document filed by the applicant shall be marked as Ex. A1 and the document filed by the complainant shall be marked as Ex. C1 and the documents filed by the defendants or other person not being applicant shall be marked as Ex. Dl and so on."

82. In light of the statutory provisions, the above discussion, and the scheme of the PMLA, the conclusions, as relevant for the present purposes, which, though not exhaustive, may be summarised as follows:

(a). The ED initiates action under the PMLA by conducting search and seizure under Section 17(1).

(b). Upon executing a search and seizure or passing a freezing order, the ED is statutorily obligated to immediately inform the learned AA and forward the reasons recorded along with the relevant material, as mandated under Section 17(2).

(c). Within 30 days of such search, seizure, or freezing, the ED must file an Application under Section 17(4), before the learned AA for confirmation and adjudication in accordance with Section 8(1), (2), and (3) of the PMLA.

(d). Prior to the point in time when the power for confirmation of retention of the seized/ frozen property or records is required to be confirmed by the learned AA for the period beyond 180 days, in exercise of its powers under Section 8(3), the Provisions of

Section 20(1) and Section 20(2) read with Section 20(3) would have to be necessarily held to be the power under which the seized goods are permitted to be retained for a period up to 180 days.

(e). Therefore, after informing the learned AA under Section 17(2) and before filing the requisite application under Section 17(4), the ED, if it believes the retention of the seized or frozen property is necessary for adjudication under Section 8, would have to necessarily invoke Section 20.

(f). Filing an application under Section 17(4) before the learned AA does not *ipso facto* permit the ED to retain the seized property unless it also complies with the requirements of Section 20. Failure to do so would amount to a violation of the express procedure established by law.

(g). Section 20(1) mandates that the officer authorized by the Director of ED must have in his possession, material leading to a reasonable belief that the continued retention is required for adjudication under Section 8. This belief must be based on tangible evidence and recorded in writing. Upon forming such a belief, the officer shall pass an order for such retention or continued freezing for a period not exceeding 180 days from the date of seizure or freezing.

(h). Once such a belief is formed and recorded in an order, it must be communicated to the learned AA under Section 20(2). This communication becomes relevant as part of the record and basis for the learned AA's adjudication.

(i). Under Section 20(4), the learned AA may allow continued retention or freezing only if it is satisfied that:

(i) The property is *prima facie* involved in money laundering; and

(ii) The property is required for adjudication under Section 8.

(j). On the basis of the Application under Section 17(4), made within 30 days of the seizure, the learned AA, after satisfying itself on the foundational requirement under Section 20(4) of "*prima facie*" satisfaction, would thereafter, along with the relevant material and Reasons to believe under Sections 17(2) and 20(2) undertake the mandatory procedural requirements set out in Sections 8(1) and 8(2) and under 8(3), pass an order, in writing, confirming the retention, whereupon, the seizure would continue beyond 180 days and up to 365 days, during the investigation.

(k). The learned AA, upon receiving such application, forms an opinion under Section 8(1), issues notice, and provides the concerned person an opportunity to respond with evidence and be heard under Section 8(2). Thereafter, based on the material on record, the learned AA determines whether the property in question is involved in money laundering. Based on the decision under Section 8(2), the learned AA, under Section 8(3), confirms the retention of property or records seized or frozen under Section 17 or 18 for a period beyond 180 days.

(l). Before forming any such opinion, the learned AA must adhere to the procedural requirements of Sections 8(1) and (2), and in doing so, may invoke the relevant provisions of the *Adjudicating Authority (Procedure) Regulations, 2013*.

(m). Section 8(2) imposes a duty upon the learned AA to:

(i) consider the reply, if any, submitted by the aggrieved person;

(ii) hear both, the aggrieved person and the ED; and

(iii) take into account all relevant materials placed on record.

(n). The scope of Section 8(2) of the PMLA is not confined to the response and hearing of the parties; it also includes all materials previously submitted by the ED, during and after the search, seizure and retention.

(o). The decision of the learned AA is appealable before the learned AT, and if aggrieved by the decision of the learned AT, a further challenge may lie before the appropriate High Court.

(p). In case there is no order for retention, Section 20(3) provides that, upon expiry of the 180-day period, the property must be returned to the person from whom it was seized or whose property was frozen.

83. The PMLA, being a special legislation with significant economic implications, occupies a distinct place in the statutory framework of financial regulation and jurisprudence. Recognising the evolving nature of economic offences and the growing threat of money laundering to the integrity of national and international financial systems, the PMLA has been extensively amended over time, almost a dozen times, to address exigencies, close legal loopholes, and reinforce its enforcement architecture. The list of amendments, which underscores the evolving scope and rigor of the statute, includes:

(a). The Prevention of Money Laundering (Amendment) Act, 2005 (20 of 2005).

(b). The Prevention of Money Laundering (Amendment) Act, 2009 (21 of 2009).

(c). The Prevention of Money Laundering (Amendment) Act, 2012 (2 of 2013).

(d). The Finance Act, 2015 (20 of 2015).

(e). The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015).

(f). The Finance Act, 2016 (28 of 2016).

(g). The Finance Act, 2018 (13 of 2018).

(h). The Prevention of Corruption (Amendment) Act, 2018 (16 of 2018).

(i). The Finance Act, 2019 (7 of 2019).

(j). The Aadhaar and Other Laws (Amendment) Act, 2019 (14 of 2019).

84. Section 20 of the PMLA was comprehensively amended by the Prevention of Money Laundering (Amendment) Act, 2012 (2 of 2013), reflecting the legislature's intent to introduce a more robust and clearly delineated procedure concerning the retention of seized or frozen property. The substantive nature of this amendment implies that these provisions are not merely directory or procedural but are mandatory and of critical legal consequence. If they were of lesser import, such comprehensive legislative substitution would have been unnecessary. Furthermore, the amendments to Section 20 triggered corollary changes across other provisions of the Act, reinforcing the view that the amended provisions form a central part of the scheme for lawful seizure and retention.

85. The Appellant’s contention that once the learned AA confirms the seizure under Section 8 within the statutory period of 180 days,

non-compliance with procedural safeguards, if any, under Sections 20 becomes inconsequential, is legally flawed and merits outright rejection. Such an argument, if accepted, would render the statutory safeguards illusory and undermine the checks instituted by Parliament against potential abuse of power by enforcement agencies.

86. Such an interpretation would, in our opinion, run contrary to the express mandate of the Statute, as resort to Section 17(4) without referral or resort to the Provisions of Section 20, would effectively render the provisions of Section 20 nugatory. The argument of the Appellant that the resort to the provisions of Section 17(4), is at an "initial stage", in our opinion, is incorrect. This argument, to our mind, propounds a "cheat code" to the statutory intent as is otherwise apparent.

87. In our view, the Statute does not provide for any such route wherein the provisions of Section 17(4) can be directly resorted to. For the purpose of "retention" or freezing, resort to Section 17(4), in the manner as sought for, effectively translates into a short-cut, bypassing, what we believe is the express mandate of the Statute, providing statutory safeguards, necessitated by the fact that consequences of such retention would have an extreme and draconian effect on the person whose property is seized or frozen.

88. Any such order without following the required procedure would, in our opinion, not survive and is, in fact, *void ab initio*.

89. The Hon'ble Supreme Court in ***State of Orissa v. Mamata Mohanty*** *(supra)* held that an order which is *void ab initio* cannot be salvaged or legitimised by any subsequent action or development. Thus, confirmation by the learned AA cannot cure initial procedural violations or validate unlawful retention carried out without adherence

to statutory requirements. The relevant portion of the judgment states as follows:

> *"**Order bad in inception***
> **37.** It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide *Upen Chandra Gogoi* v. *State of Assam* [(1998) 3 SCC 381: 1998 SCC (L&S) 872: AIR 1998 SC 1289], *Mangal Prasad Tamoli* v. *Narvadeshwar Mishra* [(2005) 3 SCC 422: AIR 2005 SC 1964] and *Ritesh Tewari* v. *State of U.P.* [(2010) 10 SCC 677: (2010) 4 SCC (Civ) 315: AIR 2010 SC 3823]).*"*
>
> ***(emphasis supplied)***

90. Similarly, in ***Ritesh Tewari v. State of U.P.***[16], the Apex Court reiterated that statutory compliance is not an empty formality and any deviation from express procedural mandates cannot be condoned under the pretext of subsequent validations. The relevant paragraphs of the said judgement observed as follows:

> "**32.** It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has obtained the benefits. (Vide *Upen Chandra Gogoi* v. *State of Assam* [(1998) 3 SCC 381: 1998 SCC (L&S) 872]; *Satchidananda Misra* v. *State of Orissa* [(2004) 8 SCC 599: 2004 SCC (L&S) 1181] and *SBI* v. *Rakesh Kumar Tewari* [(2006) 1 SCC 530: 2006 SCC (L&S) 143].)
> **33.** In *C. Albert Morris* v. *K. Chandrasekaran* [(2006) 1 SCC 228] this Court held that a right in law exists only and only when it has a lawful origin.

[16](2010) 10 SCC 677

> **34.** In *Mangal Prasad Tamoli* v. *Narvadeshwar Mishra* [(2005) 3 SCC 422] this Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside."
>
> ***(emphasis supplied)***

91. It is thus clear that although the PMLA empowers the ED to seize or freeze property suspected to be involved in money laundering, such powers are embedded within a stringent procedural framework aimed at ensuring accountability, transparency, and protection of individual rights. The exercise of such coercive powers must strictly conform to the statutory checks and balances provided within the Act.

92. We reiterate that, Section 20(1) would necessarily get attracted, at the very first instance, in respect of any action taken for the Retention of property or the continuance of freezing of any property. Section 20(1) mandates that a separate and independent opinion must be formed by an officer authorised by the Director, who may not necessarily be the same officer as authorized under Section 17(1), stating reasons justifying such retention. After forming an independent reason to believe, which would naturally have to form the basis for the order for retention, the order would be required to be forwarded along with the material in his possession, without delay, under Section 20(2). Such an order would draw sustenance from the reason to believe and would necessarily have to form a part of the order, as any order without the appurtenant reasoning would not be an order at all. This is all the more relevant since the said order effectively seeks to prolong the curtailment of the enjoyment of valuable rights of a party who has suffered any such seizure or freezing of property.

93. We are of the opinion that these provisions are not directory or mere procedural niceties but are substantive and mandatory in nature.

The statutory text leaves no scope for discretion or implied exceptions for retaining property or records without following the prescribed procedure. Allowing retention of seized property without strict adherence to these provisions would amount to a violation of the legislative mandate and would undermine the very purpose of incorporating procedural safeguards in the PMLA.

94. This, all the more since, it is well settled that although the right to property is no longer a fundamental right under the Constitution of India, it retains its status as a constitutional and legal right under Article 300A. No person can be divested of their property save by authority of law. This position was unequivocally reaffirmed by the Hon'ble Supreme Court in ***Laxman Lal v. State of Rajasthan***[17] as follows:

> "**16.** Article 300-A of the Constitution mandates that:
>
> > "**300-A.** ***Persons not to be deprived of property save by authority of law***. —No person shall be deprived of his property save by authority of law."
>
> Though the right to property is no longer a fundamental right but the constitutional protection continues inasmuch as without the authority of law, a person cannot be deprived of his property. Accordingly, if the State intends to appropriate the private property without the owners' consent by acting under the statutory provisions for compulsory acquisition, the procedure authorised by law has to be mandatorily and compulsorily followed. The power of urgency which takes away the right to file objections can only be exercised by the State Government for such public purpose of real urgency which cannot brook delay of few weeks or few months. This Court as early as in 1964 said that the right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition; such right cannot be taken away as if by a side wind (*Nandeshwar Prasad* v. *State of U.P.* [AIR 1964 SC 1217])."
>
> ***(emphasis supplied)***

[17](2013) 3 SCC 764

95. Similarly, in ***Sukh Dutt Ratra v. State of H.P.***[18], the Apex Court emphasised that the constitutional right to property commands protection from arbitrary state action and must be respected in all enforcement actions. The relevant paragraphs of the said judgment are set out below:

> "***Analysis and conclusion***
>
> **13.** While the right to property is no longer a fundamental right ["Constitution (Forty-fourth Amendment) Act, 1978"], it is pertinent to note that at the time of dispossession of the subject land, this right was still included in Part III of the Constitution. The right against deprivation of property unless in accordance with procedure established by law, continues to be a *constitutional* right under Article 300-A.
>
> **14.** It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorisation of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in *Entick* v. *Carrington* [*Entick* v. *Carrington*, 1765 EWHC (KB) J98 : 95 ER 807] and by this Court in *Wazir Chand* v. *State of H.P.* [*Wazir Chand* v. *State of H.P.*, (1955) 1 SCR 408 : AIR 1954 SC 415] Further, in several judgments, this Court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.
>
> **15.** When it comes to the subject of private property, this Court has upheld the high threshold of legality that must be met, to dispossess an individual of their property, and even more so when done by the State. In *Bishan Das* v. *State of Punjab* [*Bishan Das* v. *State of Punjab*, (1962) 2 SCR 69: AIR 1961 SC 1570] this Court rejected the contention that the petitioners in the case were trespassers and could be removed by an executive order, and instead concluded that the executive action taken by the State and its officers, was destructive of the basic principle of the rule of law. This Court, in another case — *State of U.P.* v. *Dharmander Prasad Singh* [*State of U.P.* v. *Dharmander Prasad Singh*, (1989) 2 SCC 505: (1989) 1 SCR 176],held: (SCC p. 516, para 30)
>
> > "*30.* A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression "re-entry" in the lease deed does not authorise extra-judicial

[18](2022) 7 SCC 508

> methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a "legal pedigree"."
>
> ***(emphasis supplied)***

96. We are of the opinion that the architecture of the PMLA is designed to strike a delicate balance between empowering enforcement agencies and protecting individual rights. The processes of search, seizure, freezing, attachment, and retention are embedded with procedural safeguards to ensure that state action is not only lawful but also proportionate and subject to independent scrutiny. Judicial and quasi-judicial oversight is envisaged at every stage to prevent the arbitrary exercise of power and to uphold constitutional values. The integrity of this framework rests on the rigorous application of the procedural mandates enshrined in the statute.

97. A cardinal principle of statutory interpretation, as reiterated by courts time and again, is that when a statute prescribes a method to do a particular thing, it must be done in that manner alone and not otherwise. Therefore, if Section 20 stipulates a defined mechanism for the retention of seized property or records, it is imperative that such procedure is strictly followed.

98. This legal position was reaffirmed by a three-judge Bench of the Hon'ble Supreme Court in ***OPTO Circuits (India) Ltd. v. Axis Bank***[19], wherein the Court stressed that procedural compliance under

[19](2021) 6 SCC 707

the PMLA is not optional, especially when individual rights are at stake. The relevant paragraphs of the said judgement are herein below:

> "**8.** A perusal of the above provision would indicate that the prerequisite is that the Director or such other authorised officer in order to exercise the power under Section 17 of the PMLA, should on the basis of information in his possession, have reason to believe that such person has committed acts relating to money-laundering and there is need to seize any record or property found in the search. Such belief of the officer should be recorded in writing. Sub-section (1-A) to Section 17 of the PMLA provides that the officer authorised under sub-section (1) may make an order to freeze such record or property where it is not practicable to seize such record or property. Sub-section (2) provides that after search and seizure or upon issuance of a freezing order the authorised officer shall forward a copy of the reasons recorded along with material in his possession to the adjudicating authority in a sealed envelope. Sub-section (4) provides that the authority seizing or freezing any record or property under sub-section (1) or (1-A) shall within a period of thirty days from such seizure or freezing, as the case may be, file an application before the adjudicating authority requesting for retention of such record or properties seized.
>
> **9.** For the purpose of clarity, it is emphasised that the freezing of the account will also require the same procedure since a bank account having alleged "proceeds of crime" would fall both under the ambit "property" and "records". In that regard, it would be appropriate to take note of Sections 2(1)(*v*) and 2(1)(*w*) of the PMLA which defines "property" and "records". The same read as follows:
>
> > "**2. (1)(*v*)** "**property**" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
> >
> > ***
> >
> > **2. (1)(*w*)** "**records**" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;"
>
> **10.** The scheme of the PMLA is well intended. While it seeks to achieve the object of preventing money-laundering and bring to book the offenders, it also safeguards the rights of the persons who would be proceeded against under the Act by ensuring fairness in procedure. Hence a procedure, including timeline is provided so as to ensure that power is exercised for the purpose to which the officer is vested with such power and the adjudicating authority is also kept in the loop. In the instant case, the procedure contemplated under Section 17 of the PMLA to which reference is made above has not been followed by the officer authorised.

Except issuing the impugned Communication dated 15-5-2020 to AML Officer to seek freezing, no other procedure contemplated in law is followed. In fact, the impugned communication does not even refer to the belief of the authorised officer even if the same was recorded separately. It only states that the officer is investigating the case and seeks for relevant documents, but in the tabular column abruptly states that the accounts have to be "debit freezed/stop operations". It certainly is not the requirement that the communication addressed to the Bank itself should contain all the details. But what is necessary is an order in the file recording the belief as provided under Section 17(1) of the PMLA before the communication is issued and thereafter the requirement of Section 17(2) of the PMLA after the freezing is made is complied with. There is no other material placed before the Court to indicate compliance with Section 17 of the PMLA, more particularly recording the belief of commission of the act of money-laundering and placing it before the adjudicating authority or for filing application after securing the freezing of the account to be made. In that view, the freezing or the continuation thereof is without due compliance with the legal requirement and, therefore, not sustainable.

14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in *Chandra Kishore Jha* v. *Mahavir Prasad* [*Chandra Kishore Jha* v. *Mahavir Prasad*, (1999) 8 SCC 266] and in the course of consideration observed as hereunder : (SCC p. 273, para 17)

> "*17.* … It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is

a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."

(Emphasis supplied)

99. As already elaborated upon earlier, the interpretation as sought to be canvassed by the Appellant effectively puts paid to the expressed timelines delineated in Sections 20 and 8(3) of the PMLA. The same is clearly impermissible in view of the determinative position of law as elaborated by the Hon'ble Supreme Court.

100. We now turn our attention to the order in question. In the instant case, the learned AA, while adjudicating under Section 8 the application filed by the ED under Section 17(4), passed the order dated 21.08.2017, recording the following:

"**Discussions: -**

1. No submissions have been filed by defendant side.

2. Counsel for Applicant pleads retention as per O.A.

3. After considering the original application, submissions of Defendant, it is held that condition laid down for retention are satisfied and OA is allowed accordingly.

4. Original Application is allowed accordingly.

5. The order of retention shall:

(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under corresponding law of any other country before competent court of criminal jurisdiction outside India as the case may be;

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section age 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority."

101. As is manifest, the order does not reveal any reason being accorded for the decision to confirm the retention of the property. In our opinion, the same does not satisfy the statutory mandate and suffers from a mechanical and superficial approach, devoid of the mandatory inquiry envisaged under Sections 8(2) and 8(3). The

absence of a response from the Respondent cannot absolve the learned AA of its statutory duty to independently assess the materials placed before it and determine whether the property is indeed involved in money laundering. The legislative scheme does not permit automatic confirmation or passive endorsement; it mandates active, reasoned adjudication.

102. In light of the foregoing analysis, this Court is of the firm and considered view that the Order dated 21.08.2017 passed by the learned AA is legally unsustainable. Consequently, the present appeal does not merit any interference with the Impugned Order dated 06.02.2019 passed by the learned AT, which merits affirmation.

103. Accordingly, the present appeal, along with pending application(s), if any, stands dismissed.

104. No order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

SEPTEMBER 12, 2025/sm