

**IN THE COURT OF SPECIAL JUDGE FOR MPID and PMLA  
AT BOMBAY  
MISCELLANEOUS APPLICTION NO. 434 OF 2019  
IN  
MPID SPECIAL CASE NO.1 OF 2014**

Pankaj Saraf )  
Age : 44 years, Occ : Business, )  
Residing at 182, Venus Apartment, )  
Cuffe Parade, Mumbai – 400 005 ) ...Applicant.

Versus

1. The Enforcement Directorate, )  
Zonal office, Kaiser-i- Hind, 4<sup>th</sup> floor, )  
Currimbhoy Road, Ballad Estate, )  
Mumbai-400 001. )

2. Mohan India Pvt. Ltd. )  
254, Tarun Enclave, Pitampura, )  
New Delhi – 110034 )

3. Whizkid Promoters Pvt. Ltd. )  
55-T, S.F.S. Flats, Sector-8, )  
Jasola Vihar, New Delhi – 110025 )

4. Jai Shankar Shrivastav )  
D-153, Pinnacle DLF Phase – V )  
Golf Course Road, Gurgaon, )  
Haryana ) ...Respondents.

Learned Advocate Mr. Sandeep Karnik for the applicant.  
Learned S.P.P. Mr. Sunil Gonsalves for the ED.  
Learned Advocate Mr.Vijay Singh for respondent Nos. 2 to 4.

**CORAM : HIS HONOUR THE SPECIAL JUDGE  
SHRI. Dinesh E. KOTHALIKAR (C.R.NO.25)  
DATED : 15<sup>th</sup> JULY' 2019.**

**(DICTATED AND PRONOUNCED IN OPEN COURT)**

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**ORAL ORDER**

By this application, the applicant has claimed the relief of releasing the attachment on the subject properties.

2. It is claimed by the applicant that respondent No.1 has attached the properties mentioned below :

Sr.No.	Description	Owner Name
1	Car – Toyota Fortuner 3.0 L 2 WD Automatic having VIN No. MBJ11JV6104010065, - Regn. No. DL-8 CX 9369.	Mohan India Pvt. Ltd.
2	Tatvam Villa No. 45, Vipul World, Sector 48, Gurgaon, Haryana	Mohan India Pvt. Ltd.
3	Flat Nos. 3401 & 3402, Gomti Enclave, Plot No. 1 and 2, Village Jiamau, Muazamarhi Madarpur, Ward Vikramaditya, Lucknow.	Mohan India Pvt. Ltd.
4	8 Plots bearing Nos. A-06, A-12, A-14, A-16, A-17, A-19, A-20 & 21 at Prime City, Sector 10, Asandh, Dist. Karnal, Haryana	Mohdn India Pvt. Ltd.
5	Pinnacle Flat No. PNC-163, 16 <sup>th</sup> Floor, DLF City Phase-V, Gurgaon, Haryana	Mohdn India Pvt. Ltd.
6	50% share in Hotel Camphar, Panaji, Goa	Property owned by Timber Trail Travel Today Pvt. Ltd. Purchased in the name of jail Shankar Shrivastav.
7	Florence Flat No. 11B, 11 <sup>th</sup> Floor, Raisina Residency, Gurgaon, Haryana	Jai Shankar Shrivastav
8	3 Nos. of Houses No.B-6/41, B-6/43, Rajiv Gandhi Ward, Vineet Khand, Gomti Nagar, Lucknow	Jai Shankar Shrivastav
9	Rectangle No. 31, Khasara No. 12, Village – Devali, Mehrauli, New Delhi.	Whiz Kids Promoters Pvt. Ltd.

10	193/1, Village – Devali, Mehrauli, New Delhi.	Whiz Kids Promoters Pvt. Ltd.
11	Khasara No. 655, Village – Neb Sarai, Tehsil – Hauz Khas, New Delhi.	Whiz Kids Promoters Pvt. Ltd.
12	Agriculture Land situated in the village – Issapur, Tehsil – Najafgarh, New Delhi- Measuring-73 Bighas, 15 Biswas forming part of Khasara No. 14/13 (4-16), 14 (14-4-16), 17 (4-16), 18 (4-16), 23 (4-16), 24 (4-11), 26 (0-5), 21/4/2 (2-4, 5 (4-1), 15/1 (1-13), 6 (4-9), 7/1 (2-16), 22/3 (4-16), 4 (4-16), 7 (4-16), 8 (4-16), 9 (4-16), 10 (4-16), 11 min (1-0)	Whiz Kids Promoters Pvt. Ltd.
13	Khasara No. 652, Village-Neb Sarai, Tehsil-Hauz Khas, New Delhi, 4 Bigha & 9 Biswa	Whiz Kids Promoters Pvt. Ltd.
14	Lane No. W-5/20 Western Avenue, Sainik Farm, New Delhi, Land measuring 2420 Sq. yards (approx)	Whiz Kids Promoters Pvt. Ltd.
15	Agriculture Land measuring 1 Bigha (1800 Sq. yards approx) comprising in Khasara No. 504/973/505, Village – Khirkee, Mehrauli, New Delhi known as Sainik farms, New Delhi	Whiz Kids Promoters Pvt. Ltd.
16	Agriculture Land measuring 18 Bighas, 8 Biswas forming part of 1 Khasara No. 18/7/2 (2-10), 8 (4-16, 9 (4-16), 14 (2-0) min (3-17), 19/6 (0-6) in Village Bakkargarh, Tehsil – Najafgarh, New Delhi.	Whiz Kids Promoters Pvt. Ltd.
17	First Floor of property No. 202, Block No. 172, Jorbagh, New Delhi, along with 1 car parking	Whiz Kids Promoters Pvt. Ltd.

3. The owner of the properties had given consent for making the attachment absolute and for its sale. Accordingly, my learned

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Predecessor had made the attachment absolute.

4. Similarly, the disputed properties have also been attached by the Directorate of Enforcement, Ministry of Finance, Department of Revenue under the provisions of the Prevention of Money Laundering Act, 2002.

5. According to the applicant, he is one of the investors and being one of the victims, he is entitled to receive compensation. It is his further contention that, the legitimate interest of the claimants like the applicant is required to be considered while interpreting Section 8 of the PMLA Act. Sub-section 8 of the Act empowers this court to consider claim of the investors to recover the quantifiable loss. The properties belonging to respondent Nos. 2 to 4 are attached under MPID Act as well as under PMLA Act and the attachment under MPID Act has been made absolute. Since, the properties are under dual attachment, the genuine buyers do not come forward to participate in the auction.

6. According to the applicant, since respondent Nos. 2 to 4 have given consent for making the attachment absolute, there is no point to keep the properties under attachment under the PMLA Act. It is claimed that even if the attachment under the PMLA Act is confirmed, no purpose would be served by confiscating the property to the Central Government. Hence, it is prayed to direct respondent No. 1 to restore the property in favour of the Competent Authority.

7. The Learned SPP Mr. Gonsalves has submitted that, the property in dispute is liable to be confiscated on conviction of the accused in view of Section 8 (5) of the Act. It is further claimed that in view of Rule 3(A) (1) of the Prevention of Money Laundering (Restoration of Property) Rules 2010 the special court may restore the property, on the application made by the claimant as per the procedure provided in the rules at the stage of trial i.e. after framing of charge under Section 4 of the Act. It is further claimed that special court is required to consider whether the claimant had acted in good faith and has suffered quantifiable loss as a result of offence of Money Laundering in terms of the first proviso of Section 8 (8) of PML Act, 2002. It is further claimed that the application is not maintainable before the special court for restoration of said property, since the charges are yet to be framed. It is prayed to pass appropriate order.

8. Learned Advocate for respondent Nos. 2 to 4 has submitted that the attachment in respect of properties mentioned in column Nos. 2 to 18 has already been made absolute and therefore he has no objection to pass appropriate orders.

9. I have heard the submissions of Learned advocate Mr. Karnik for the applicant, Learned S.P.P. Mr. Gonsalves for respondent No.1 and Mr. Vijay Singh for respondent Nos. 2 to 4.

10. It is to be noted here that the properties have already been attached under Section 4 of MPID Act, and in turn the attachment has

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already been made absolute. The most important aspect is that the owners of the properties i.e. Respondent Nos. 2 to 4 have given consent for making the attachment absolute and accordingly the attachment has been made absolute.

11. Now, it is found that since the properties have also been attached under the PML Act, the properties could not be auctioned and the investors could not get fruits of the attachment. Therefore this court is required to see whether the mere fact that the properties have been attached under the PML Act can be said to be rider in getting fruits by the investors.

12. In this regard Learned S.P.P. Mr. Gonsalves for respondent No.1 has submitted that in view of rule 3 (A) of (Restoration of Property, Rules 2010), the task of restoration of property attached, can be undertaken after the charges are framed. For the better appreciation, it would be just to make reference to rule 3 (A) of the rules which runs as under :

**“3A. Manner of restoration of property during trial :-** (1) The special Court, after framing of the charge under section 4 of the Act, on the basis of an application moved for restoration of a property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18 of the Act prior to confiscation, if it think fit, may, for the purposes of the second proviso to sub-section (8) of section 8 of the Act, cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where such

property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.

(2) When the property referred to in sub-rule (1) is sufficient to meet the loss suffered by the claimant as a result of the offence of money-laundering, the Special Court, as it thinks fit, may pass an order of restoration of property directing the Central Government, if necessary, to auction such property and disburse on a pro-rata basis in accordance with the share of loss suffered by each claimant and may give custody thereof to such claimant on his executing a bond undertaking to produce such restored property before the Special Court as and when required for the purposes of sub-section (5) or sub-section (6) or sub-section (7) of section 8 of the Act.

(3) No claimant shall be entitled to claim restoration of the property referred in sub-rule (1) before the Special Court beyond thirty days from the date of publication of the notice referred to in that sub-rule:

Provided that the Special Court may entertain any claim not exceeding further thirty days, upon the satisfaction that the claimant was prevented by sufficient cause.

(4) No restoration order shall be passed by the Special Court under this rule, without giving an opportunity of being heard to the owner of the property referred to in sub-rule (1) or in the event of his death, the legal representatives of such person or official assignee or official receiver, as the case may be.”

13. In this regard the Learned advocate for the applicant has invited my attention to the proviso provided to Section 8 of the PML

Act, which speaks 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. Therefore, according to Mr. Karnik, the power of restoration of the property can be availed during the pendency of the trial.

14. In addition of this, I would like to make reference to Section 8 (7) of the Act. It deals with the stage where the trial under PML Act can not be conducted by reason of the death of the accused or the accused being declared as a proclaimed offender or for any other reason, or if the trial has commenced but could not be concluded, in that case the special court on an application submitted by the Director or the person claiming to be entitled for possession of the property in respect of which the 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. Thus, Section 8 (7) of the Act empowers the court to pass orders of either confiscating or releasing the property, even if the trial has not been concluded or commenced.

15. At this juncture, it would not be out of place to make reference to the statement of objects and reasons of the MPID Act, 1999. The same, reads as under:-

"There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these Establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive



interest rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits on public. As such deposits run into Crores of rupees it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, specially in the city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to make a suitable legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra.

16. If the statement made by the Learned SPP for respondent No.1 is accepted in that case the property cannot be confiscated till the trial is over. Considering the seriousness of the charges and looking to the fact that there are around 68 accused persons involved in the case registered under PML Act there are least chances that the trial would be concluded in near future and if the depositors are asked to wait for indefinite period for getting the fruits it would cause prejudice to them.

17. Learned Advocate for respondent Nos. 2 to 4 has submitted that the attachment in respect of property mentioned at column No. 1 has not been made absolute and therefore, it can not be said to be available to the Competent Authority. The Learned advocate for the applicant Mr.Karnik has conceded the same.

18. Considering the statements of object as stated above, the

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provisions of the MPID Act and the PML Act are required to be reconciled harmoniously. But, on perusal of the provisions incorporated under the PML Act, in case of confiscation, the end result would be that the property would go to the Government and in such case the investors, the depositors for whose benefit the MPID Act has been enacted would not be benefited. In view of this I conclude that in order to protect the interest of the depositors, it is necessary to invoke the power under Section 8 of the PML Act and to release the attachment made under the PML Act. In the result, I proceed to pass following order;

**ORDER**

1. The application is hereby allowed.
2. The properties mentioned in 'Exhibit-A' of application at Serial Nos. 2 to 18 ordered to be released from the attachment made by the E.D.
3. Inform the Directorate of Enforcement, Mumbai.
4. The Competent Authority is directed to do the needful.

**(Dinesh E. Kothalikar)**  
**Special Judge (MPID and PMLA)**  
**City Civil & Sessions Court,**  
**For Greater Bombay**

**Date : 15.07.2019**

Dictated on : 15.07.2019  
Typed on : 15.07.2019  
Signed on : 15.07.2019

