Serial No. 11

IGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2364/2022
CM Nos. 5922/2024,
1605/2025,
4312/2024,
7017/2024,
2202/2025,
2205/2025,
5058/2024,
5086/2024,
6418/2022 &
6419/2022
c/w
WP(C) No. 1301/2022
CM No. 3709/2022
WP(C) No. 2183/2024
CM No.5324/2024

M/s Pee Bee Associates Narwal Bye
Pass Road, Jammu.

.....Petitioners

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Paras Gupta, Advocate in WP(C)
Nos. 2364/2022 & 2183/2024
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate in
WP(C) No. 1301/2022.

Vs.

Union of India and others

..... Respondents

Through: Mr. Vishal Sharma, DSGI for R- 1 & 2
in
WP(C) Nos. 2364/2022, 1301/2022
& 2183/2024.

Mr. Amit Gupta, Advocate for R-3 in
WP(C) No. 2364/2022 & for R-3 in
WP(C) No. 2183/2024

Mr. Anirudh Sharma, Advocate for R-
4 to 6 in WP(C) No. 2364/2022.

Mr. Sunil Sethi, Sr. Advocate with
Mr. Paras Gupta, Advocate for R-6 to
10 in WP(C) No. 1301/2022.

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER

(22.09.2025)

01. A First Information Report (FIR) No.**24/2018** dated **28.12.2018** registered with the Special Operations Group, SOG, Rajasthan Police Jaipur came to implicate two persons namely Mukesh Modi and Rahul Modi, as being founder and active directors of **Adarsh Credit Cooperative Society Ltd**., (in short "**ACCSL**"), for alleged commission of offences punishable under sections 120-B, 420, 406, 409, 467, 468, 471 and 477–A IPC.

02. Registration of **FIR 24/2018** was at the instance of complainant **Smt. Neha Manohar** resident of Udaipur who had made financial deposits/investments in various schemes floated by **ACCSL** said to be controlled and managed by Mukesh Modi, Rahul Modi, their family members and associates.

03. The complainant Neha Manohar was delayed and denied the return of her deposit/investments which led her to register said FIR alleging that money deposit/investment of millions of small investors of **ACCSL** has suffered defalcation and diversion to other companies, firms, LLPs functioning in the real estate sector in the guise of loans as a matter of scam and fraud but all being networked to Mukesh Modi & his clan.

04. Alongside the aforesaid development of registration of FIR , the Ministry of Corporate Affairs, Govt. of India, in exercise of its power under section 212(1)(c) off the **Companies Act, 2013** and sections 43(2) &(3) (c)(1) of **Limited Liability Partnership (LLP)Act 2008** issued an order dated **20/06/2018** directing the Serious Fraud Investigation Office, SFIO, New Delhi to investigate into the affairs of Adarsh Group of Companies and LLPs which resulted in a criminal complaint No. **05 of 2019** dated **18/05/2019** titled "**SFIO V/s Adarsh Build Estate Limited etcetera**" under sections 447 of the Companies Act 2013, section 120–B read with sections 417, 418 and 420 IPC getting filed which included 181 Companies of Adarsh Group, their directors and associates as accused.

05. Following the heels of aforesaid development, the **Directorate of Enforcement (in short ED)** came to register an enforcement case information report **(ECIR) No. ECIRJPZO/01/2019** dated **22/03/2019** under the **Prevention of Money Laundering Act (in short PMLA), 2002** on account of the fact that offences under sections 120–B, 420, 467 and 471 IPC being covered under Paragraph 1 of Part A of the Schedule Offences under **PMLA, 2002**.

06. While the **ED** came to engage itself in probe of **ECIR JPZO/01/2019**, the Special Operations Group SOG, Rajasthan

Police, Jaipur had come forward with an **Interim Charge Sheet No. 11/2019 dated 20/07/2019** with respect to FIR No. 24/2018 thereby booking fourteen (14) accused persons for alleged commission of offences under sections 406, 409, 420, 467, 468, 471, 477, 120 – B, 201IPC read with section 5 of the **Prize Chits Money Circulation Scheme Banning Act 1978** and section 65 of the **Information Technology Act, 2000**.

07. Fourteen (14) accused persons booked by reference to said interim charge sheet are as under:

i) Mukesh Modi
ii) Virender Modi
iii) Rahul Modi
iv) Priyanka Modi
v) Eshwar Sing Sindhal
vi) Bharat Modi
vii) Rohit Modi
viii) Sameer Bharat Modi
ix) Kamlesh Chaudhary
x) Vaibhav Lodha
xi) Lalitha Rajpurohit
xii) Rajeshwar Singh
xiii) Vivek Purohit
xiv) Bharat Das Vaishnav.

08. Acting under the cover of **ACCSL**, said accused persons are said to have diverted funds through **187 loan accounts,** which comprised of **78 loan accounts of 44 companies**, **23 accounts of firms**, **11 loan accounts of M/s Adarsh Build Estate Ltd.,** and **2 loan accounts** of **M/s Empire Build Estate Company** against whom as on **31/03/2019** an amount of **Rs.14,978.15 crores** was purportedly found to be outstanding without even being secured in any manner whatsoever by any security.

09. **M/s Adarsh Build Estates Ltd.**, (**in short M/s ABEL**) is one of the flagship companies of the accused Mukesh Modi and his family to which the funds of **ACCSL** are said to have been diverted with family members of Mukesh Modi, themselves being directors of **M/s ABEL**.

10. In the context of present case, it is **M/s ABEL**, the respondent No.3, which is figuring in its role viz-a-viz the petitioner.

11. In the course of time by **July 2020**, eighteen **(18)** more FIRs came to be registered by SOG against alleged beneficiaries of diversion of funds made from **ACCSL.**

12. **FIR No.0025** dated **05/06/2020** for commission of offences under sections 420, 406, 409, 477 – A, 120–BIPC came

to be registered against **Mukesh Modi** and the respondent No.3- **M/s ABEL**.

13. **ED, Jaipur** at its end, in its purported investigation, came to determine the amount of **Rs.25,82,41,11,089,** as being the actual amount debited from the accounts of **ACCSL** and taken away by the alleged borrowers related to **186 loan accounts**. An amount of **Rs.7,23,37,78,451.29** was determined to be **proceeds of crime** acquired by way of commission by Modi family.

14. In its investigation done by **ED Jaipur**, it came to be purportedly found that funds of **ACCSL** to the tune of **Rs.199,08,10,310** stood diverted as share investment in **28** companies of **Adarsh Group of Companies** under the control of Mukesh Modi and his family members and one of which companies being the respondent No.3- **M/s ABEL** with share investment of **Rs.4,86,97,000.00**.

15. Prosecution Complaint No. **06/2021** dated **31/03/2021** therein booking **124** accused persons for prosecution came to be presented by **ED Jaipur** before the **Special Court PMLA Jaipur**.

16. Now, in the context of present case, the respondent No.3- **M/s ABEL** got related to and engaged with a construction of commercial project in Jammu under name and style **Golden**

Palms, for which a **Development Agreement** dated **13/11/2013 read with Supplementary Agreement dated 27/04/2016** with petitioner got executed in terms whereof of **25.08** kanals of land at Narwal Bypass, Jammu owned, possessed and pooled by the promoters of the petitioner, in their individual capacity, serving as being the site of construction of the project. Said two agreements obtain on this writ petition as **annexure IV** Paper Book Page 640-670.

17. This **Golden Palms** project was conceived to have 92 Showrooms, 100 Kiosks at 1st & 2nd Floor, 4 Theaters at 3rd Floor, Food Courts at 4rth Floor and Office Spaces at 5th Floor.

18. The **Golden Palms** project admittedly came to be abandoned in its construction stage in 2018, half-finished by the respondent No.3- **M/s ABEL** leaving the petitioner and its promoters in lurch. By this time, some **170** odd investors/prospective buyers had come to invest in the **Golden Palms** in lieu of earmarked Spaces on sale booked in advance by them against payments made.

19. On the basis of purported percentage completion report obtained from an erstwhile architect/project management contractor **M/s Ideals of Shri Gajendra Singh Shekhawat**, the total square feet construction completed at the site was determined to be **140505.6 sq.ft.**, which was attributable to the

expenses invested by the respondent No.3-**M/s ABEL** and the construction value by involvement of **POC** drawn from books of accounts of the respondent No.3-**M/s ABEL** was purportedly found to be at **₹65,40,39,038**.

20. As per **ED**, with respect to the development and construction of **Golden Palms** project, the source of funding by and with the respondent No.3- **M/s ABEL** is **POC** generated out of fraud at the end of **ACCSL** in entirety wherefrom the diversion of funds had gone into construction component of **Golden Palms** project.

21. As per record collected by **ED** during spot enquiry and physical verification of the **Golden Palms** project, a sum of **₹26,67,94,817** is found to have been recovered by the respondent No.3- **M/s ABEL** against this half-done abandoned project and an amount of **₹8,44,00,000/-**accumulated and received by the petitioner against its share of **35%** in the project as per terms and conditions of the Development Agreement.

22. The net receipt to the respondent No.3- **M/s ABEL** was found to be **₹18,23,94,817** which upon being deducted out of purported **POC** of **₹65,40,39,038** left net inflow of **POC** relatable to the **Golden Palms** project construction was assessed to be of **₹47,16,44,221** in commensuration to which attachable construction of the **Golden Palms** project out of total **140505.6**

sq. ft. was found to be **101322.17 sq. ft.** for which **four floors** of under-construction **Golden Palms** project along with **₹11,00,000** as security deposit lying with the petitioner, was found liable for provisional attachment under **section 5(1) of PMLA, 2002**.

23. It is in this context that the petitioner owned and conceived **Golden Palms** project came to figure and get embroiled in a **Provisional Attachment Order No.03/2022** dated **25/03/2022** passed by the respondent No.2-**Deputy Director ED Jaipur,** acting in exercise of power under section **5(1) of PMLA 2002**, which resulted in consequent directions to different authorities including Registration Authorities not to entertain any matter relatable to attached properties, movable as well as immovable valuing Rs. **270,48,56,073** as enlisted in said **Provisional Attachment Order No. 03/2022** dated **25/03/2022**. This Provisional Attachment Order obtains on this writ petition as **annexure III** Paper Book Page **474-639**.

24. In para 12 bearing heading "**Identification of Proceeds of Crime"** of this **Provisional Attachment Order No. 03/2022** dated **25/03/2022**, there are enlisted **22** properties of different concerns/persons.

25. With respect to the petitioner's **Golden Palms** project, the reference of property came to be made **at Sr. No. 19** with respect to fixed deposit of **₹11,00,000/-**of the petitioner in the

Citizens Cooperative Bank, Jammu and **at Sr. No. 20 “** Inventory on floor UB, Ground, 1st and 2nd (except K-81 to K-91) of **Golden Palms** project, Jammu valuing **₹47,16,44,220.68** being the investment of proceeds of crime”**.**

26. In **Provisional Attachment Order No. 03/2022** dated **25/03/2022** with respect to the aforesaid two properties of the petitioner one immovable and other money deposit, discussion came to be made by the **respondent No.2-Deputy Director ED, Jaipur**, as being the attachment order making officer, under para **13.15** thereby setting up the context in which by reference to the respondent No.3-**M/s ABEL,** said two properties of the petitioner were being subjected to attachment purportedly on the premise being fed by **POC** in the matter of construction activity.

27. In para **13.15.10** of the **Provisional Attachment Order No. 03/2022** dated **25/03/2022,** the attachment order making officer came to summarize as under:-

> ***“13.15.10: AND WHEREAS, based on total construction of 140505.6 Square Feet (table above) determined at this site and putting the same against cost of construction being Rs.65,40,39,038/-, the attachable construction against net inflow of POC of Rs.47,16,44,221/- can be arrived at 101322.17 Square Feet. The same is equivalent to entire inventory/units situated on UB, Ground, First and Second Floor (except unit no. K-81 to K-91 of 2nd floor) of***

> ***this under-construction project. Thus, these four floors of the project Golden Palm and Rs. 11 lakhs in bank account of land owner M/s Pee Bee Associates are liable to provisional attachment u/s 5(1) of Prevention of Money Laundering Act, 2002."***

28. The aforesaid development, thus, came to catch the petitioner in a Devil and Deep Sea situation in the sense that while its project **Golden Palms** had come to suffer abandonment in terms of its completion because of embroilment of the directors of the respondent No.3-**M/s ABEL** in legal tangle at their end while on the other hand the physical structure of under-construction building structure of **Golden Palms** project getting attached under the effects of **PMLA, 2002** thereby catching the petitioner and its promoters in the lurch not being able to act any further except to suffer the developing situation.

29. The course of action in the form of issuance of **Provisional Attachment Order No. 03/2022 dated 25.03.2022** led to a follow-up complaint by the respondent No.2-**Deputy Director ED, Jaipur**, attachment order making authority, by filing a written complaint **No. 1686/2022** on **19.04.2022** before the **Adjudicating Authority** under section 8 of PMLA-2002. This complaint obtains on this writ petition as **annexure II Paper Book Page 129-285.**

30. In this very complaint No. **1686/2022** filed with an objective to seek confirmation of the provisional attachment order addressed against all the respective properties mentioned therein including said two properties of the petitioner, the genesis of the case leading to registration of **ECIR No. JPZO/01/2019 dated 22.03.2019** came to be set out along with the course of investigation conducted by **ED** leading to the passing of **Provisional Attachment Order No. 03/2022** dated **25/03/2022**.

31. In its section **"G"** under heading **"Identification of further proceeds of crime"** of the complaint, an amount of **Rs.2,70,48,56,073.69** is reckoned to be **POC** which Mukesh Modi and his family members, Associates and their entities are said to have placed/parked in movable and immovable assets constituting acquisitions for the purposes of layering and integration so as to project the proceeds of crime as undated came to be referred. Under this section **G**, the aforesaid two properties relatable to the petitioner again came to be mentioned at **Sr. Nos. 19 & 20**.

32. In para 15 (15.1 to 15.2) of this complaint, under heading **"Discussion with regard to properties at Sr. Nos. 19 & 20 of table-A above"** came to make mention of and reference to the respondent v No.3-**M/s ABEL** and the petitioner. In this para

of the complaint, it is admitted and acknowledged that the petitioner is owning **25.08** kanals of land at Narwal, Bye-Pass, Jammu with respect to which the project of **Golden Palms** was conceived to be constructed and commissioned in terms of the Joint Venture Agreement dated **13.11.2013 read with 23/04/2016** and upon commissioning of the said project the sharing between the petitioner as land owner and the respondent No.3-**M/s ABEL** as developer being agreed to be **35:65**. It is acknowledged and admitted in this very complaint that the **Golden Palm** project got stalled before completion and commissioning. The construction component of the **Golden Palm** project in terms of investment was referred to be that of respondent No.3-**M/s ABEL** and, thus, relatable to **POC.**

33. Para 15.10 summarized the complaint in the context of **Golden Palm** project relatable to the petitioner as below:-

> ***"15.10 That based on total construction of 140505.6 Square Feet (table above) determined at this site and putting the same against cost of construction being Rs.65,40,39,038/-, the attachable construction against net inflow of POC of Rs.47,16,44,221/- can be arrived at 101322.17 Square Feet. The same is equivalent to entire inventory/units situated on UB, ground, First and Second floor (except unit no. K-81 to K-91 of 2nd floor) of this under-construction project. Thus, these four floor of the project Golden Palm and Rs.***

11 lakhs in bank account of landowner M/s Pee Bee Associates are liable for provisional attachment u/s 5(1) of Prevention of Money Laundering Act, 2002."

34. In para 34 of this complaint, on behalf of the petitioner one of its promoters/directors – Tarun Mahajan came to record his statement detailing therein the circumstances relatable to the conception and commencement of the project meant for its completion.

35. In summoning up his complaint, the respondent No.2-Deputy Director ED, Jaipur in **section R to Z** came up with purported factual findings. Sections (X), (Y) & (Z) of the complaint, as forming the conclusion part of the complaint, read as below:-

"(X) That, the aforesaid facts prima facie indicate that Mukesh Modi, his family members, their associates, companies/firms/LLPs/AOPs and others were involved in criminal offences as mentioned under sections 406, 409, 420, 467, 468, 471, 477, 120 B, 201 of IPC, section 5 of the Prize Chits Money Circulation Scheme (Banning Act) 1978 and section 65 of the IT Act, out of which sections 120 B, 420, 467 & 471 of Indian Penal Code are covered under Paragraph 1 of Part A of the Schedule Offences under the Prevention of Money Laundering Act, 2002 (PMLA, 2002), as amended in terms of section 2 (1)(y) of Prevention of Money Laundering Act, 2002 and had acquired movable & immovable property in their name. Also, companies/LLP's and individual beneficiaries of this fraud were charged by Serious Fraud Investigation Office u/s 447, 448, 143, 74(3), 76A, 144 R/W 141(3)(e)

R/W 147, of the Companies Act 2013, Sections 58A (6) R/W 58AAA, 211 R/W 628, 227 R/W 233 of the Companies Act 1956. That, section 447 of the Companies Act, 2013 is also covered under Paragraph 29 of Part A of the Schedule Offences under the Prevention of Money Laundering Act, 2002.

(Y) That for the reasons detailed above, it is evident that the properties/investments presently under provisional attachment through Provisional Attachment Order no. 03/JPZO/2022 dated 25.03.2022 were derived from, or involved in, money laundering which rendered them liable to confirmation of attachment under section 8(3) of the said Act. The present Complaint is being filed without prejudice to the provisional attachments of other properties likely to be made during the outcome of the ongoing investigations.

(Z) That, it is humbly submitted that while investigation is still in progress in this case and there was a sufficient evidence both documentary and oral, to draw a reasonable inference that the movable and immovable properties of Rs. 2,70,48,56,073.69 under attachment, acquired by the defendants, represent Proceeds of Crime in terms of Section 2(1)(u) of the Act by considering that "proceeds of crime" also means the "value" of any such property derived or obtained from predicate offence.

(AA) That, the list of relied upon documents along-with the copies of documents are enclosed with this complaint.

<u>PRAYER</u>

Under the circumstances mentioned herein above, the complainant herein humbly pray that this

> ***complaint may be taken on record for the purpose of Adjudication under Section 8 of the Prevention of Money Laundering Act, 2002 and the Provisional Attachment Order No. 03/2022 dated 25.03.2022, issued in ECIR-JPZO/01/2019, may be confirmed under Section 8(3) of the said Act."***

36. Acting upon the said complaint, the **Adjudicating Authority**, in terms of section 8 of the PMLA 2002, came to entertain it on its file as **OC-1686/2022 dated 12/04/2022** undertake enquiry proceedings by issuance of notice to all the concerned including the petitioner as well. The notice dated **05/05/2022** to the petitioner, as defendant No. 18 in the complaint, called upon the petitioner to submit its written statement by or before **14/06/2022** which came to be submitted accordingly. Said written statement obtains on this writ petition at Paper Book Page 687-735.

37. In the meantime, while the confirmation proceedings were so initiated and pending before the Adjudicating Authority, proceedings under the Insolvency & Bankruptcy Code (***in short "IB Code"***), 2016 came to be initiated with respect to the respondent No.3-**M/s ABEL** which resulted in passing of an order dated **29.08.2022** by the National Company Law Tribunal (***in short "NCLT"***) of appointment of **Resolution Professional**.

38. The Court of Special Judge PMLA, Jaipur, vide an order dated **08/09/2022**, came to take cognizance of **ED**'s complaint

No.06/2021 filed against fourteen (14) accused persons on **31/03/2021**.

39. The Adjudicating Authority under PMLA, 2002, at its end, came forward with order dated **15.09.2022** thereby coming to a finding that the immovable/movable properties provisionally attached vide **Provisional Attachment Order No. 03 of 2022 dated 25.03.2022** are the proceeds of crime in terms of section 2(1)(u) of PMLA, 2002 and, therefore, involved and tainted in money laundering liable to confirmation of attachment to last during and till the pendency of the proceedings relating to offence/s under PMLA, 2002 before the Special Court PMLA Jaipur and to become final upon an order of confiscation to be passed under section 8(5) & (7) of PMLA, 2002 by the Special Court. This order dated **15/09/2022** obtains on this writ petition as **annexure I** Paper Book Page **24-127** as an impugned order.

40. **ED** Jaipur came to file on **12/10/2022** a Supplementary Prosecution Complaint against another additional set of **fifteen (15)** accused persons before the Special Court PMLA Jaipur. Properties attached under **Provisional Attachment Order 03/2022** dated **25/03/2022** also came to be surrendered before the Special Court PMLA Jaipur with an application for confiscation proceedings.

41. Now coming to the present case context, the cause of action and subject matter of present writ petition relates back to year 2013 when the respondent No.3-**M/s ABEL**, or so to say its anchoring entity **Adarsh Group of Companies** under Mukesh Modi and his family, was not tainted with any public culpability and investigatory surveillance as came to happen when FIR came to be registered in 2018, and the petitioner, acting with due diligence at its end, had entered in the **Development Agreement** dated **13/11/2013** followed by a Supplementary Agreement dated **27/04/2016** with the respondent No.3-**M/s ABEL** to get the **Golden Palm** project constructed, completed and commissioned.

42. The institution of the present writ petition came to take place on **03.11.2022** to seek the following reliefs:-

i) An appropriate writ, order or direction in the nature of writ of Certiorari quashing the Order dated 15.09.2022 so far as the petitioner is concerned passed by the Chairman, Adjudicating Authority, PMLA, New Delhi in Original Complaint (OC) No.1686/2022 thereby confirming the attachment of the property of the petitioner as mentioned at S. No. 19 and 20 in the PAO No. 03/2022 dt. 25.03.2022 being totally illegal, passed in violation of law, facts and suffers from non-application of mind and the submissions of the petitioner and in view of no powers vested with the Adjudicating Authority to pass any order

in view of initiation of Insolvency proceedings under the provisions of IBC, 2016;

ii) An appropriate writ, order or direction in the nature of writ of Certiorari quashing the Provisional Attachment Order so far as petitioner is concerned (i.e. properties mentioned at S. No. 19 and 20 of Table-A) passed by Res. No. 2 bearing Order No.03/2022 & F. No. ECIR/JPZO/01/2019/AD-PMLA(RS)/771 dated 25.03.2022 being illegal, contrary to the law and facts of the case and passed without there being any application of mind and law;

iii) An appropriate writ, order or direction in the nature of Prohibition/Mandamus thereby prohibiting/ directing the respondents not to proceed further with respect to the properties of the petitioner as mentioned at S. No. 19 and 20 of Table-A of PAO dt. 25.03.2022 since the proceedings initiated by the respondents are totally against the law and facts which deserved to be set aside and the respondent cannot proceed further in view of the initiation of CIRP under IBC, 2016 and if not done then irreparable loss will not only cause to the rights of the petitioner but various other investors of project Golden Palms, Jammu.

43. In its writ petition, the petitioner came to name the three respondents with the **respondent No. 2** being the **Deputy Director ED, Jaipur** and the respondent No. 3 – **M/s ABEL**, through Resolution Professional appointed under **IB Code, 2016**.

44. In the writ petition, the petitioner came to reflect upon as to how the promoters of the petitioner came in contact with one **Shri Vinay Kumar Kumpawat**, one of the directors of the respondent No.3–**M/s ABEL** in the year **2012-13** with deliberations leading to execution of a **Development Agreement** dated **13.11.2013** between the petitioner through its promoters namely, **Parjan Kumar Jain**, **Deepak Kumar Jain**, **Bharat Bushan Mahajan** and **Tarun Mahajan** with the respondent No. 3 - **M/s ABEL** through its Director-Vinay Kumar Kumpawat.

45. The **Development Agreement** dated **13/11/2013** clearly recited that all the requisite NOCs with Golden Palm project required in terms of legal regime are earned by the petitioner including the building permission whereupon Mall-cum-Multiplex and a Hotel with allied activities and features to be constructed upon **25.08** kanals of land of the promoters of the petitioner is intended to come up. The investment in terms of undertaking construction activity of the **Golden Palm** project was agreed to come from the respondent No. 3 - **M/s ABEL** in which the respondent No. 3 - **M/s ABEL** to have **65%** share with **35%** share of the petitioner but only to mature and accrue upon successful completion of the project and to be realizable from the proceeds of sale/lease of the premises/commercial spaces of the commercial complex to be made by the petitioner. The sharing was to be based upon cost-wise assessment.

46. In the said **Development Agreement**, it came to be agreed beforehand that the entire lower ground floor of the developed complex of **Golden Palms** project was to be exclusively relatable to the petitioner in lieu whereof the petitioner to pay respondent No.3 - **M/s ABEL** an amount of **Rs.15 crores** as part of its 65% share. The **Development Agreement** further spelled out all the operating conditions of understanding between the petitioner and the respondent No. 3 - **M/s ABEL** with a clear and expressed recital that the completion period for the project to be **three years** with a grace period of **six months** and in the event of failure of the respondent No. 3-**M/s ABEL** to complete the project then security deposit of **Rs. 11 lacs** furnished by the respondent No. 3 - **M/s ABEL** to be forfeited and the commercial complex premises relatable to the respondent No. 3-**M/s ABEL** in terms of share-wise identification to vest in the petitioner leaving no right, title or claim whatsoever with the respondent No. 3 - **M/s ABEL** both in respect of the site as well as subject matter of the project with an option available to the respondent No. 3 - **M/s ABEL** to remove the structure in its non-completed stage at its own risk, responsibility and cost within six months.

47. Condition No. 13 of the **Development Agreement** provided that in the event of the petitioner willing to acquire more share than 35% share with respect to the commercial premises then the liberty vesting with the petitioner to acquire the same

from the respondent No. 3-**M/s ABEL** at the price mutually settled with the respondent No. 3-**M/s ABEL** who was bound to oblige to sell/surrender the same to the petitioner.

48. The original Development Agreement dated **13/11/2013** came to be supplemented by a **Supplementary Agreement** dated **27/04/2016**, wherein **30/06/2018** came to be set as extended deadline for completion of the project by the respondent No.3-**M/s ABEL.** In addition, from the scope of development, the hotel and banquet hall came to be deleted.

49. The aforesaid **Development Agreement** read with Supplementary Agreement clearly envisaged relationship between the petitioner and respondent No. 3 - **M/s ABEL** to be not that of partnership or a joint venture.

50. In present writ petition in para 16, the petitioner has come to be set out the grounds on the basis of which challenge is thrown to the under-developed **Golden Palm** project being subjected to the attachment by the **respondent No. 2 – Deputy Director ED, Jaipur** purportedly acting under and through PMLA, 2002.

51. The petitioner has highlighted how the abandoned **Golden Palm** project in terms of its super-structure is suffering waste with passing time and further how the petitioner and its promoters are being rendered vulnerable to suffer legal action at

the instance of the person/s and/or concerns which have booked spaces in advance in the of **Golden Palms** project to whom the title transfer was meant to take place from the petitioner's end.

52. On behalf of the respondent No. 2 – Deputy Director ED, Jaipur, **reply-cum-objections** dated **28.11.2022** came to be filed wherein the respondent No. 2 – **Deputy Director ED, Jaipur,** while stating the legal basis of course of action at its end under PMLA, 2002, came to highlight as to how the respondent No. 3 - **M/s ABEL** is a purported recipient of diversion of funds from **ACCSL** without any security backing.

53. The respondent No. 2–**Deputy Director ED, Jaipur** has come to refer as to how the respondent No. 3 - **M/s ABEL** came to be established in the year **2005** with Mukesh Modi, his brother Virendra Modi and few other Associates being the original directors but later on resigning on account of net worth of the respondent No. 3 - **M/s ABEL** turning negative and the entire ownership of **M/s ABEL** being transferred to **ACCSL** which in turn was controlled and managed by Mukesh Modi and his family.

54. It came to be stated that a cumulative amount of **Rs.461,36,61,964**/- was disbursed to the respondent No. 3 - **M/s ABEL** under twelve different loan accounts during **2011-14** by **ACCSL** where from one of the investments by the respondent

No. 3 - **M/s ABEL** came to be in the Golden Palms project of the petitioner.

55. In the entire reply-cum-objections, it is nowhere stated or meant to be stated by the respondent No. 2-**Deputy Director ED, Jaipur** that in the year 2013 till registration of FIR No. **24/2018** in the year 2018, **ACCSL** and the respondent No. 3 - **M/s ABEL** were in any manner known in the public domain to be tainted concerns so as to serve as a caveat for third party/ies, business concern/s, like the petitioner, to stay away from contractually engaging in deal/s which in the present case happened to be that of development of a commercial complex **Golden Palms** at the prime land site of the promoters of the petitioner whereas the respondent No. 3 - **M/s ABEL** was to come forward with financial investment.

56. Thus, the *bonafide* of the petitioner all along remains unquestionable even as per the tone and tenor of the reply-cum-objections filed by the respondent No. 2 – **Deputy Director ED, Jaipur.**

57. In its reply-cum-objections, the respondent No. 2 – **Deputy Director ED, Jaipur** came to refer to the cases of :-

a) Nivedita Sharma Vs Cellular Operators Association of India, (2014) 1 SCC 603;

b) Cicily Kallarackal Vs Vehicle Factory, (2012) 8 SCC 524;

c) Radha Mohan J.Lakhotia Vs Deputy Director, (2010) 5 Bom CR 625 &

d) Deputy Director Vs Axis Bank, (2019) SCC Online Del 7854.

58. Upon consideration of reply-cum-objections by the respondent No. 2–Deputy Director ED, Jaipur, this Court, in terms of an order dated **06.10.2023,** came to concretize the issue in the context of the case to be that at best the alleged involvement of proceeds of crime **POC** in the **Golden Palms** project from the end of the respondent No. 3 - **M/s ABEL** which is self-assessed by the respondent No. 2 – Deputy Director ED, Jaipur to be **Rs. 47** odd crores which upon being secured from the petitioner can result in disentanglement of the held-up **Golden Palms** project to get back in the hands of the petitioner to take it towards its logical completion and commissioning at the petitioner's own expense and efforts and, thus, came to direct the petitioner to deposit the identified amount of proceeds of the crime POC having come in investment from the end of the respondent No. 3 - **M/s ABEL** in the construction of the **Golden Palms** project to the extent completed and to make the said deposit within a **period of three months** with the respondent No.

2 – Deputy Director ED, Jaipur whereupon the **Golden Palms** complex in terms of attachment effected thereupon to be released and accorded detachment.

59. The petitioner came forward with an application **CM No. 6217/2023** thereby seeking correction of some inadvertent errors in the order dated **06/10/2023** which led to the passing of an order dated **18/10/2023** by this court to be red as part and parcel of order dated **06/10/2023.**

60. As the time to deposit amount of Rs.47 odd crores by the petitioner given in order dated **06/10/2023** was within period of three months, so the petitioner came to seek an extension of time in making the deposit which led to the passing of an order dated **04/12/2023** directing the requisite deposit to take place up to ending **31/03/2024**.

61. The petitioner again came up with an application **CM No. 1789/2024** filed on **01/04/2024** citing reasons therein seeking further extension of time for making the deposit and accordingly vide an order dated **03/04/2024** deposit time was extended up to **31/07/2024**.

62. Third time extension came to be sought by the petitioner in making the requisite deposit by moving an application **CM No. 4321/2024** on **29/07/2024**. In this application in para 5&6, the petitioner came to refer to the fact

that as to how the respondent No.3-**M/s ABEL** has come to be under legal course of action under **IB Code 2016** with a **Committee of Creditors** having been appointed with Resolution Professional **Mr. Jai Prakash Rawat** getting appointed for the purpose.

63. In terms of an order dated **31/07/2024**, this court, in response to said application **CM No. 4321/2024**, came to grant another extension of time by another four weeks in favour of the petitioner for making the deposit of amount of **Rs.47.16 crores** upon deposit of which the respondent No. 2- Deputy Director ED, Jaipur in particular stood directed to de-attach the **Golden Palm** premises in reference to the extent of **four floors** it was suffering the attachment and also to free from attachment security amount of **Rs. 11 lacs**.

64. This court, in its order dated **31/07/2024,** came to register the plea of the respondents No. 1 & 2 that they intend to file an appeal against said order dated **06/10/2023**. Time to deposit, nevertheless, came to be extended by the court with an express observation that the extension shall not come in the way of the respondent No.2-Deputy Director ED, Jaipur to avail the remedy of filing appeal against order dated **06/10/2023** if it was being so desired at the end of the respondents No. 1 & 2.

65. While the petitioner was acting to comply with the mandate of deposit of so called POC investment of **Rs.47,16,44,221** from the end of the respondent No.2- **M/s ABEL** in the **Golden Palm** project construction by seeking extension of time from this court, the respondent No.2- Deputy Director ED Jaipur came to issue **Notice No. ECIR/JPZO/01/2019/1565-1566 dated 12/08/2024** purportedly a notice for eviction under sub rule (2) of Rule (5) of **Prevention of Money-Laundering Act(Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules 2013** thereby calling upon the petitioner to vacate the premises of the **Golden Palm** project , otherwise half-finished, for enabling the **ED** to take possession of Floor UB, Ground, 1st & 2nd (except K-81 to K-91).

66. This notice for eviction was issued by the respondent No.2-Deputy Director ED, Jaipur purportedly based onan authorization of the **Director, Directorate of Enforcement**, New Delhi given vide **F.No.T-21/03-Coord/2011/PMLA/ADE(P)/HZO/06/12** dated **23/10/2013** under section 8 (4) of PMLA, 2002.

67. On the other hand, the petitioner came to make good of said *3rd time* extension by making deposit of amount of **Rs.47, 16, 44, 221** in terms of **DD No. 002088 dated 22/08/2024HDFC**

Bank in favour of the respondent No. 2-**Deputy Director ED Jaipur** thereby carrying into compliance of direction obtaining in the order dated **06/10/2023**.

68. Following the deposit so made by the petitioner, the respondent No. 2- **Deputy Director ED**, Jaipur acting through **Assistant Director ED Jaipur** came up with an application **CM No. 5058/2024** filed on **28/08/2024** thereby seeking vacation of order dated **06/10/2023**.

69. In this application **CM No. 5058/2024**, it came to be submitted in para 21 that there is no such provision in the PMLA 2002 and the Rules there-under for allowing the replacement of an attached property with another fresh security/property and detachment thereof. It came to be further divulged that the ED has already filed a Supplementary **Prosecution Complaint** dated **12/10/2022** before the Special Court of PMLA at Jaipur bearing a prayer to confiscate the property in question and there is no such provision in PMLA, 2002 for replacement of the attached property at the given stage of the case. It came to be mentioned that a genuine/legitimate claimant has every right to approach the Special Court under section 8(8) of PMLA, 2002.

70. Thus, a twin scenario came to surface on record of this case as on one hand the petitioner coming to make deposit of **Rs.47,16,44,221,** so claimed to be POC invested by the

respondent No.3-**M/s ABEL** in the construction work of the Golden Palm project**,** meant for earning release of attached portion of semi-finished Golden Palm complex of the petitioner so as to take it forward to its completion for long waiting buyers of spaces therein having booked in advance whereas on other hand the respondent No.2- **Deputy Director ED, Jaipur** meaning to maintain the continuing status of attachment of the **Golden Palm** complex only for the Special Court PMLA Jaipur to determine the next legal course of action thereto notwithstanding the mandate of court order dated **06/0/2023**.

71. From the end of the petitioner, an application **CM No. 5086/2024** came to be filed on **28/08/2024** for the purpose of placing on record receipt of **Demand Draft DD of Rs.47,16,44,221/-** in the name of the respondent No. 2- **Deputy Director ED Jaipur.**

72. The forwarding of Demand Draft DD of **₹47,16,44,221/-** in the name of the respondent No. 2 – **Deputy Director, ED, Jaipur** by the petitioner came to be acknowledged by the Assistant Director ED, Zonal Office vide letter No. **F.No. ECIR/JPZO/01/2019/AD(M)/11529 dated 08/10/2024**. In this very letter, it came to be recited that further necessary action to detachment/release of the property in question would be taken shortly and intimation in this regard would be shared shortly.

73. The petitioner came to file **CM No. 5922/2024** dated **09.10.2024** for placing on record e-mail receipt dated **08.10.2024** with respect to acceptance of demand draft by the **Deputy Director ED, Jaipur**.

74. In terms of an order dated **09/10/2024**, this court came to make mention as to the fact that the respondent No. 1 & 2 are reportedly in the process of issuance of a detachment order at an earliest. It further came to be observed that the as per the learned counsel for the petitioner, the petitioner's deposit of the amount be not construed as any sort of admission of any liability resting upon its end and the same be subject to outcome of the proceedings initiated by the respondents No. 1 & 2 and also without prejudice to petitioner's rights under law.

75. On behalf of the respondent No. 3- **M/s ABEL**, Mr. Jai Prakash Rawat, in his purported capacity as Interim Resolution Professional (IRP), came to cause appearance and apprise about order/direction issued by the National Company Law Tribunal NCLT, Chandigarh Bench in terms of its order dated **29/08/2022** in the spirit of which the writ proceedings in the present case is meant to stay.

76. This development led to the issuance of a communication No. **F.No. ECIR/JPZO/01/2019/AD(M)/1748** dated **20/11/2024** by the **Deputy Director ED, Zonal Office,**

Jaipur to the Inspector General of Registration, J&K Jammu wherein the Deputy Director ED, Zonal Office, Jaipur came to apprise the Inspector General of Registration, UT of J&K that the instructions/directions issued from the end of the Deputy Director ED, Jaipur with respect to the property in reference related to the petitioner forming subject matter of PAO No. **09/2019 dated 07/02/2019** to be treated as withdrawn until further orders. This communication **F.No. ECIR/JPZO/01/2019/AD(M)/1748** dated **20/11/2024** by the Deputy Director ED, Zonal Office, Jaipur came to place on record by the petitioner by moving an application **CM No. 7017/2024 dated 03/12/2024**.

77. In the meantime, Mr. Jai Parkash Rawat, the Insolvency Professional, came to address a communication dated **05.12.2024** as being the Resolution Professional for the respondent No.3-**M/s ABEL** apprised to the petitioner that the proposal submitted by the petitioner is under consideration for which the fresh information from the petitioner's end be provided in terms of the points mentioned in the letter dated **05/12/2024** which came to be replied by the petitioner vide letter dated **10/12/2024** on the basis whereof a revised proposal came to be submitted on **15/12/2024** by the petitioner to Mr. Jai Parkash Rawat, Resolution Professional.

78. The petitioner came forward with an application **CM No. 1065/2025** dated **18/03/2025** for placing on record the documents related to the deliberations taking place for settlement of the matter with Mr. Jai Parkash Rawat, Insolvency Professional being appointed Resolution Professional for M/s ABEL who in turn came forward with an application **CM No. 2202/2025** dated **11/04/2025** for placing on record the refusal of the settlement proposal of the petitioner.

79. It is in this backdrop that this Court is called upon by the petitioner to adjudge and confirm the status of the Golden Palm as a property as well as project as being free or not from the effects of the Prevention of Money Laundering Act, 2002 for enabling the petitioner to carry forward the project completion at its own by dealing with the project status vis-a-vis Committee of Creditors in place for the respondent No.3-**M/s ABEL** to the exclusion of the Enforcement Directorate and prosecution proceedings under PMLA, 2002 before the Special Court PMLA Jaipur .

80. Before proceeding further to deal with the issue in hand so as to give it quietus, relevant provisions of PMLA, 2002 need to be drawn out and discerned.

> **"2. Definitions.**—(1) In this Act, unless the context otherwise requires,—

2 (d) "**attachment**" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

2 [(na) "investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;]

2 (u) "**proceeds of crime**" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

2 (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 (za) "**transfer**" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

2 (zb) "**value**" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

5. Attachment of property involved in money-laundering.—(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

Provided that no such order of attachment shall be made unless, in relation to an offence under:

(i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or

(ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the 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 order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

6. Adjudicating Authorities, composition, powers, etc.—(1) The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority,—

(a) in the field of law, unless he—

(i) is qualified for appointment as District Judge; or

(ii) has been a member of the Indian Legal Service and has held a post in Grade I of that service;

(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and such other places as the Central Government may, in consultation with the Chairperson by notification, specify;

(d) the Central government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty-two years.

(9) The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Member shall be varied to his disadvantage after appointment.

(10) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be

continued before the Adjudicating Authority from the stage at which the vacancy is filled.

(11) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government or relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Chairperson or any other Members shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(14) When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

(15) The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure.

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, he 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 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 authorized 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 sub-section (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 sub-section (1) of section 5 or retention of property or record seized under section 17 or section 18 and record a finding to that effect,

such attachment or retention of the seized property or record shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

(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 attached property.

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

9. Vesting of property in Central Government.— Where an order of confiscation has been made under sub-section (6) of section 8 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter or seized under Chapter V is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrances or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages."

81. Now from the perspective of afore stated legal provisions of PMLA, 2002, this court is to examine how the Golden Palm project and property is to be seen and dealt with.

82. Firstly, **Golden Palm** project's land site of **25.08 kanals** is ownership property of the promoters of the Petitioner which was pooled for the purpose of construction of **Golden Palm** project for which the building sanction had already been obtained by the petitioner vide **JDA Building Permission No. CTP/JDA/BP 284-85 dated 11/11/2013**.

83. Thus, said land component of **Golden Palm** project, at no point of time by any stretch of comprehension and claim, was and is a product of proceeds of crime under PMLA, 2002, be it with or without any agreement for its development which in present case is for **Golden Palm** project, with or without respondent No.3- **M/s ABEL**. In no manner, said parcel of land is legally related to the respondent No. 3-**M/s ABEL** by any time reference in particular after the **Development Agreement dated 13/11/2013** read with **Supplementary Agreement dated 27/04/2016.**

84. In the year 2013-2919, legal position in the State of J&K, as it was then before becoming the UT of J&K in year 2019,

with respect to property was that right to property was continuing to be a fundamental right under article 19(f) COI notwithstanding its repeal for rest of India w.e.f., 20/06/1979 vide 44th Amendment of 1978 of COI. In addition, no non-State Subject of State of J&K was eligible to acquire and own an immovable property in the State of J&K. So thus legally speaking the respondent No.3- M/s ABEL had no proprietary stake in the Golden Palms project in the sense of holding any right, title or interest as an owner therein. Thus, in this regard, word Property defined in section 2 (v) and mentioned in section 2 (u) PMLA, 2002 ruled out an immovable property being related to the respondent No.3- M/s ABEL quo the Golden Palms project. This is very crucial aspect of the case which perhaps was lost to the respondent No.2- **Deputy Director ED Jaipur** while contemplating the legal status of **Golden Palms** project vis-a-vis the respondent No.3-**M/s ABEL**.

85. Now, in 2013 when the petitioner came to enter contractual relationship by making of **Development Agreement dated 13/11/2013** with the respondent No. 3 -**M/s ABEL**, the same was only for development of the Golden Palms project without meaning, expressly or impliedly, to create any right, title or interest in favour of the respondent No.3- **M/s ABEL** quo the Golden Palm project as an immovable property at any stage of its development be it commencement, completion and

commissioning. Thus, at no point of time, **Golden Palms** project was meant to be a property of any kind whatsoever of and/or related to the respondent No.3- **M/s ABEL** so as to suffer taint of property defined as “Proceeds of Crime” in section 2(u) PMLA, 2002.

86. The only right of the respondent No.3- **M/s ABEL** vis-a-vis the **Golden Palm**s project was the right of financial return of its investment with agreed profit element on account of undertaking the construction, completion and commissioning of the **Golden Palms** project.

87. In the year 2013, there was no occasion and scope for the petitioner to envision and foreknow that in coming years by year 2018, by which time period the **Golden Palm** project was meant to be completed otherwise, the respondent No.3- M/s ABEL would get entangled in legal wrangles under PMLA, 2002 thereby roping in the petitioner’s Golden Palms project under a questionable clout.

88. Surely, the petitioner had, and is to be assumed to have, acted with due diligence in making the Development Agreement dated 13/11/2013 with the respondent No.3- M/s ABEL when there was nothing even remotely tainted against the respondent No.3- M/s ABEL. Thus, *bona-fide* was always at the end of the petitioner and continued to stay so.

89. Now, the only legal interest of the respondent No.3-M/s ABEL obtaining quo the Golden Palm project in the year 2018 when it came to go in hiding and leaving the project in-complete in the hands of the petitioner was that of money investment having gone into the construction component of Golden Palms project which came to be worked out by the ED very reliably from the books of accounts and other record corresponding to which the identified portion of Golden Palms project superstructure came to suffer attachment under PMLA, 2002.

90. The very fact even ED in its provisional attachment order dated **25/03/2022** read with complaint No. 1686/2022 self-computed amount of **Rs.47,16,44,220.68** as parked proceeds of crime in the Golden Palms project commensurating to floor wise structure construction is an acknowledgment of fact that Golden Palm project as a property is not proceeds of crime product from the perspective and position of the petitioner as well as the prospective buyers of spaces in the said Golden Palms project. The petitioner had made a contract with respondent No.3-**M/s ABEL** for lawful consideration for lawful object for development of **Golden Palms** project. Now, if the from the end of the respondent No. 3-**M/s ABEL** in carrying out its contractual obligation and burden of development of **Golden Palms** project investment of money purportedly came to be reckoned proceeds of crime, the construction made with respect to **Golden Palms**

project was not to be rendered per se illegal and attachable under PMLA, 2002. If it would have been so that **Golden Palms** project at every given stage of its construction was and is rendered an illegal asset because of involvement of the respondent No3-**M/s ABEL**, then by that reference of facts even the petitioner's promoters ought to have been reckoned privy to dealing with proceeds of crime and made co-accused in criminal prosecution initiated by ED before the Special Court PMLA Jaipur but that is not the scenario thereby meaning that the petitioner and its project Golden Palms project per se is not culpable and tainted and further even the Development Agreement between the two as a contract were to be an illegal one but that is not the scenario by any stretch of claim. The petitioner and its Golden Palms project are not to be condemned just because of contractual relationship made with the respondent No.3-**M/s ABEL**.

91. This factual position even came to be accepted and acted upon by the Adjudication Authority in its order dated **15/09/2022** without any demurrer.

92. Thus, what actually came to suffer action and attachment under PMLA, 2002 is not **Golden Palms** project but parked proceeds of crime valuing **Rs. 47,16,44,220/**-for which an identified portion of the Golden Palms project representative of said amount value was brought under attachment.

93. Now it is this state of facts operating with respect to **Golden Palms** project that made this court pass order dated **06/10/2023** read with order dated **18/10/2023** calling upon the petitioner to extract out the amount of **Rs. 47,16,44,221** as being money computed as representing parked proceeds of crime from the end of the respondent No.3-M/s ABEL and pay it to the **ED** to serve as recovery of proceeds of crime from the respondent No.3-M/s ABEL and thus salvage the **Golden Palms** project.

94. Situation is akin that if very said amount of proceeds of crime related to respondent No.3-**M/s ABEL** would have been in a bank deposit, then the said Bank, it's management and building would not have been brought or subjected to an attachment under PMLA, 2002 but instead said amount were to be drawn out by ED from the Bank account and attach said withdrawn amount or bank account bearing said amount of money suffering attachment. Present case is no less different than situation as referred above.

95. The petitioner surely had not volunteered itself in contract with the respondent No.3-**M/s ABEL** in 2013 to land **Golden Palms** project with a beforehand monition that in the year 2018 it would come to be reckoned as a product of proceeds of crime invested by the respondent No.3- **M/s ABEL**.

96. The petitioner's Golden Palms project got purged of taint of investment of proceeds of crime when the petitioner came to volunteer very fairly without joining any issue from its purse the payment of **Rs. 47,16,44,221/-** as being the purported amount for the corresponding value of which the portion of Golden Palms project came to be subjected to attachment under PMLA, 2002. Even without court order dated **06/10/2023** in the present case, the respondent No.2- Deputy Director ED, Jaipur perhaps could not have legally refused the petitioner volunteering payment of **Rs.47,16,44,221/**- to be attached in place of portion of Golden Palms project.

97. Cumulative effect of facts and circumstances set out above along with reasoning operating thereupon, this court holds the application **CM No.5058/2024** filed by the respondent No.2- **Deputy Director ED, Jaipur** seeking vacation of this court's order dated **06/10/2023** as misconceived and bereft of legal basis. This court's order dated **06/10/2023** has been carried into compliance by the petitioner by payment of **Rs.47,16,44,221/-** in the form of DD in the name of the respondent No.2- Deputy Director ED Jaipur which has also been duly accepted and acted upon by and at the end of the respondent No.2-Deputy Director ED Jaipur.

98. It is now this amount of **Rs.47,16,44,221/-** which has to become the attached property subject to confiscation and shall be deemed to have replaced mention of the petitioner's Golden Palms project wherever made in Provisional Attachment Order No.03/2022 & F.No. ECIR/JPZO/01/2019/AD-PMLA(RS)/771 dated 25/03/2022, in the complaint No. 1686/2022 dated 12/04/2022 filed by the respondent No.2-Deputy Director ED Jaipur and finally in the order dated 15/09/2022 passed by the Adjudication Authority. Consequently, the petitioner's Golden Palms project, be in its present status and/or in its future developed status, shall be free from effects of PMLA, 2002 in the context of and by reference to the respondent No.3-M/s ABEL. The Order/Notice No. ECIR/JPZO/01/2019/1565-1566 dated 12/08/2024 issued by the respondent No. 2- Deputy Director ED, Jaipur shall also be rendered nonest.

99. In view of the aforesaid outcome, the respondent No.2-Deputy Director ED Jaipur is directed to submit before the Special Judge PMLA, Jaipur, seized of prosecution of ED's complaint No.06/2021, the amount of **Rs. 47,16,44,221/-** paid by the petitioner so as to be dealt with as attached property under the Provisional Attachment Order No.03/2022 & F.No. ECIR/JPZO/01/2019/AD-PMLA(RS)/771 dated 25/03/2022, and under the Confirmation Order dated 15/09/2022 passed by

the Adjudication Authority. Certified copy of this order will also be produced by respondent No.2- **Deputy Director, ED Jaipur** before the Special Court PMLA Jaipur to be taken on record.

100. Compliance be done and reported by the respondent No.2- **Deputy Director ED, Jaipur** by or before next date of hearing.

101. List on **27.10.2025**

102. Ordered accordingly.

(RAHUL BHARTI)
JUDGE

JAMMU
22.09.2025
Muneesh