

**IN THE COURT OF SHRI DHEERAJ MOR  
SPECIAL JUDGE, (PC ACT) (CBI), (COAL BLOCK CASES)-01,  
ROUSE AVENUE DISTRICT COURT : NEW DELHI**

CNR No.	DLCT11-000690-2024
Cr. Cases No.	CR Cases/1/2024 dated 03.08.2024
ECIR No.	ECIR/13/DLZO/2014 dated 24.04.2014
Under Sections	Section 44 read with Section 45, Section 3 read with Section 70 and Section 4 of Prevention of Money-Laundering Act, 2002

**DIRECTORATE OF ENFORCEMENT**

.... Prosecution

**Versus**

1. **M/s Rathi Steel & Power Ltd.**  
(Through its Directors)  
Registered Office at A-97, Sector-63,  
NOIDA, Uttar Pradesh-201301.
2. **Pradeep Rathi S/o Sh. Punam Chand Rathi**  
(the then Managing Director of M/s Rathi Steel & Power Ltd.)  
R/o 26/A, Sadhna Enclave, New Delhi-110017.
3. **Udit Rathi S/o Sh. Pradeep Rathi**  
(the then Executive Officer of M/s Rathi Steel & Power Ltd.)  
R/o 26/A, Sadhna Enclave, New Delhi-110017.
4. **Kushal Kumar Agarwal S/o Sh. Udai Prakash Agarwal**  
(the then Assistant General Manager of M/s Rathi Steel & Power Ltd.)  
R/o 507, Riddhi Mahagunpuram, Ghaziabad,  
Uttar Pradesh-201301.

....Accused Persons

06.03.2026

ORDER ON COGNIZANCE

1. The present complaint under Section 44 read with Section 45 of Prevention of Money-Laundering Act, 2002 (*hereinafter referred to in short as 'PMLA'*) was filed on 02.08.2024 against all the four accused persons for the offence under Section 3 read with Section 70 punishable under Section 4 PMLA.

2. An application dated 18.11.2024 was moved by A-4 Sh. Kushal Kumar Agarwal seeking a right of hearing prior to taking of cognizance in terms of Section 223 of the Bhartiya Nagrik Suraksha Samhita, 2023 (*hereinafter referred to in short as 'BNSS'*). However, the said application was rejected by this court vide order dated 20.11.2024. By the same order, cognizance for the aforementioned offences of PMLA was taken and all the four accused persons were summoned for the said offences. On the challenge of the said order of cognizance by A-4 Sh. Kushal Kumar Agarwal, the Hon'ble Supreme Court of India vide its order dated 09.05.2025, set aside the order of cognizance dated 20.11.2024 on the ground of non-compliance with the proviso to sub-Section (1) of Section 223 of BNSS. It was further directed that in terms of the said proviso, the said accused be given an opportunity of being heard at the time of deciding on the aspect of cognizance. Similar liberty was granted by the Hon'ble Supreme Court to the other three accused persons on their respective criminal appeals vide orders dated 19.05.2025 and 25.08.2025.

3. Thereafter, in compliance with the aforementioned orders passed by the Hon'ble Supreme Court, all the four accused persons were afforded an opportunity of being heard prior to the passing of this order.

4. Sh. Rajesh Batra, Learned Special Public Prosecutor, Directorate of Enforcement and Sh. Vijay Aggarwal, Learned Counsel for all the four accused persons have been heard at length on the question of taking cognizance of the offence alleged in the present complaint. The prosecution complaint, documents annexed therewith and the written arguments/notes filed on behalf of both the sides have been carefully perused.

#### **FACTUAL MATRIX AS ALLEGED IN THE PROSECUTION COMPLAINT**

5. Based upon preliminary inquiry no.219 2012 (E) 0002 initiated by Central Bureau of Investigation (CBI) on the reference of Central Vigilance Commission (CVC), FIR/RC No.219 2013 E 0007 dated 18.06.2013 was lodged under Section 120B read with Section 420 of Indian Penal Code, 1860 (*hereinafter referred to in short as 'IPC'*) and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (*hereinafter referred to in short as 'PC Act'*) against the accused, namely, (i) M/s Rathi Steel & Power Ltd. (erstwhile M/s Rathi Udyog Ltd.) (*hereinafter referred to in short as 'RSPL'*); (ii) Directors of RSPL; (iii) Sh. Udit Rathi S/o Sh. Pradeep Rathi, Chief Executive Officer of RSPL; (iv) Members of 36<sup>th</sup> Screening Committee; and (v) unknown others for alleged corruption in the matter of allocation of Kesala North Coal Block, Chhattisgarh to RSPL by the Ministry of Coal, Government of India in the year 2008.

6. Upon completion of investigation in the said FIR, only two accused persons i.e. RSPL and Sh. Udit Rathi, Chief Executive Officer, RSPL were charge-sheeted by the CBI. However, Ld. Special Judge, (PC Act) (CBI)-7, New Delhi District, Patiala House Courts, New Delhi took cognizance for the offence punishable under Sections 120B/420 IPC against total four accused persons i.e. aforesaid two accused persons, Sh. Pradeep Rathi, Managing Director, RSPL and Sh. Kushal Kumar Agarwal, Assistant General Manager, RSPL on the allegations that they conspired to submit a highly inflated claim regarding the land actually in possession of RSPL company in its feedback form dated 07.02.2008 submitted to the 36<sup>th</sup> Screening Committee, thereby dishonestly inducing the said Committee to recommend the allocation of Kesala North Coal Block, Chhattisgarh in its favour on 03.07.2008, which ultimately culminated into its allocation by the Ministry of Coal, Government of India on 05.08.2008. After conclusion of its trial, all the four accused persons were convicted for the offence punishable under Sections 120B/420 IPC on 26.07.2016 with the finding that the said allegations stand proved beyond shadow of all reasonable doubts. In the said order, the Court concluded that the accused persons with a dishonest intention and in pursuance to the common object of the criminal conspiracy hatched among themselves deceived the 36<sup>th</sup> Screening Committee and thereby Ministry of Coal, Government of India on the basis of false representation qua the issue of land showing a higher status/stage of progress made by them towards establishing the End Use Project (EUP) so as to procure allotment of a coal block in favour of RSPL. Thereafter, vide order dated 27.07.2016, all the four accused persons were sentenced.

7. The jurisdiction of the complainant/Directorate of Enforcement to investigate the offence of money laundering under PMLA is triggered only upon the existence of a scheduled offence, evidenced by the registration of an FIR or Police Report under Section 173 CrPC or a complaint concerning the scheduled offence under the PMLA. This condition precedent is traceable to Sections 2(1)(u) ('Proceeds of Crime'), 2(1)(y) ('Scheduled Offence') and 3 ('Offence of Money Laundering') of PMLA, which collectively mandates the prior existence of scheduled offence for initiation of investigation under the PMLA. Sections 120B & 420 of the IPC and Sections 13(1)(d) & 13(2) of the PC Act, as invoked in the above-mentioned predicate FIR No.RC 219 2013 E0007 dated 18.06.2013 registered by CBI, EO-I, New Delhi, constitute the scheduled offence under the PMLA. Accordingly, investigation/inquiry under the PMLA was initiated against the accused persons, namely, (i) RSPL; (ii) Directors of RSPL; (iii) Sh. Udit Rathi S/o Sh. Pradeep Rathi, CEO of RSPL; (iv) Members of 36<sup>th</sup> Screening Committee; and (v) unknown others upon recording brief facts of the scheduled offence in this corresponding ECIR No.13/DLZO/2014 dated 24.04.2014.

8. During investigation, statements under Section 50 of PMLA of A-2 Sh. Pradeep Rathi, A-3 Sh. Udit Rathi and A-4 Sh. Kushal Kumar Agarwal were recorded. A-3 Sh. Udit Rathi in his statement under Section 50 PMLA dated 20.12.2021 undertook to furnish the reply along with supporting documents in respect of the questions put to him, to which he could not respond due to lack of knowledge and non-availability of the documents at the relevant time. Thereafter, vide letter dated 22.12.2021, he furnished replies to the questions that remained unanswered during his

statement on 20.12.2021, along with 09 supporting annexures. Further, the relevant documents including 08 Annual Reports of A-1 RSPL for the FYs 2006-2007 to 2013-2014 were seized by the IO. The proceeds of crime in the form of immovable properties valued at total Rs.30,72,380/- were provisionally attached as property of equivalent value as defined in “*value of such properties*” clause in terms of Section 2(1)(u) of the PMLA. It was subsequently confirmed by the Ld. Adjudicating Authority (PMLA), New Delhi vide order dated 04.08.2023. The details and status of the 70 lakh preferential equity shares of RSPL allotted to its promoters and non-promoters in the FY 2007-08 and which were subscribed to them after payment of Warrants Conversion Price in the FY 2009-10, were obtained by the IO from Bombay Stock Exchange (BSE), through its letter dated 04.01.2019.

## **RESULT OF INVESTIGATION**

9. The outcome of investigation in this ECIR, as encapsulated in the prosecution complaint, is summarized as under:-

(i) All the four accused persons have been convicted under Sections 120B/420 IPC in the predicate FIR/RC No.219 2013 E 0007 dated 18.06.2013 by Ld. Special Judge (PC Act) (CBI)-7, New Delhi District, Patiala House Courts, New Delhi (Ld. Predecessor of this Court) on 26.07.2016 for having conspired to misrepresent, before the 36<sup>th</sup> Screening Committee, the particulars relating to the land available with RSPL for setting up an EUP, thereby dishonestly inducing the committee to recommend allocation of Kesala North Coal Block to it in its meeting held on 03.07.2008, which ultimately culminated into issuance of allocation letter of the said coal block in

favour of RSPL by Ministry of Coal, Government of India on 05.08.2008;

(ii) The coal block allocated to RSPL vide allotment letter dated 05.08.2008 (being a valuable security) issued by the Ministry of Coal with the intention to derive subsequent benefits by way of developing the coal block comes under the purview of proceeds of crime as defined under Section 2(1)(u) read with Section 2(1)(v) of PMLA, 2002 which in an offence under Section 3 of the PMLA, 2002 and thereby punishable under Section 4 of the said Act;

(iii) On the analysis and examination of Annual Reports of RSPL for the FYs 2006-07 to 2013-14, it is evident that the intent of RSPL was to derive profit from allocation of Kesala North Coal Block, which was secured by resort to fraudulent means, as duly established in the predicate/scheduled offence;

(iv) The accused persons after fraudulently securing allocation of Kesala North Coal Block, Chhattisgarh vide allocation letter dated 05.08.2008 (a valuable security), generated proceeds of crime by raising share capital/premium on the strength and under the guise of the said allocation letter;

(v) After allocation of coal block, RSPL issued total 70 lakh fresh equity shares on preferential basis during FY 2009-10 and FY 2010-11 at the rate of Rs.22/- each [Rs.10/- (face value) and Rs.12/- (as premium)] to its promoters as well as non-promoters for total consideration of Rs.15.40 crores. Out of the said 70 lakh fresh equity shares, 14 lakh shares were issued in favour of the non-promoters namely M/s Modern Ferno Alloys Pvt. Ltd. and M/s AD Suppliers

Pvt. Ltd. and thereby RSPL gained Rs.3.08 crores in the said transaction by projecting the coal mine development as a major determinative factor, as depicted in its Annual Reports;

(vi) Neither mining lease was executed in favour of RSPL nor it undertook any development of coal mining blocks. However, through its Directors, it indulged in acquisition of the said proceeds of crime to the tune of Rs.3.08 crores by misrepresenting the same in its Annual Reports;

(vii) The disclosure made by RSPL in its Annual Reports for FY 2007-08 (**RUD-19**) in its Page No.18 in respect of coal block and iron ore mines was to attract positive attention from the investors for investment in preferential shares which resulted in gain of Rs.3.08 crores by issuance of said 14 lakh fresh equity shares on preferential basis to its non-promoters;

(viii) The said non-promoter investor companies were struck off later and their Directors remained untraceable; and

(ix) A-2 Sh. Pradeep Rathi was the Managing Director, A-3 Sh. Udit Rathi was the CEO and A-4 Sh. Kushal Kumar Agarwal was the Assistant General Manager of RSPL. They were the ultimate beneficiaries of the present transactions.

## **THE CRUX OF ALLEGATIONS IN THE PROSECUTION COMPLAINT**

10. In nutshell, the allegations of the prosecution in this complaint are that the accused persons were knowingly and actually indulged, assisted or involved in the process or activity connected to acquisition, possession, use or projection of the following ‘proceeds of crime’:-

- (i) The allocation letter dated 05.08.2008 for Kesala North Coal Block, Chhattisgarh in favour of RSPL constitutes 'property' within the meaning of Section 2(v) of PMLA and having been derived as a result of commission of the scheduled offence, it falls within the ambit of 'proceeds of crime' as defined under Section 2(u) of PMLA; and
- (ii) The sum of Rs.3.08 crores gained by RSPL in the FY 2009-10 for issuance of its 14 lakh preferential equity shares to the non-promoters namely M/s Modern Ferro Alloys Pvt. Ltd. and M/s AD Suppliers Pvt. Ltd. on the strength of the aforesaid allocation letter of coal block obtained through commission of the scheduled offence.

## **ARGUMENTS OF THE PROSECUTION/DIRECTORATE OF ENFORCEMENT**

11. Sh. Rajesh Batra, Learned Special Public Prosecutor assisted by Sh. N.K. Matta, Learned Special Public Prosecutor submitted that CBI lodged an FIR/RC No.219 2013 E 0007 dated 18.06.2013 under Section 120B/420 IPC and Section 13(2) read with Section 13(1)(d) PC Act. The said offences are scheduled offence under PMLA. Therefore, upon satisfaction of the condition precedent for initiating proceedings under the said Act, the Directorate of Enforcement, after recording the brief facts of the scheduled offence in this ECIR, commenced investigation to ascertain if the offence of money laundering under PMLA has been committed as a result of commission of the scheduled offence. It has been further submitted that during investigation, a charge-sheet was filed in the said FIR/RC and upon conclusion of its trial, all the four accused persons herein have been

convicted for the offence punishable under Sections 120B/420 IPC for having fraudulently secured allocation of Kesala North Coal Block from Ministry of Coal, Government of India through misrepresentation. Therefore, there cannot be any dispute or objection that Directorate of Enforcement does not have jurisdiction to investigate this matter to determine if proceeds of crime were generated, acquired, possessed, concealed or used as a result of criminal activity relating to the scheduled offence and to identify the persons involved in the process or activity connected therewith.

12. Learned Special Public Prosecutor further contended that during investigation, two sets of proceeds of crime were unearthed in this case. The first set of proceeds of crime is the allocation of coal block itself that was secured by A-1 RSPL from Ministry of Coal through letter dated 05.08.2008 which constitutes 'property' and 'a valuable security' derived as a result of commission of the scheduled offence. Therefore, it qualifies as proceeds of crime within the meaning of Section 2(1)(u) of the PMLA. The second set of proceeds of crime is Rs.3.08 crores gained by RSPL through issuance of 14 lakh preferential equity shares in favour of non-promoters namely M/s Modern Ferro Alloys Pvt. Ltd. and M/s AD Suppliers Pvt. Ltd. in FY 2009-10 on the strength of the aforesaid allocation letter as depicted in the Annual Reports of A-1 RSPL for FY 2009-10 (RUD-21).

13. In respect of first set of proceeds of crime i.e. allocation letter dated 05.08.2008, Learned Special Public Prosecutor further contended that it has been unequivocally held to be 'valuable right' amounting to 'grant of largesse' by the Hon'ble Supreme Court in **Manohar Lal Sharma Vs. The**

**Principal Secretary & Ors. (2014) 9 SCC 516.** It has been contended that once the allocation itself has been recognized as conferring a valuable benefit flowing from the State, it squarely falls within the ambit of 'property' as defined under Section 2(1)(v) of the PMLA. He submitted that the Directorate of Enforcement challenged findings of Learned Single Judge of Hon'ble Delhi High Court in case titled as **M/s Prakash Industries Ltd. & Anr. Vs. Directorate of Enforcement 2022 SCC OnLine Del 2033** (*hereinafter referred to in short as 'Prakash Industries-I, Single Judge'*) and **M/s Prakash Industries Ltd. Vs. Union of India & Anr. 2023/DHC/000481** (*hereinafter referred to in short as 'Prakash Industries-II, Single Judge'*) by filing Letters Patent Appeal (LPA) before the Division Bench of Hon'ble Delhi High Court. The Learned Single Judge had, *inter alia*, held that allocation of a coal block cannot be construed either as 'property' or 'conferment of a right in property' and thus, it cannot *per se* be recognized as representing 'proceeds of crime'. He contended that the said finding of Learned Single Judge has been set aside by the Division Bench of Hon'ble Delhi High Court in **Directorate of Enforcement Vs. M/s Prakash Industries Ltd. & Anr. 2025 SCC OnLine Del 6524** (*hereinafter referred to in short as 'Prakash Industries-I, Division Bench'*) and **Directorate of Enforcement Vs. M/s Prakash Industries Ltd. 2025 SCC OnLine Del 8243** (*hereinafter referred to in short as 'Prakash Industries-II, Division Bench'*) wherein it was *inter alia* held that the allocation of coal block constitutes 'property' within the meaning of Section 2(1)(v) of the PMLA and the illegal financial gains arising therefrom falls within the definition of 'proceeds of crime' under Section 2(1)(u) of the PMLA. However, he has

fairly conceded that the operation of all the said four Prakash Industries judgments has been stayed by the Hon'ble Supreme Court on 16.01.2026.

14. Learned Special Public Prosecutor further contended that in view of stay of the Prakash Industries judgments by the Hon'ble Supreme Court, the question as to whether allocation letter of coal block constitutes 'proceeds of crime' in the present matter must be determined independently, without placing reliance upon or being guided by the law laid down in the said judgments. He argued that in absence of Prakash Industries judgments, the law laid down in **Manohar Lal Sharma (supra)** shall serve as a dominating guiding factor on the nature and character of coal block allocation. He contended that in **Manohar Lal Sharma (supra)**, the Hon'ble Supreme Court has categorically held that the allocation letter of coal block is grant of largesse by the Central Government which confers a very valuable right upon the allottee to get the prospecting license and/or mining lease from the State Government, thereby vesting in the allottee a significant commercial advantage. He contended that the definition of 'property' as provided under Section 2(1)(v) of the PMLA, is inclusive, expansive and deliberately broad in its sweep. The proviso includes every description whether corporeal or incorporeal, tangible or intangible, and encompasses deeds, instruments, or any document evidencing title to or interest in such property or assets. The appended explanation further widens its amplitude to include property used in the commission of an offence and property derived or obtained directly or indirectly. He further contended that the definitions given in the said statute must receive purposive interpretation to include every description of property including every valuable right so as to advance the object of the PMLA, which is to

prevent and combat the laundering of proceeds of crime. A restrictive interpretation excluding valuable rights or entitlements from the ambit of 'property' would defeat the legislative intent and render the statute ineffective in addressing sophisticated economic crimes.

15. Learned Special Public Prosecutor further contended that the definition of 'property' under Section 2(1)(v) of the PMLA including the appended explanation is deliberately kept very wide by the Parliament to include even the iota of interest in the property or asset i.e. every plausible form of property into its ambit including tangible or intangible, corporeal or incorporeal for averting the possibility of rendering it unproductive or futile in tackling the menace of the offence of money laundering. He contended that in the contemporary evolving jurisprudence, the various intangible rights like copyrights, trademarks, patents, licenses, digital assets and contractual entitlements have been recognized as valuable forms of property. In that backdrop, an allocation letter (a valuable right or largesse) conferring the allottee an exclusive and preferential right to be considered for execution of mining lease of a coal block in its favour for gaining commercial advantage by its excavation is essentially one of the forms of the property within the meaning of 'property' under Section 2(1)(v) of the PMLA.

16. Learned Special Public Prosecutor further contended that once the allocation letter of coal block is established to be a 'property' within the meaning of Section 2(1)(v) of the PMLA, the same shall categorically fall within the meaning of 'proceeds of crime' as defined under Section 2(1)(u) of the PMLA as it is derived or obtained as a direct result of criminal activity relating to the scheduled/predicate offence of criminal conspiracy

and cheating in this case. The presence of proceeds of crime is the sufficient requirement for proceeding further and for taking cognizance for the offence of money laundering as defined under Section 3 and punishable under Section 4 of the PMLA.

17. Learned Special Public Prosecutor further contended that apart from the allocation letter constituting the first set of proceeds of crime, a second set of proceeds of crime to the tune of Rs.3.08 crores was generated by RSPL through issuance of its 14 lakh preferential equity shares at the rate of Rs.22/- each [Rs.10/- (face value) and Rs.12/- (as premium)] to its non-promoters namely M/s Modern Ferro Alloys Pvt. Ltd. and M/s AD Suppliers Pvt. Ltd. in the FY 2009-10 on the strength and in the guise of allocation of coal block to it. He pointed out that in its Annual Report of FY 2007-08 (**RUD-19**), particularly at Page No.18, A-1 RSPL made specific disclosures regarding allocation of the coal block and proposed development of the iron ore mines, thereby projecting enhanced commercial prospects of the company. The said disclosures were intended to attract positive attention from the investors for investment in their preferential shares which subsequently resulted in gain of the said amount by issuance of the aforementioned shares at the aforementioned price to its aforementioned non-promoters. He argued that although the face value of the share of RSPL was Rs.10/- each but it used the tainted allocation letter of coal block to inflate the price of its preferential share to Rs.22/- each and thereby derived the said benefit or profit as a result of criminal activity relating to scheduled offence of criminal conspiracy and cheating. Thus, on the pretext of the said allocation letter, a valuable right, it raised its share capital/premium and derived proceeds of crime to the tune of Rs.3.08

crores by selling its 14 lakhs preferential shares to its non-promoters in the FY 2009-10. He has argued that the said amount derived/gained by the RSPL is also direct result of the criminal activity related to the scheduled offence and therefore, it is another limb of 'proceeds of crime' in this case.

18. Learned Special Public Prosecutor further argued that A-2 Sh. Pradeep Rathi, Managing Director, RSPL; A-3 Sh. Udit Rathi, Chief Executive Officer, RSPL; and A-4 Sh. Kushal Kumar Agarwal, Assistant General Manager, RSPL assisted A-1 RSPL in securing allocation letter dated 05.08.2008 of Kesala North Coal Block (proceeds of crime) in its favour by fraudulently misrepresenting before the Screening Committee. They played active role in obtaining the said allotment letter (proceeds of crime) in favour of A-1 RSPL and it has been corroborated by their conviction in the predicate offence of criminal conspiracy and cheating. He submitted that the PMLA is a standalone, distinct and independent offence. However, the conviction of the said 03 private accused persons in the predicate offence support the case of the prosecution herein that they knowingly and actively assisted in generation of the proceeds of crime in this case in the form of allocation letter of coal block. He further contended that Section 70 of the PMLA can also be invoked for indicting the said 03 private accused persons for the second limb of proceeds of crime of Rs.3.08 crores gained by the RSPL as a result of criminal activity relating to the scheduled offence as at the time of generation of the said proceeds of crime, all of them were in-charge and were responsible to the RSPL company for the conduct of its business. He contended that there is sufficient material available on record to proceed further in this case, to take cognizance for the offence under Sections 3/4 of the PMLA and to

summon all the said 04 accused persons under Section 223 of BNSS for the said offence.

## **ARGUMENTS ON BEHALF OF ALL THE FOUR ACCUSED PERSONS**

19. Sh. Vijay Aggarwal, Learned Counsel for all the four accused persons contended that Hon'ble Supreme Court in **Manohar Lal Sharma (supra)** case referred to allocation of coal block as 'grant of largesse' or 'valuable right' but did not characterize such allocation as 'property' within the meaning of 'property' as defined under Section 2(v) of PMLA. He further contended that after stay of operation of all the 04 Prakash Industries judgments of Hon'ble Delhi High Court by Hon'ble Supreme Court on 16.01.2026, the law on this aspect as determined in **Himachal Emta Power Ltd. Vs. Union of India 2018 SCC OnLine Del 11078** shall be squarely applicable in this case. Even otherwise, **Prakash Industries-I and II, Division Bench** judgments though held allocation of coal block to be 'property' within the meaning of Section 2(v) of PMLA, consciously refrained from declaring it as 'proceeds of crime' within the meaning of its definition contained under Section 2(1)(u) of PMLA. Rather, the Division Bench of the Hon'ble Delhi High Court held that the financial benefits derived by the company post-allocation such as coal extraction, commercial exploitation, profit generation and other financial gains would fall within the ambit of 'proceeds of crime' under Section 2(1)(u) of PMLA. It has been thus, argued that the said judgments of the Division Bench clearly demarcate a distinction between 'property' and 'proceeds of crime'. Not every 'property' *ipso facto* becomes 'proceeds of crime'. Rather, only such property as is derived or obtained, directly or indirectly

as a result of a criminal activity relating to a Scheduled Offence falls within the scope of 'proceeds of crime' under Section 2(u) of PMLA. Therefore, even the ratio of the **Prakash Industries-I and II, Division Bench judgments (now stayed)** is of no benefit to the prosecution for bringing the allocation of coal block within the mischief of 'proceeds of crime'.

20. Learned Counsel for the accused persons further contended that if allocation of coal block letter is treated as 'proceeds of crime' under Section 2(u) PMLA, it would obliterate the conceptual and statutory distinction between the scheduled/predicate offence and the offence of money laundering. It has been argued that both the offences are independent and distinct. The offence under the PMLA arises only after the scheduled offence has already accomplished. He further contended that if this difference is not appreciated, there will be no distinction between the said two offences and it will lead to double jeopardy. It has been contended that it would amount to punishing the accused twice for the same act and would offend the constitutional protection against double jeopardy under Article 20(2) of the Constitution of India. He argued that if allocation letter of coal block is treated as 'proceeds of crime', then conviction of the accused persons in the predicate offence for alleged fraudulent misrepresentation to secure the same would ensure their conviction under PMLA even before the trial commences. Meaning thereby, their conviction in predicate offence would guarantee their conviction in PMLA offence for their exactly same act without even iota of additional culpable act/omission on their part. He contended that the legislative intent behind PMLA is not to punish a person twice for the scheduled offence (predicate offence), but to penalize those who indulge or assist or are party to or are actually

involved in the process or activity connected with laundering of property derived from criminal activity relating to the scheduled offence. It has been contended that the object of its enactment is to prevent the laundering of tainted financial gains i.e. property derived or obtained as a result of criminal activity and not merely to replicate punishment for the predicate offence. It has been further argued that in the instant case, no financial gain or property was derived or obtained by A-1 RSPL through allocation letter of coal block. The essential ingredient of 'proceeds of crime' is absent insofar as the allocation letter of coal block is concerned, as it merely conferred valuable right in favour of A-1 RSPL to obtain interest/right in the coal block through execution of mining lease, which was never executed in this case.

21. In respect to the other alleged limb of 'proceeds of crime' i.e. Rs.3.08 crores, Learned Counsel for the accused persons has contended that there is no co-relation or connection between the alleged scheduled offence and issuance of 14 lakh preferential equity shares by A-1 RSPL to two non-promoters namely M/s Modern Ferno Alloys Pvt. Ltd. and M/s AD Suppliers Pvt. Ltd. at the rate of Rs.22/- each [Rs.10/- (face value) and Rs.12/- (as premium)]. He has contended that the Annual Report of RSPL for the FY 2007-08 (**RUD-19**) was published on 02.09.2008 and the allocation letter for Kesala North Coal Block was issued in favour of A-1 RSPL on 05.08.2008. He contended that as per the allegations of the prosecution, the positive attention of the investors was drawn in the said Annual Report of A-1 RSPL by disclosure of allocation of coal block on its Page No.18 and that resulted in inducing or coaxing the non-promoters to purchase the said preferential equity shares in the FY 2009-10. However,

he has vehemently argued that the said contentions are baseless and nothing more than a figment of imagination. He argued that the said Annual Report (**RUD-19**) itself records the issuance of 14 lakh preferential equity shares to the non-promoters. Therefore, it cannot be contended that the disclosure in the said Annual Report induced or influenced the non-promoters to subscribe to the shares. Thus, any disclosure in the said Annual Report including the fact regarding allocation of the coal block to RSPL was not at all a determining factor for the non-promoters to subscribe to its preferential equity shares. The record itself demonstrates that the decision to subscribe to the preferential equity shares of A-1 RSPL by the non-promoters had already been taken prior to the publication of the Annual Report of FY 2007-08 (**RUD-19**) containing the disclosure regarding allocation of the coal block. Thus, the said report cannot be held to be an instrument of inducement to the non-promoters and accordingly, the said transaction cannot be held to have any direct or indirect nexus with the allocation of coal block.

22. He further contended that total 56 lakh preferential equity shares were issued to the promoters and 14 lakh preferential equity shares were issued to the non-promoters by A-1 RSPL in the FY 2007-08 at the same rate of Rs.22/- per share. It has been contended that the said shares were issued and subscribed for utilizing the consideration price acquired from their subscription for meeting the day-to-day expenses of A-1 RSPL. He contended that the said transaction has no relation, whatsoever, with the allocation of coal block.

23. He further argued that A-1 RSPL was incorporated in the year 1971 and it was a robust company having a turnover of Rs.500 crores even before the allotment of coal block. It is an old listed company producing iron and steel in massive quantity and its shares were being publicly traded at prices as high as Rs.47/- per share even before allotment of the coal block. It has been contended that the allegation of prosecution that price of preferential equity shares of A-1 RSPL was inflated to Rs.22/- per share though its price was Rs.10/- per share is unfounded and baseless. The Annual Report of FY 2007-08 (**RUD-19**) clearly indicates that during the said financial year it was trading between Rs.17.40 in October, 2007 to Rs.47/- in January, 2008. It has been contended that the pricing of the impugned preferential equity shares was done in accordance with the applicable SEBI guidelines and the said calculation is unequivocally depicted in the Annual Report of FY 2007-08. There are no allegations against the A-1 RSPL that it flouted any of the guidelines of SEBI in calculation of the price of the said preferential equity shares. As per the applicable SEBI guidelines, the price of preferential equity share has to be higher than the average of weekly high and low of the closing price during six months preceding the relevant date and the average of weekly high and low of the closing price during the two weeks preceding the relevant date. The relevant date as depicted in the Annual Report of FY 2007-08 (**RUD-19**) was 31.08.2008 and the highest of the said two averages was Rs.21.63. Accordingly, in accordance with the SEBI guidelines, shares were priced at Rs.22/-, being the nearest highest whole number, though it was permissible for A-1 RSPL to fix its price at even higher price than Rs.22/-. It has been contended that the pricing of the said preferential

equity shares were reasonably determined based upon the applicable SEBI guidelines. Thus, the allegations of the prosecution qua their inflated prices is unreasonable, unfounded and contrary to the contemporaneous marking data.

24. He further contended that 14 lakh preferential equity shares of A-1 RSPL were initially issued in the form of warrants in the FY 2007-08 and subscribers/non-promoters were statutorily required to pay the price of the said shares towards conversion of warrants to equity shares within 18 months of the allotment. Accordingly, they paid the price of the said shares in the FY 2009-10 to the total tune of Rs.3.08 crores at the rate of Rs.22/- per share which was fixed during the FY 2007-08. The payment of Rs.3.08 crores in the FY 2009-10 was merely compliance with statutory requirements and was based on pricing determined earlier, independent of the alleged scheduled offence. Thus, the allocation of coal block has no bearing at all in the said transaction. Accordingly, the said transaction cannot be held to be direct or even indirect result of the alleged criminal activity relating to the scheduled offence.

25. He further pointed out that the prosecution has taken self-contradictory or mutually inconsistent stands- on one hand, it has claimed that the non-promoters were induced to purchase the preferential equity shares of A-1 RSPL on the pretext of allocation of coal block for a total price of Rs.3.08 crores and on the other hand, it has claimed that the non-promoters themselves connived in the said transaction. The said self-contradictory stand has undermined and demolished its own case.

26. He further contended that the prosecution has neither cited nor examined any representative from the non-promoter companies to *prima*

*facie* establish that the allocation of coal block to A-1 RSPL influenced their decision to subscribe to its preferential equity shares or the said allocation had any connection or bearing in their decision to subscribe to the 14 lakh preferential equity shares of RSPL. It has been contended that it was a primary requirement to *prima facie* establish connection of the said transaction with the allocation of coal block to the RSPL. The PMLA does not bring under its purview every transaction conducted by the company after the alleged commission of the scheduled offence even if it has no connection with the scheduled offence. It has been contended that the entire case of the prosecution is based upon the conjectures, surmises and unfounded assumptions that the said transaction must have been a direct or indirect result of the criminal activity relating to the scheduled offence. The said assumption is purely a figment of imagination not supported by any evidence to connect the same with the scheduled offence. In absence thereof, there is no reason to assume that the said amount of Rs.3.08 crores derived by A-1 RSPL from the non-promoters by issuance of 14 lakh preferential equity shares are proceeds of crime as there is no evidence on record to show if there was any cause-effect relationship between the allocation of coal block and the said transaction. It has been, therefore, contended that even the second limb of allegation also does not fall within the meaning of 'proceeds of crime' under Section 2(1)(u) of the PMLA. With these submissions, he contended that in absence of proceeds of crime, no offence under PMLA is attracted and made out against the accused persons. He contended that there exists no ground to proceed further and accordingly, sought decline of cognizance in the present case.

## **ARGUMENTS IN REBUTTAL OF PROSECUTION/DIRECTORATE OF ENFORCEMENT**

27. Sh. Rajesh Batra, Learned Special Public Prosecutor assisted by Sh. N.K. Matta, Learned Special Public Prosecutor has reiterated his submissions to contend that the letter of allocation of coal block is 'property' and 'proceeds of crime' within the meaning of Sections 2(1)(v) and 2(1)(u) respectively of the PMLA. In respect of Rs.3.08 crores, he has reinforced that the said amount was derived by A-1 RSPL as a result of criminal activity relating to the scheduled offence. The said amount has been derived as a consequence of the scheduled offence by inducing the non-promoters to subscribe to its 14 lakh preferential equity shares at the inflated rate of Rs.22/- each, though their value was Rs.10/- each, by inducing them on the strength of the letter of allocation of coal block. Thus, the said amount is also proceeds of crime. It has been, therefore, contended that there is sufficient material available on record to proceed further in this case, to take cognizance for the offence under Sections 3/4 of the PMLA and to summon all the four accused persons for facing trial for the said offence.

## **THE RELEVANT SUBSTANTIVE PROVISIONS OF LAW**

28. The relevant substantive provisions of law are reproduced herein for ready reference and for convenience:-

(A) **Section 2(1)(u) of the PMLA** provides as under:-

**“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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

**Explanation.**—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

(B) **Section 2(1)(v) of the PMLA** provides as under:-

“**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;

**Explanation :** For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.

(C) **Section 3 of the PMLA** provides as under:-

“**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 proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.”

**Explanation** – For the removal of doubts, it is hereby clarified that;

(i) a person shall be guilty of offence of money laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property,
- (g) in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property in any manner whatsoever.

(D) **Section 23 of PMLA** provides as under:-

“Presumption in inter-connected transactions – Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purpose of adjudication or confiscation under Section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court, be presumed that the remaining transactions form part of such inter-connected transactions.”

(E) **Section 70 of PMLA** provides as under:-

“Offence by Companies” –

- (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-Section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.
- (2) Notwithstanding anything contained in sub-Section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer

shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

**Explanation.1**—For the purposes of this Section,

(i) “company” means anybody corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

**Explanation. 2** – For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or prosecution of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

## LAW ON COGNIZANCE

29. In **Amantullah Vs. State of Bihar (2016) 6 SCC 699**, it is held by the Hon’ble Supreme Court in Para No.25:-

“... it is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the chargesheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court’s duty is limited to the extent of finding out **whether from the material placed before it, the offence alleged therein against the accused is made out or not with a view to proceed further with the case**”

(emphasis supplied)

30. Therefore, at this stage, it is required to be examined whether from the material placed before this Court in this complaint, the offence of money laundering under Section 3 of PMLA 2002 is made out or not against the accused persons with a view to proceed further with the complaint for its cognizance and trial.

## ANALYSIS OF LAW ON PMLA

31. Before advertng to the facts of this case, it is expedient to analyze the relevant provisions of PMLA as interpreted by the Hon’ble Supreme Court in its various pronouncements.

32. The most important and crucial ingredient of the offence of money laundering is ‘proceeds of crime’ and it is defined under Section 2(u) PMLA. It 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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad. In **Vijay Madanlal Chaudhary Vs. Union of India 2022 SCC OnLine SC 929**, the Hon’ble Apex Court has interpreted the meaning, extent and scope of the ‘proceeds of crime’ and its relevant portion is reproduced as under:-

**“31. The “proceeds of crime” being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person “as a result of” criminal activity**

**relating to the concerned scheduled offence.** This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

32. **Be it noted that the definition clause includes any property derived or obtained “indirectly” as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the “property” which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence.** In the context of Explanation added in 2019 to the definition of expression “proceeds of crime”, it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to “any property” including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition “proceeds of crime”. The definition of “property” also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. **In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true.** Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.

33. **Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime.** The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property

recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event of person named in the criminal activity relating to scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.”

(emphasis supplied)

33. The nature and scope of the money laundering offence as defined under Section 3 of the PMLA is elaborately discussed in **Vijay Madanlal Chaudhary (supra)** in its following paragraphs:-

“42. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

43. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of

money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.”

XXXX XXXX XXXX XXXX

52. **The next question is: whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of “proceeds of crime” under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “proceeds of crime” under Section 2(1)(u) will necessarily be crime properties.....”**

**(emphasis supplied)**

34. Therefore, 'proceeds of crime' has to be construed strictly in accordance with law and its quantum cannot be arbitrarily overblown on unfounded assumptions in violation of law. Only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as 'proceeds of crime'. The authorities under the PMLA cannot resort to action against any person for money laundering on an assumption that the property recovered from him or the transaction done by him must be 'proceeds of crime' unless there is cogent evidence to the effect that the same is derived or obtained, directly or indirectly, as a result of criminal activity relating to the scheduled offence.

35. The limitation of jurisdiction of investigating agency in PMLA case has been unequivocally emphasized by the Hon'ble Supreme Court in **Vijay Madanlal Chaudhary (supra)** by declaring that it has to be confined to 'proceeds of crime' derived or obtained directly or indirectly through and relatable to scheduled offence only. It held that the transactions unrelated or unconnected to the scheduled offence lacks the character of proceeds of crime even if any illegality or irregularity beyond scheduled offence is observed in it. The Directorate of Enforcement cannot *suo moto* assume authority to probe the said extraneous sphere unrelated to the registered scheduled offence as it is beyond its jurisdiction even if any kind of illegality or irregularity in relation to it is observed unless the said illegality or irregularity falls within the ambit of unreported/unregistered scheduled offence and the concerned authority by resorting to Section 66(2) PMLA, makes the complaint regarding its completion to the

jurisdictional police. In absence of proceeds of crime, no prosecution under PMLA can be launched.

36. In **Vijay Madanlal Chaudhary (supra)**, it was clarified that not all properties used in the commission of scheduled offence shall fall within the domain of 'proceeds of crime' or 'tainted property'. It has been explained that the scheduled offence and the PMLA offence are independent and distinct criminal acts. The PMLA is triggered only after the scheduled offence is accomplished and property, money or financial gains are generated as a result or consequence of criminal activity relating to the scheduled offence.

37. The legal principles laid down in **Vijay Madanlal Chaudhary (supra)** on the aspects of 'proceeds of crime' and 'money laundering' are summarized as under:-

- (i) 'Proceeds of crime' must be construed strictly;
- (ii) The 'property' must be derived or obtained as a result of criminal activity relating to a scheduled offence. The phrase 'as a result of' denotes a direct or indirect but real and demonstrable nexus;
- (iii) Every property involved in the commission of the scheduled offence is not necessarily proceeds of crime. For example, a vehicle used in commission of an offence would not *ipso facto* become proceeds of crime;
- (iv) Money laundering is an independent offence concerning the process or activity connected with the proceeds of crime. However, its existence depends upon the generation of proceeds of crime from a scheduled offence;

- (v) Money laundering is a continuing offence. Continuing possession or use of proceeds of crime may attract prosecution;
- (vi) The phrase 'process or activity' mentioned in the definition of the offence of money laundering under Section 3 of the PMLA has a wide amplitude;
- (vii) The Directorate of Enforcement cannot assume jurisdiction on mere suspicion or presumptions or unfounded assumptions. There must be existing scheduled offence and demonstrable proceeds of crime having nexus or causal relation with the criminal activity relating to the scheduled offence;
- (viii) Transactions unrelated to the scheduled offence lack the character of proceeds of crime; and
- (ix) In absence of proceeds of crime, prosecution under PMLA cannot be sustained.

38. In **Y. Balaji Vs. Karthik Desari & Anr. Etc. 2023 INSC 542**, the Hon'ble Supreme Court held that there are some offences, which though scheduled offences, may or may not generate proceeds of crime. However, in the cases of corruption involving bribe or illegal gratification, the same is essentially 'proceeds of crime' that would attract prosecution under PMLA. It further held that whenever there are allegations of corruption, there is acquisition of proceeds of crime which itself tantamount to money laundering.

39. In **Directorate of Enforcement Vs. Padmanabhan Kishore (2022) 19 SCC 612**, the Hon'ble Apex Court held that the bribe money assumes the character of 'proceeds of crime' the moment an intention is entertained to hand it over as a bribe in a corruption case. By handing over money with

the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Thus, the bribe giver is also liable for prosecution under Section 3 of the PMLA for intentionally assisting in generation of proceeds of crime by handing it over to the bribe taker in relation to/as a result of criminal activity of the scheduled offence of corruption.

### **APPLICATION OF THE RELEVANT STATUTORY PROVISIONS AND THEIR BINDING INTERPRETATION ON THE FACTS OF THE PRESENT CASE**

40. In the scheduled offence, it is alleged that A-2 Sh. Pradeep Rathi, Managing Director of A-1 RSPL; A-3 Sh. Udit Rathi, Chief Executive Officer of A-1 RSPL; and A-4 Sh. Kushal Kumar Agarwal, Assistant General Manager of A-1 RSPL entered into a criminal conspiracy to cheat Ministry of Coal, Government of India and pursuant to the said conspiracy, they secured allocation of Kesala North Coal Block, Chhattisgarh on 05.08.2008 in favour of A-1 RSPL by dishonestly inducing the Screening Committee and Ministry of Coal, Government of India through dishonest misrepresentation. After the trial of scheduled offence, all the said four accused persons were convicted and sentenced for the offence of criminal conspiracy and cheating punishable under Sections 120B/420 IPC. Their appeal against their judgment of conviction and order on sentence is pending before Hon'ble Delhi High Court.

41. Significantly, the jurisdiction of the Directorate of Enforcement to probe money laundering triggers immediately on the registration of the scheduled offence provided their exists 'proceeds of crime' within the meaning of Section 2(1)(u) of the PMLA. The PMLA case is independent

and distinct of the scheduled offence. However, survival of the PMLA case depends upon the existence of the scheduled offence and 'proceeds of crime'. Therefore, till the scheduled offence registered before the jurisdictional police or the instituted complaint before the court having jurisdiction to try the scheduled offence are subsisting, the offence of money laundering subsists provided property or financial gains are derived or obtained, directly or indirectly, as a result of criminal activity relating to the scheduled offence, which tantamounts to 'proceeds of crime'. The direct or indirect indulgence, knowing assistance or actual involvement in any process or activity connected to proceeds of crime including its concealment, possession, acquisition or use as untainted property falls within the ambit of money laundering defined under Section 3 of the PMLA. Accordingly, presence of 'proceeds of crime' is *sine qua non* for invoking the jurisdiction of PMLA for the offence of money laundering.

42. Pertinently, in the present case, the allocation letter of coal block did not culminate into mining lease of the coal block. Resultantly, neither any coal was extracted nor any commercial exploitation of the coal block ever commenced nor revenue, profit or financial gain was generated from the coal block.

43. The allegations in the present case are confined to two alleged sets of 'proceeds of crime' i.e. (i) allocation letter of Kesala North Coal Block dated 05.08.2005 in favour of A-1 RSPL; and (ii) Rs.3.08 crores acquired/received by A-1 RSPL during FY 2009-10 for subscription of its 14 lakh preferential equity shares in favour of non-promoters namely M/s Modern Ferno Alloys Pvt. Ltd. and M/s AD Suppliers Pvt. Ltd. at the rate of Rs.22/- each [Rs.10/- (face value) and Rs.12/- (as premium)]. The core

issue for determination is whether either of the above satisfies the statutory definition of ‘proceeds of crime’ under Section 2(1)(u) PMLA and in the succeeding paragraphs, the said facet is proposed to be discussed, analyzed and determined.

### **ALLOCATION LETTER OF THE COAL BLOCK**

44. The Directorate of Enforcement has contended that the allocation letter dated 05.08.2005 of Kesala North Coal Block, Chhattisgarh in favour of A-1 RSPL is ‘property’ within the meaning of Section 2(1)(v) of the PMLA and as it has been derived or obtained as a result of criminal activity relating to the scheduled offence. Therefore, it itself is ‘proceeds of crime’ within the meaning of Section 2(1)(u) of the PMLA. However, the defence has contended that the said allocation letter is merely a ‘valuable right’ which did not culminate into ‘property’ as no mining lease qua the said coal block was executed before it was revoked in the year 2014 and no financial gains were generated pursuant to the said allocation.

45. The Directorate of Enforcement has placed reliance upon the judgment **Manohar Lal Sharma (supra)** to support its contention. However, the said judgment is not of much use for the prosecution on the said aspect as the Hon’ble Apex Court in the said judgment did not term the letter of allocation of coal block to be ‘property’. It was merely held to be a ‘valuable right’ amounting to grant of largesse to the allottee giving it a preferential right to be considered for creation of interest in the coal block by execution of mining lease.

46. The relevant portions of the said judgment are reproduced hereunder:-

“70. We are unable to accept the submission of the learned Attorney General that allocation of coal block does not amount to grant of largesse. It is true that allocation letter by itself does not authorize the allottee to win or mine the coal but nevertheless the allocation letter does confer a very important right upon the allottee to apply for grant of prospecting licence or mining lease. As a matter of fact, it is admitted by the interveners that allocation letter issued by the Central Government provides rights to the allottees for obtaining the coal mines leases for their end-use plants. The banks, financial institutions, land acquisition authorities, revenue authorities and various other entities and so also the State Governments, who ultimately grant prospecting licence or mining lease, as the case may be, act on the basis of the letter of allocation issued by the Central Government. As noticed earlier, the allocation of coal block by the Central Government results in the selection of beneficiary which entitles the beneficiary to get the prospecting licence and/or mining lease from the State Government. Obviously, allocation of a coal block amounts to grant of largesse.

71. Learned Attorney General accepted the position that in the absence of allocation letter, even the eligible person under Section 3(3) of the CMN Act cannot apply to the State Government for grant of prospecting licence or mining lease. The right to obtain prospecting licence or mining lease of the coal mine admittedly is dependant upon the allocation letter. The allocation letter, therefore, confers a valuable right in favour of the allottee.....”

47. The ‘valuable right’ and ‘property’ are not synonyms. All ‘property’ contains ‘valuable rights’ but all ‘valuable rights’ are not necessarily ‘property’. The ‘valuable right’ constitutes ‘property’ if it is transferrable or creates enforceable ownership or it results in economic gain. The allocation of a coal block confers a ‘valuable right’ to the allottee to obtain a mining lease in accordance with law. It does not amount to transfer or ownership of the coal block or coal *in situ*. The proprietary interest arises only upon grant of mining lease which constitutes property. The allocation of a coal block is merely a statutory and valuable right to acquire a mining

lease subject to fulfillment of prescribed conditions. The allocation itself does not create any proprietary interest in the coal block. Such interest arises only upon grant of the mining lease. What is valuable is not the coal block itself but the right flowing from allocation to obtain a mining lease which alone creates the proprietary interest.

48. A letter of allocation of a coal block does not create any interest, right or title in the coal block itself. It merely creates a conditional right to pursue a mining lease which may or may not fructify. It is a valuable but limited right in favour of the company to be considered with preference for grant of a mining lease subject to fulfillment of statutory conditions. No title, lease hold or possessory interest in the coal block arises based upon the letter of allocation of a coal block. The coal block remains a State property until a mining lease is executed under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). It merely confers upon the company a valuable but inchoate right, namely, a preferential entitlement to be considered for grant of a mining lease subject to fulfillment of statutory requirements and approvals. The allocation is merely a preliminary step, conferring at best a valuable right i.e. a preferential entitlement to be considered for grant of a mining lease subject to compliance with statutory requirements and the discretion of the competent authorities. It does not even, to the slightest extent, create any present right, title or interest in the coal block itself. The letter of allocation grants a valuable opportunity to pursue execution of a interest in the coal block. It does not create even an iota of right, title or interest in the coal block.

49. Had the allocation of a coal block conferred any vested or indefeasible right, every allocation letter would have necessarily and inevitably culminated in the grant of mining lease. The factual position, however, belies such contention. Several allocation letters never fructified into mining leases and on the contrary, were withdrawn or revoked even prior to the pronouncement of the final judgment of the Hon'ble Supreme Court in **Manohar Lal Sharma (supra)**. This unmistakably establishes that the transition from allocation to mining lease was neither automatic nor a mere ministerial act depending upon the fulfillment of written formalities but was contingent upon substantive considerations and the continued subsistence of governmental discretion.

50. The grant of largesse is not equivalent to property. 'Largesse' means a benefit granted by the State and it may ripen into property only when all statutory conditions are fulfilled and a final grant, in the form of lease, is made unless then it remains a concession not a right in rem. 'Largesse' is a concession/privilege whereas property is a vested right protected by the law. Grant of largesse creates, at best, a privilege or expectation. It becomes a property only after final statutory compliance and execution of lease deed.

#### LAW RELATED TO ALLOCATION LETTER ENUNCIATED IN PRAKASH INDUSTRIES JUDGMENTS

51. The Directorate of Enforcement has contended that the **Prakash Industries-I & II, Division Bench** support their case though their operation has been stayed by the Hon'ble Supreme Court. Even though, the law laid down in the said two judgments has been eclipsed by the stay granted by Hon'ble Supreme Court, I deem it appropriate that the ratio laid down in

the said two judgments be also considered to ascertain if it actually supports the case of the prosecution.

52. The background of **Prakash Industries-I, Single Judge** judgment is that coal block was allocated to Prakash Industries Limited (*hereinafter referred to in short as 'PIL'*) on 04.09.2003. Thereafter, mining lease was executed in its favour and it started excavation of coal for commercial gains. The said allocation/lease was ultimately canceled in terms of the judgment of Hon'ble Supreme Court in **Manohar Lal Sharma (supra)** in the year 2014. An FIR was lodged by CBI in the year 2010 alleging misrepresentation by PIL in order to obtain the coal allocation as well as diversion of coal extracted from the said coal block and after its investigation, charge-sheet was filed before the competent court. The said FIR/charge-sheet was quashed by the Hon'ble Delhi High Court in September, 2014. In the meanwhile, on 25.08.2014, the Hon'ble Supreme Court vide its judgment in **Manohar Lal Sharma (supra)** canceled the allocation of all the coal blocks from the year 1993 till the year 2010 including the coal block allocated to PIL. Thereafter, in December, 2016, second FIR was lodged by the CBI against PIL with the allegation of dishonest misrepresentation for obtaining allocation of the coal block which was also subject matter of the above-mentioned first FIR.

53. Subsequently, on the strength of the second FIR relating to the scheduled offence, the Directorate of Enforcement invoked the provisions of PMLA and provisionally attached the 'proceeds of crime' in the form of the revenue or financial gains generated by PIL by extraction of the coal from the impugned coal block. The said provisional attachment order was challenged before Learned Single Judge of Hon'ble Delhi High Court in

the writ petition. The said petition was allowed in **Prakash Industries-I, Single Judge** wherein it was *inter alia* held that allocation of coal block itself is neither a 'property' nor 'proceeds of crime'. It further held that the Directorate of Enforcement does not have jurisdiction to cover the events post 04.09.2003 i.e. the date of allocation of coal block to PIL as separate scheduled offence that was registered as former FIR (in the year 2010) has been quashed. It held that in absence of the predicate offence qua the events post allocation of coal block, the Directorate of Enforcement does not have jurisdiction to attach the 'proceeds of crime' allegedly generated thereafter. Therefore, the provisional attachment was held to be bad in law.

54. The backdrop of **Prakash Industries-II, Single Judge** is that an FIR was lodged by CBI in the year 2014 for the offence of cheating and other scheduled offences with the allegations that PIL dishonestly misrepresented in its application for allocation of coal block to the Screening Committee for securing Fatehpur Coal Block. Based upon the said misrepresentations, the Screening Committee recommended allocation of the said coal block to the PIL on 13.09.2007. On 17.11.2007, PIL sent a letter to Bombay Stock Exchange (BSE) apprising it of the allocation of Fatehpur Coal Block in its favour even though, the actual letter of allocation was issued in favour of the PIL and its joint venture partner later on 06.02.2008. On the said allegations, the Directorate of Enforcement lodged an ECIR having reasons to believe that 'proceeds of crime' had been generated as a result of criminal activity relating to the scheduled offence. Pertinently, the said coal block was canceled in the light of judgment rendered by the Hon'ble Supreme Court in **Manohar Lal Sharma (supra)** on 25.08.2014.

55. In the said ECIR, Provisional Order of Attachment (POA) was passed for provisionally attaching the 'proceeds of crime' to the tune of Rs.118.75 crores allegedly generated by PIL by allotment of preferential shares based upon a false declaration to the Bombay Stock Exchange (BSE) on 17.11.2007 asserting that the Fatehpur Coal Block had been allotted in its favour, even though, the allocation came to be made later only on 06.02.2008. The sale price of the preferential shares was considered to be 'proceeds of crime' as misrepresentation by PIL of allocation of coal block to Bombay Stock Exchange (BSE) even prior to its actual allocation resulted in artificial rise in its share prices. They were attached on the premise that they were illegal gains obtained and derived by utilization of the coal block allocation letter and relatable to the scheduled offence of criminal conspiracy to cheat. Significantly, the allegations with respect to share price manipulation and the generation of proceeds of crime from such activities were neither mentioned in the FIR nor in the charge-sheet nor in the ECIR. The said POA was challenged in the writ petition which was decided by Learned Single Judge in **Prakash Industries-II, Single Judge**.

56. Learned Single Judge in **Prakash Industries-II, Single Judge** set aside the said PAO on the ground that in **Prakash Industries-I, Single Judge** the allocation of coal block has been held to be neither 'property' nor 'proceeds of crime' and the allegations related to share price manipulation is not the subject matter of the scheduled offence. Therefore, in absence of any scheduled offence having allegations related to share price manipulation, the ED does not have jurisdiction to investigate or inquire into the same. It held that the allocation of the preferential shares and the

proceeds garnered therefrom is what constitutes the substratum of the PAO. However, no report or complaint in relation thereto stands registered as scheduled offence. Therefore, the pre-requisite for exercise of jurisdiction by the Directorate of Enforcement under the PMLA on the subject of share price manipulation is glaringly missing.

57. Aggrieved by the said judgments of Learned Single Judge, the Directorate of Enforcement challenged them before the Division Bench of Hon'ble Delhi High Court through two separate LPAs which were decided by **Prakash Industries-I and II, Division Bench** wherein both the **Prakash Industries-I and II, Single Judge** judgments were set aside.

58. In **Prakash Industries-I, Division Bench**, the Hon'ble Delhi High Court held that coal block allocation letter is a 'valuable right', which once exercised and converted into economic gain becomes a form of 'property'. Thus, it means that coal block allocation letter becomes 'property' only once it is exercised and converted into economic gain whereas before that, it is only a 'valuable right'. Its relevant portion is reproduced as under:-

“36. In the present case, the coal block allocation letter, although subsequently cancelled by the Supreme Court in ML Sharma (Supra), is an instrument evidencing a right or interest, namely, a right to obtain mining lease from the Government and extract coal through its utilisation. **In accordance with, the definition of 'property' provided under both Black's Law Dictionary and Section 2(1)(v) of the PMLA, such a right, once exercised and converted into economic gain becomes a form of property and the very foundation for what the Directorate has identified as proceeds of crime.** Moreover, it is undisputed that the allocation letter was neither dormant nor kept in abeyance rather was utilised by PIL to derive substantial financial gains through coal excavation, leading to form the very foundation for the economic generation stated to be proceeds of crime by the Directorate.”

(emphasis supplied)

59. In **Prakash Industries-I, Division Bench**, the Hon'ble Delhi High Court held that allocation letter dated 04.09.2003 is 'property' within the meaning of Section 2(1)(v) of the PMLA. In specific circumstances of the said case, the said coal block allocation letter dated 04.09.2003 was acted upon by using it to obtain mining lease and thereafter, coal was extracted from the said coal block. Thus, applying the legal principles of 'property' vis-a-vis coal block allocation letter as stated in preceding paragraph, the Hon'ble Delhi High Court held that the said allocation letter dated 04.09.2003 was 'property'. However, even after holding the coal block allocation letter dated 04.09.2003 to be 'property', the Hon'ble Delhi High Court did not categorize it to be 'proceeds of crime'. Rather, it distinguished it from the 'proceeds of crime' by using the conjunction 'whereas' to state that the coal block allocation letter is 'property' whereas the illegal financial gains facilitated or generated from the said property is 'proceeds of crime' under Section 2(1)(u) of the PMLA. The relevant portion of **Prakash Industries-I, Division Bench** is reproduced as under:-

“66. For all the foregoing reasons, this Court has reached the conclusion that the issuance of the Provisional Attachment Order under Section 5 of the PMLA formulates a foundational executive action, the legality of which was challenged by PIL under Article 226 of the COI. **Further, the coal block allocation letter dated 04.09.2003 obtained through misrepresentation constitutes 'property' under Section 2(1)(v) of the PMLA, whereas the illegal financial gains facilitated the generation of proceeds of crime under Section 2(1)(u) of the PMLA.** Furthermore, PIL's continued possession and use of these proceeds established the offence under Section 3 of the PMLA. Moreover, the Directorate has satisfied the statutory pre-requisites envisaged under Section 5 of the PMLA justifying the issuance of PAO.”

(emphasis supplied)

60. In **Prakash Industries-II, Division Bench**, the Hon'ble Delhi High Court held that the allocation letter leading to an exclusive commercial benefit falls well within the scope of an 'intangible property' and as such, constitutes 'proceeds of crime'. Thus, it demarcated the distinction between the coal block allocation letter and the 'property' to hold that only those coal block allocation letter that leads to or results in financial or exclusive commercial gains are 'property' and as such, constitutes 'proceeds of crime'. The offence of money laundering is distinct and continuing offence which subsists as long as such illicit gains are possessed or utilized by the accused. Its relevant portions are reproduced as under:-

“35. In substance, this Bench in **Prakash Industries-I**, upheld the validity of the PAO, with a finding that **the definition of property under Section 2(1)(u) of the PMLA is deliberately wide to include both tangible and intangible assets, including rights and interests resulting into economic value. Accordingly, an allocation letter leading to an exclusive commercial benefit, falls well within the scope of an intangible property and as such constitutes proceeds of crime.** Further, the misrepresentation by PIL in order to obtain such an allocation would be rendered as a criminal activity, resultantly generating proceeds of crime under Section 2(1)(u) of the PMLA. **Against this backdrop, it was then established that Section 3 of the PMLA criminalises all processes connected with such proceeds, making money laundering a distinct and continuing offence which subsists as long as such illicit gains are possessed or utilized by the accused.**

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39. To put it in other words, even if no separate predicate offence is registered in relation to the subsequent act of utilisation of property to acquire funds through a legalised transaction, the classification of the illegal gains used by means of a legal transaction emanating from an illegal means adopted for attaining coal block allocation would still be construed as “proceeds of crime”. This is because the proceeds

nevertheless are traceable either directly or indirectly, to the original criminal activity relating to a scheduled offence.

XXXX XXXX XXXX XXXX

41. In view of the aforesaid, it would not be imperative and/or reasonable to compartmentalize the offence of money laundering and limit its scope only to an isolated event of misrepresentation by PIL. The offence shall rather be construed or viewed as a series of connected acts which begins from the generation of proceeds by unlawful means extending through their subsequent lawful layering or projection.”

(emphasis supplied)

61. The crux of **Prakash Industries-I and II, Division Bench** judgments can be summarized as follows:-

(i) Coal block allocation letter, secured as a result of scheduled offence, is ‘property’ under Section 2(1)(v) of PMLA provided it results in or leads to direct or indirect financial or commercial gains and as such, it falls under the ambit of ‘proceeds of crime’ under Section 2(1)(u) of PMLA;

(ii) The ‘valuable right’ associated with the coal block allocation letter, if exercised, and converted into mining lease leading to extraction of coal (financial or commercial gains), constitutes the ‘property’ directly derived as a result of criminal activity relating to the scheduled offence and thus, it would fall within the meaning of ‘proceeds of crime’ under Section 2(1)(u) of PMLA;

(iii) The ‘valuable right’ associated with the coal block allocation letter, if exercised, and converted into financial gains by artificial escalation of the shares of allottee company on the strength or guise of the said letter, constitutes the ‘property’ indirectly derived as a

result of criminal activity relating to the scheduled offence and thus, it would fall within the meaning of 'proceeds of crime' under Section 2(1)(u) of PMLA; and

(iv) The offence of money laundering is a continuing offence which subsists as long as such illicit gains are possessed or utilized by the accused and they can be directly or indirectly relatable back to the scheduled offence.

62. This court is conscious of the fact that the operation of all the four Prakash Industries judgments has been stayed by the Hon'ble Supreme Court on 16.01.2026. However, it appears that Directorate of Enforcement has misconstrued the **Prakash Industries-I and II, Division Bench** judgments to interpret that the Hon'ble Delhi High Court has held that allocation letter itself bereft of any consequent illegal or financial gains would fall in the category of 'property' and as such, constitutes 'proceeds of crime'. The only inescapable interpretation and conclusion of the said judgments of Division Bench of the Hon'ble Delhi High Court is that coal block allocation letter unless it leads to or results in financial gains, direct or indirect but relatable, cannot be construed as 'proceeds of crime' within the meaning of Section 2(1)(u) of the PMLA.

#### **CONCLUSION IN RELATION TO COAL BLOCK ALLOCATION LETTER IN THIS CASE**

63. Admittedly, after allocation of Kesala North Coal Block to A-1 RSPL vide allocation letter dated 05.08.2008, neither any mining lease of the said coal block was executed in favour of A-1 RSPL nor any coal was extracted or any commercial gains were directly derived from the said coal block. Thus, in view of the above discussion and in the light of law laid

down by the Hon'ble Supreme Court in **Manohar Lal Sharma (supra)**, the said allocation letter dated 05.08.2008 remained merely a 'valuable right' which did not culminate into 'property' before it was canceled or withdrawn. Furthermore, even applying the principles of law laid down by the Hon'ble Delhi High Court in **Prakash Industries-I and II, Division Bench (their operations being stayed)**, coal block allocation letter would not fall within the meaning of 'property' or 'proceeds of crime' unless the prosecution shows that A-1 RSPL directly or indirectly derived any financial gains from it by exercising valuable right connected to it. The stay operating on **Prakash Industries-I and II, Division Bench** shall not alter the position of law that is enunciated hereinabove which is based upon the applicable and binding precedents, independent of the stayed Prakash Industries judgments. Nevertheless, the present conclusion is fully in consonance with and supported by, the ratio laid down in the said Division Bench judgments.

64. In the context of coal block allocation, a company may derive profits or financial gains in multiple direct and indirect ways. The most obvious mode is through commercial exploitation by extracting and selling coal or using it for captive consumption, thereby generating revenue or reducing input costs, which results in measurable financial gain. Even prior to extraction, economic benefit may accrue through enhancement of the company's net worth, increase in share valuation and improved creditworthiness, enabling it to secure loan or attract investors on more favourable terms. The allocation may also confer a strategic market advantage strengthening the company's competitive position and future earning capacity. Thus, profit derivation may be immediate or prospective,

direct or indirect, tangible or financial in nature an issue that becomes legally significant when determining whether such benefit amounts to 'property' or 'proceeds of crime', particularly in light of judicial observations in **Manohar Lal Sharma (supra)**.

65. The allocation letter of a coal block, when considered in isolation and unaccompanied by any financial benefit, economic gain, or derived asset, constitutes merely a 'valuable right' and does not amount to 'property' in the strict legal sense unless the allocation results in (i) execution of a mining lease; (ii) extraction and sale of coal; (iii) creation of downstream assets; and (iv) enhancement of share value traceable to the allocation. It cannot be said that any 'property' has been derived. Therefore, in the absence of demonstrable economic benefit or conversion of the allocation into a tangible or intangible asset with monetary value, the allocation letter remains a valuable statutory privilege rather than 'property' capable of being treated as 'proceeds of crime'.

66. In the foregone paragraphs, it has been conclusively concluded that A-1 RSPL did not obtain any direct financial benefit or economic gain from the allocation letter dated 05.08.2008 of Kesala North Coal Block as it neither executed its mining lease nor extracted any coal from the said block. Thus, the 'valuable right' associated with the said coal block allocation letter was not exercised and converted into mining lease leading to extraction of coal (financial or commercial gains). In absence thereof, it does not constitute the 'property' directly derived as a result of criminal activity relating to the scheduled offence and consequently, it would not fall within the meaning of 'proceeds of crime' under Section 2(1)(u) of PMLA.

## **PREFERENTIAL EQUITY SHARES OF A-1 RSPL**

67. Having concluded that the allocation letter of Kesala North Coal Block did not lead or result in any direct financial benefit or economic gain to A-1 RSPL, it becomes necessary to examine if any indirect financial benefit or economic advantage was derived therefrom. In this regard, the sole allegation in the present complaint is that during FY 2009-10, A-1 RSPL sold its 14 lakh preferential equity shares at a total value of Rs.3.08 crores to two non-promoter entities namely M/s Modern Ferno Alloys Pvt. Ltd. and M/s AD Suppliers Pvt. Ltd. at the rate of Rs.22/- each [Rs.10/- (face value) and Rs.12/- (as premium)]. According to the prosecution, such investment was procured on the strength or under the guise of the said coal block allocation letter dated 05.08.2008. Accordingly, the prosecution contends that the said sum of Rs.3.08 crores constitutes 'proceeds of crime' allegedly derived or obtained by A-1 RSPL, through other three accused persons, as a result of criminal activity relating to the scheduled offence of securing coal block allocation letter by misrepresentation.

68. It is not disputed that a company may induce the third party/entity to subscribe to its preferential equity shares of the company by inducing it under the pretext of coal block allocation letter, projecting it as a crucial determinative factor reflecting the financial soundness and future commercial prospects of the company. In such a case, the use of coal block allocation would constitute an indirect exploitation of the allocation for generating financial gains. Consequently, consideration received from the sale of such preferential equity shares to the said third party/entity would certainly fall within the ambit of 'proceeds of crime', being 'property' indirectly derived as a result of criminal activity relating to the scheduled

offence of securing coal block allocation by misrepresentation. However, in absence of any such inducement or undue influence based upon coal block allocation letter, the consideration/money derived from the said transaction cannot be termed as 'proceeds of crime'. The reason for it is apparent and obvious as it lacks direct or indirect nexus or causal effect with the criminal activity relating to the scheduled offence. In the succeeding paragraphs, it is proposed to be discussed whether there is any perceivable nexus or relation of the coal block allocation with the said transaction.

69. As per prosecution, the sale consideration of Rs.3.08 crores was received by A-1 RSPL during the FY 2009-10 from the aforementioned two non-promoter entities on account of issuance of 14 lakh preferential equity shares to them at the rate of Rs.22/- per share though value of its share was Rs.10/- per share. The said allegations are required to be understood in true perspective by aligning it with the admitted fact as evident from the Annual Reports of A-1 RSPL, which are even relied by the prosecution. The Annual Report of A-1 RSPL for the FY 2007-08 **(RUD-19)** reflects that the said shares to the non-promoters along with 56 lakh preferential equity shares to the promoters were allotted during the said financial year itself at the same rate i.e. Rs.22/- per share. They were allotted in the form of convertible warrants to be converted/subscribed by the promoters and non-promoters into equity shares in their favour by paying their price within 18 months of the date of allotment of warrants. The disclosure of the name of non-promoter investors in the Annual Report **(RUD-19)** and payment of price of 14 lakh preferential equity shares by them to the tune of Rs.3.08 crores within 18 months during the FY 2009-

10 unequivocally manifest that they had expressed their interest/gave consent to invest in the said shares even before publication of Annual Report of A-1 RSPL for the FY 2007-08 **(RUD-19)**.

70. The Annual Report **(RUD-21)** of A-1 RSPL for FY 2009-10 reflects that the consideration sum of Rs.3.08 crores towards the subscription of 14 lakh preferential equity shares was paid to A-1 RSPL during the said financial year and accordingly, they were transferred in the name of said non-promoters during the said financial year. The said fact has also been confirmed by the communication received by Directorate of Enforcement from Bombay Stock Exchange (BSE) **(RUD-26)**. The Directorate of Enforcement misconstrued that the allotment of the said 14 lakh preferential equity shares were made in the FY 2009-10. On the contrary, the Annual Report of A-1 RSPL for the FY 2007-08 **(RUD-19)** unequivocally indicates that the said shares, in the form of warrants, were allotted to the non-promoters during the FY 2007-08 which were convertible into equity shares before the expiry of 18 months of their allotment. The non-promoters by making the payment of the subscription price of Rs.3.08 crores during the FY 2009-10 exercised their pre-existing right to get those allotted warrants converted into the equity shares at the price already fixed in the FY 2007-08. There are no allegations against the A-1 RSPL that it violated or flouted any of the guidelines of SEBI or any other extant law, in allotment and issuance of preferential equity shares in the manner as detailed above duly reflected in the Annual Reports of A-1 RSPL for the FYs 2007-08 and 2009-10 **(RUD-19 and RUD-21 respectively)**.

71. A-1 RSPL was a public listed company with a turnover exceeding Rs.500 crores even prior to coal block allocation. The Chapter XIII of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (updated till November 29, 2007) provides for guidelines in relation to pricing of the preferential shares. As per the said guidelines for a listed company, the price for the preferential equity shares was required to be determined on the basis of a prescribed formula linked to the average market price of the shares quoted on a recognized stock exchange during its relevant preceding period i.e. average of the weekly high and low of the closing price during six months preceding the relevant date or average of the weekly high and low of the closing price during two weeks preceding the relevant date, whichever is higher. The above SEBI guidelines make it apparent that the preferential shares could not be priced less than the higher of the average of the weekly high and low of the closing prices of the related shares in the preceding six months or preceding two weeks. Its price has to be fixed at a higher price, than of the highest of the aforesaid two averages. The above formula of the SEBI has been devised for the protection of interest of shareholders so that preferential allotment of shares to selected investors is not made at price lower than market rates. If the preferential shares are convertible, the conversion price or formula had to be predetermined at the time of issuance/allotment and disclosed upfront.

72. Based upon the said SEBI guidelines, the price of the preferential shares of A-1 RSPL was fixed at Rs.22/- for being the nearest whole number of the highest of the said two averages. The said fact is reflected from the Audit Report of A-1 RSPL for the FY 2007-08 **(RUD-19)**.

Further, there is no allegation that any of the law, rule or SEBI guidelines was violated in fixing the price of the preferential equity shares of A-1 RSPL during FY 2007-08.

73. The allegation of the prosecution that the preferential equity shares were fixed at the price of Rs.22/- though their price was Rs.10/- is extremely preposterous and unfounded. The Annual Report (**RUD-19**) of A-1 RSPL for the FY 2007-08 at its Page No.15 depicts that the shares of A-1 RSPL were trading in the market between Rs.17.40 to Rs.47/- during the said financial year. Therefore, it is incomprehensible as to how the prosecution arbitrarily concluded that its price was Rs.10/- during the relevant period. There are no allegations that the fluctuation in the price of shares of A-1 RSPL, as depicted in its annual reports, was due to coal block allocation. Rather, as per the chart of share value of A-1 RSPL contained at Page No.13 in its annual report for the FY 2008-09 (**RUD-20**) i.e. after coal block allocation dated 05.08.2008, the price of its shares dipped from Rs.26.10 in August, 2008 to Rs.21.45 in September, 2008 and continued plunging till March, 2009 when it reached as low as Rs.9/- per share. Thus, the coal block allocation to A-1 RSPL on 05.08.2008 had no positive impact on the value of its shares which continued to decline after the said allocation. Thus, it is apparent that the value of the shares of A-1 RSPL was governed by the market forces unrelated to and independent of coal block allocation letter.

74. In view of the formula for fixing price of preferential equity shares duly explained in the RUD-19, based upon the calculation of figures as depicted in the report, there is no reason to assume that the said price was unreasonably and arbitrarily exaggerated to cause wrongful loss to the non-

promoters or to acquire wrongful gain by A-1 RSPL. Significantly, the promoters of A-1 RSPL were also allotted 56 lakh preferential equity shares at the same price of Rs.22/- during the said financial year. This fact further supports the conclusion that the pricing of the said shares was uniform, transparent, reasonable and justifiably fixed as per law.

75. After concluding no illegality, irrationality or unreasonableness in the issuance and pricing of 14 lakh preferential equity shares by A-1 RSPL to two non-promoter entities, it is required to be examined if the coal block allocation letter dated 05.08.2008 influenced or induced the non-promoters in subscribing to the said shares. The Annual Report (**RUD-19**) of A-1 RSPL for FY 2007-08 was published on 02.09.2008 and for the first time, on its Page No.18, specific reference has been made regarding coal block allocation letter dated 05.08.2008 to A-1 RSPL. Notably, the said report also discloses about the transaction of the said 14 lakh preferential equity shares. The said Annual Report (**RUD-19**) itself evidences that the allotment preceded its publication. In such circumstances, when the annual report simultaneously disclosed both the instances of allotment of preferential equity shares and allocation of coal block, the said report cannot be determinative or decisive factor that allegedly induced the non-promoter subscribers to invest in the said shares. The annual report containing the fact regarding allocation of coal block could not have operated as an inducement to the non-promoters to subscribe to the preferential equity shares of A-1 RSPL, since the disclosure of allocation and the disclosure of subscription formed part of the same document.

76. The prosecution has alleged that the said Annual Report (**RUD-19**) at its Page No.18 disclosed about the coal block allocation and it resulted

in attracting positive attention from investors including the said two non-promoters. However, the said allegations are not sustainable as the said Annual Report (**RUD-19**) was published on 02.09.2008 whereas 14 lakh preferential equity shares were allotted to the non-promoters prior to its publication as evident from the said report for being disclosed in it itself. Accordingly, there is no document evidencing disclosure of the coal block allocation prior to allotment of preferential equity shares that could have induced the non-promoters to consent to such allotment.

77. In absence of any document prior in time to the allotment of 14 lakh preferential equity shares to the non-promoters, the possibility of orally influencing or inducing the non-promoter entities to invest in the said shares on the strength or under the guise of said coal block allocation letter cannot be conclusively ruled out. However, the prosecution did not examine any representative including Managing Director, Chairman, Director, In-Charge, Secretary or any employee whatsoever to establish the nexus or causal effect relations of the said transaction of Rs.3.08 crores with the coal block allocation letter dated 05.08.2005 in favour of A-1 RSPL. Further, the prosecution did not place on record any document of the said two non-promoter entities that could show that their decision to invest in the said preferential shares was influenced by the coal block allocation to A-1 RSPL.

78. Furthermore, there is no allegation that the amount of Rs.3.08 crores used by the non-promoter entities to subscribe to 14 lakh preferential equity shares of A-1 RSPL was sourced or derived from illegal or unlawful means.

79. In view of the above discussion, there is not even an iota of evidence on record to suggest that the said 14 lakh preferential equity shares were subscribed by the non-promoters on being influenced by the allocation of coal block allegedly secured by A-1 RSPL by misrepresentation. The entire case of the prosecution, on the present aspect, is based upon unfounded assumptions, illusions and conjectures. There is not even a trace of element or reason to connect the said transaction with the coal block allocation to A-1 RSPL. Thus, the said transaction through which A-1 RSPL derived/earned Rs.3.08 crores cannot be held to be related or connected to the coal block allocation letter in any manner whatsoever. Therefore, the said amount cannot be held to be 'proceeds of crime'.

80. The Directorate of Enforcement does not possess jurisdiction to treat every subsequent commercial transaction of an accused of the scheduled offence as 'proceeds of crime' in absence of demonstrable nexus with the scheduled offence. Not each and every transaction by the accused after accomplishment of the scheduled offence can be termed as 'proceeds of crime' unless it is directly or even indirectly has any connection, relation or it resulted as a consequence of criminal activity relating to the scheduled offence. The Directorate of Enforcement cannot usurp the jurisdiction not conferred to it by the law. The present case is a clear and classical example of assumption of jurisdiction of Directorate of Enforcement when all the material available on record clearly points against it. The material on record does not disclose even a *prima facie* connection between the coal block allocation and the subscription amount of Rs.3.08 crores of the preferential equity shares of A-1 RSPL by the non-promoter entities. The

assumption of jurisdiction by the Directorate of Enforcement, in the absence of nexus, is legally unsustainable.

81. At the cost of repetition, it is reiterated that in the earlier part of this order, it has already been conclusively held that A-1 RSPL did not directly exercise and convert 'valuable right' associated with allocation of coal block allocation letter dated 05.08.2008 into financial or economic gains. At this stage, it is expedient to revert to the proposition regarding the possibility of indirectly converting 'valuable right' arising from the said coal block allocation letter into financial gains, thereby transforming the said right into 'property' and consequent 'proceeds of crime'. The only allegation regarding the indirect conversion of the coal block allocation letter dated 05.08.2008 into financial gains by A-1 RSPL is that it allotted its 14 lakh preferential equity shares to two non-promoter entities for total consideration of Rs.3.08 crores. However, as discussed hereinabove in detail, the alleged amount of Rs.3.08 crores cannot be treated as 'proceeds of crime' since it bears neither a direct nor an indirect nexus with the criminal activity relating to the scheduled offence. Thus, the prosecution has miserably failed to establish that A-1 RSPL has derived any economic or financial benefit, even indirectly, from the use of coal block allocation letter dated 05.08.2008. Consequently, in the absence of any material or proof showing that the coal block allocation letter dated 05.08.2008 was utilized by A-1 RSPL, directly or indirectly, for deriving any financial or economic benefits, it cannot be regarded as 'property' derived from criminal activity and therefore, cannot call within the ambit of 'proceeds of crime' within the meaning of Section 2(1)(u) of PMLA.

82. Another important aspect of the present complaint which warrants consideration is the self-contradictions inherent in the story of the prosecution. On one hand, the prosecution has alleged that A-1 RSPL induced the non-promoters to subscribe to its 14 lakh preferential equity shares on the strength of the coal block allocation letter and on the other hand, the prosecution has alleged them to be complicit in commission of the present offence of money laundering. Therefore, it creates a substantial inconsistency in the prosecution's case, thereby rendering prosecution's narrative self-contradictory and self-destructive. The said vital self-contradiction has further decimated the already weak case of the prosecution.

83. Since the foundational ingredient of the offence of money laundering under Section 3 of PMLA, namely the existence of 'proceeds of crime' has not been established in this case, no ground exists for proceeding further or to take cognizance of the alleged offence. Once the very substratum of the offence is found to be absent, there remains no occasion to examine the individual roles attributed to the accused persons in the commission of an offence which itself has been found to be non-existent or non-est.

## CONCLUSION

84. After carefully going through the complaint, arguments addressed, written notes submitted by the Learned Special Public Prosecutor for the complainant/Directorate of Enforcement & by the Learned Counsel for the accused persons, judgments relied upon by them and for the reasons recorded in this order, this Court is of the considered view that from the material placed before this Court, the prosecution has failed to demonstrate

the existence of 'proceeds of crime' in this case. Accordingly, no offence of money laundering under Section 3 of Prevention of Money-Laundering Act, 2002 is made out and therefore, no ground exists for taking cognizance of the alleged offence or for proceeding further with the present complaint.

85. Consequently, the prayer of the complainant/Directorate of Enforcement in the present complaint to take cognizance of the offence of money laundering is hereby declined.

86. Accordingly, in view of Section 8(6) of PMLA, the money/property (in the form of immovable properties valued at Rs.30,72,380/- in total, as detailed in the complaint) attached by the complainant/Directorate of Enforcement in this case from A-1 RSPL be released forthwith to the said company.

87. File be consigned to the record room after due compliance.

**Announced in the open Court on 06.03.2026.**

**(Dheeraj Mor)**  
**Special Judge, (PC Act) (CBI)**  
**(Coal Block Cases)-01, RADC**  
**New Delhi: 06.03.2026**