HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION Nos.4043, 4044 of 2019, 7987, 9441 & 16770 of 2021 & 2899 , 5183 of 2022 & 11520 of 2023

COMMON ORDER:

The Writ Petitions vide W.P.Nos.4043 and 4044 of 2019 are filed by Corporation Bank for a Mandamus declaring that G.Os.issued by Home Department, Government of Andhra Pradesh, to the extent of the properties mortgaged by M/s. Agri Gold Farm Estate India Private Limited to the petitioner Bank as illegal, arbitrary, unjust and violation of Article 300-A of the Constitution and consequently raise the attachment of the properties mortgaged to the petitioner bank.

2. The writ petition vide W.P.No.7987 of 2021 is filed by Union Bank of India (erstwhile Corporation Bank) for declaring that Provisional Attachment order No.4/2020, file No.ECIR/HYZO/09/2018 issued by the Enforcement Directorate, under Section 5(1) of Prevention of Money Laundering Act, to the extent of the properties mortgaged by respondent No.6-m/S. Singaraya hills Green Power Genco Pvt. Ltd., to the petitioner Bank as illegal, arbitrary, unjust and violation of Article 300-A of Constitution of India.

3. The Writ Petition vide W.P.No.9441 of 2021 is filed by M/s. Agri Gold Farm Estates Pvt. Limited for a writ of certiorari calling for the records pertaining to the Provisional Attachment Orders 04/dated 21.12.2020 in proceedings ECIR No. ECIR/HYZO/09/2018 passed by the Directorate of Enforcement and the consequential proceedings in OC No.1391 of 2021 pending before the Adjudicating Authority, under the provisions of PML Act and quash the same being illegal, arbitrary, violative of principles of natural justice.

4. The writ petition vide W.P.No.16770 of 2021 is filed by Sai Fortune Apartment Owners Association for writ of mandamus declaring the action of respondent nos.1 and 2- Union of India, rep. by Secretary, Ministry of Finance and the Director of Enforcement in issuing the provisional attachment order vide (POA) No.04/2020 dated 24.12.2020 in ECIR/HYZO/09/2018 passed by the 2nd respondent- Director of Enforcement and the consequential proceedings in OC No.1391 of 2021 pending before the 4th respondent-Adjudicating Authority and quash the same being illegal and arbitrary.

5. Writ Petition vide W.P.No.5183 of 2022 is filed by M/s. BLG Infra Projects Private Limited for a writ of mandamus declaring the attachment

order No.4/2020, File No.ECIR/HYZO/09/2018 issued by respondent No.3-The Enforcement Directorate under Section 5(1) of Prevention of Money Laundering Act, to the extent of the properties purchased by the petitioner in the auction conducted on 13.11.2020 pursuant to proclamation of sale-cum-E Auction notice dated 09.09.2020 in R.P.No.01/2018 in O.A.No.968 of 2016 before the Debts Recovery Tribunal, Visakhapatnam in respect of the properties mortgaged to 7th respondent bank-Union Bank of India (Erstwhile Corporation Bank).

6. Writ petition vide W.P.No.2899 of 2022 is filed by M/s. Agri Gold Farm Estate India Limited for a Writ of certiorari calling for the records pertaining to the Provisional Attachment Orders 12/2021 dated 30.11.2021 in proceedings ECIR No. ECIR/HYZO/09/2018/5556 passed by the Directorate of Enforcement and the consequential proceedings in OC No.1598 of 2022 pending before the Adjudicating Authority, under the provisions of PML Act and quash the same being illegal, arbitrary, violative of principles of natural justice.

7. Writ Petition vide W.P.No.11520 of 2023 is filed by All India Agri Gold Customers & Agents Welfare Association for a writ of Mandamus declaring the Provisional Attachment Order No.04, dated 24.12.2020

passed by the 1st respondent-Director of Enforcement, in File No.ECIR/HYZO/09/2018 to the extent of attachment of properties belonging to the members of the petitioner association, being arbitrary, illegal and violative of principles of natural justice.

8. Almost all the Writ petitions were filed to declare the provisional attachment orders passed by the Enforcement Directorate and the proceedings pending before the Adjudicating Authority in relation to the properties of the Agri Gold Farm Estates Private Limited. Whereas the Corporation Bank though filed writ petitions vide W.P.Nos.4043 & 4044 of 2019 for declaring the G.Os.issued by Home Department, Government of Andhra Pradesh, to the extent of the properties mortgaged by M/s. Agri Gold Farm Estate India Private Limited to the petitioner Bank, later filed another writ petition vide W.P.No. W.P.No.7987 of 2021 challenging the Provisional Attachment order No.4/2020, file No.ECIR/HYZO/09/2018 issued by the Enforcement Directorate, in respect of the subject matter of the above writ petitions. Thus, the common thread that pass through all these writ petitions is the provisional attachment order passed by Enforcement Directorate and filing and pendency of Original Complaint (OC) before the Adjudicating Authority.

9. As much as the issue involved in all these writ petitions is similar, these writ petitions are heard together and being disposed of by this common order.

10. The facts that are essential for disposal of all these writ petitions can be summarized as under:

(i) M/s.Agri Farm Estates India Private Limited and its associate/subsidiary companies purchased various large extents of lands suitable for real estate ventures and converted/developed such lands into residential/farm plots and had sold, registered, transferred, allotted several lakhs of plots to customers including 'Fortune Helapuri Apartment' constructed in the year 2010. The petitioners in W.P.No.16770 of 2021 are bona fide purchasers of the plots in the said Apartment prior to 01.03.2015.

(ii) M/s. Singaraya Hills Green Power Genco Pvt. Ltd., and M/s. Agri Gold Farm Estate India Pvt.Ltd., are under the Management of M/s.Agri Gold Group. At the request of M/s. Singaraya Hills Green Power Genco Pvt.Ltd., Union Bak of India (Erstwhile Corporation Bank) sanctioned Term Loan of Rs. 18 crores to acquire land and to cultivate Energy Plantation subject to the condition of creation of equitable mortgage of land purchased out of the loan amount, hypothecation of Irrigation System, Pump sets, Tractors and Trucks acquired with Bank finance and accordingly, the said M/s. Singaraya Hills Green Power Genco Pvt. Ltd., deposited documents of title relating to Ac.1064.70 cents of agricultural land thereby creating mortgage. Subsequently, as the said firm failed to repay the liabilities, the Bank filed O.A.No.968 of 2016 before the Debts Recovery Tribunal, Visakhapatnam. The said O.A. was allowed on 31.01.2018 for realization of debt by enforcing mortgaged and Hypothecated properties. Pursuant to the orders dated 31.01.2018, Demand notice was issued in R.P.No.1/2018 followed by Form 16/attachment orders dated 12.02.2019 and Form 17 dated 12.02.2019/Notice for settling sale proclamation by Recovery Officer, Debts Recovery Tribunal, Visakhapatnam. Whereas, on 15.02.2019, G.O.Ms.No.39, Home (General A) Department, dated 15.02.2019 and G.O.Ms.No.23, Home (ARMS & SPF) department dated 20.02.2015 were issued under Section 3 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short, 'APPDFE Act'), attaching various properties of M/s. Agri Gold Farm Estate India Private Limited including the properties of M/s.Singaraya Hills Green Power Genco Private Limited, which were mortgaged in favour of the Bank for the purpose of credit limits sanctioned to it. Questioning the said G.O.Ms.No.39 and G.O.Ms.No.23, the bank filed writ petitions vide W.P.No.4043 of 2019 and W.P.No.4044 of 2019 before this Court.

(iii) The Recovery Officer, Debts Recovery Tribunal, Visakhapatnam, issued proclamation of sale-cum-E auction notice dated 09.09.2020 in R.P.No.01/2018 in O.A.No.968 of 2016 and brought the properties mortgaged to the bank i.e. Ac.1069.51 cents of land for sale and auction was conducted on 13.11.2020 and M/s. BLG Infra Projects Pvt. Ltd., (writ petitioner in W.P.No.5183 of 2022) became the successful bidder and accordingly the entire bid amount was deposited to the credit of the R.P.No.01/2018 in O.A.No.968 of 2016 on the file of the Debts Recovery Tribunal, Visakhapatnam.

(iv) On 02.01.2015, the SHO, Pedapadu Police Station, West Godavari District, Andhra Pradesh, registered a case against M/s. Agri Gold Farm Estates India Private Limited under sections 120B, 420 IPC, section 5 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short, APPDFE Act) and Section 45 of the RBI Act and Sections 3,4 and 5 of Prize Chit & Money Circulation (Banning) Act, 1978 and the Government of Andhra Pradesh by invoking the provisions of Section 3 of the APPDFE Act, 1999 issued G.O.Ms.No.22 and G.O.Ms.No.23 of Home (Arms & SPF) Department, dated 20.02.2015, G.O.Ms.No.73 of Home (Gen A2) Department, dated 05.06.2015, G.O.Ms.No.21 of Home (General-A2) Department, dated 29.02.2016 and G.O.Ms.No.39, Home (General-A) Department, dated 15.02.2019 and attached the properties of the Company. Thereafter, the CID, Andhra Pradesh filed petitions before the Special Court, Eluru designated to deal with the offences under APPDFE Act and the Special Court, Eluru passed orders on 23.09.2015, attaching all the properties of the company covered under G.O.Ms.22 and 23, dated 20.02.2015 and G.O.Ms.No.73 dated 05.06.2015.

(v) As many as fifteen (15) criminal cases in the State of Andhra Pradesh, three (03) criminal cases in the State of Telangana and some criminal cases in the State of Karnataka, Orissa and also in Andaman & Nicobar Islands were registered, for the same offence.

(vi) A Public Interest Litigation, vide PIL No.193 of 2015 was filed by Telangana Customers and Agents Association, Hyderabad seeking a direction to the respective governments of the State of Telangana and the State of Andhra Pradesh, seeking to take appropriate action for returning back their advance amounts paid to the Agrigold. The said PIL was retained in the High Court of the State of Telangana for further adjudication, after bifurcation of the unified High Court. The State of Telangana as well as State of Andhra Pradesh are contesting in the PIL. The Composite High Court, after considering the entire material on record was pleased to constitute a committee with a retired judge of Hon'ble High Court vide orders dated 09.10.2015. The said committee is taking all steps for the purpose of alienation of the properties attached and for distribution among the Depositors. The High Court has directed for sale of the properties, by way of various methods, including appointing the District Legal Services Authorities in both the States of Telangana and Andhra Pradesh and accordingly, nearly nine (09) properties were identified and sold under the supervision of the Court. The sale proceeds were deposited in the bank and the same were still lying for the purpose of disbursement to the Depositors of the Agri Gold Group of Companies. The Enforcement Directorate is arrayed as respondent no.8 in PIL No.193/2015.

(vii) The Directorate of Enforcement registered ECIR in the year 2018 vide ECIR No. ECIR/HYZO/09/2018 and on 24.12.2020, the Assistant Director, Directorate of Enforcement attached all the properties of the Agri

Gold group of companies invoking powers under Section 5 of the Prevention of Money Laundering Act, 2002.

(viii) As already stated, all these writ petitions were filed either questioning the attachment of properties under Section 3 of the A.P.Protection of Depositors of Financial Establishment Act, 1999 by the investigating agency in the predicate offence or the Provisional Attachment Order under Section 5(1) of the Prevention of Money Laundering Act,2002 by the Enforcement Directorate or both.

11. The contents of the counter affidavit filed by the Competent Authority-CID, so far as they are relevant for adjudication of these writ petitions, can be summarized as under:

(i) The Agri Gold Construction Company, which constructed Helapuri Apartment, Fathebada at Eluru, is one of the accused company in Crime No.3 of 2015 of Pedapadu Police Station. The said property was attached under Section 3 of the APPDFE Act vide G.O.Ms.No.23, dated 22.02.2015 and the said attachment was made absolute by the Special Court-cum-PDJ, Eluru on 23.09.2015. Merely because the flats in the subject Apartment were purchased prior to registration of Cr.No.3 of 2015 of Pedapadu Police Station does not absolve the fact that the subject property was purchased and constructed by an accused company in the said crime with the amounts collected from the depositors as such the subject apartment is one of the derived proceeds of crime. The petitioner Association of flat owners, did not raise any objection before the Special Court-cum-Principal District Judge, Eluru before the attachment of the said property was made absolute vide order dated 23.09.2015. The inadvertent mention of note in G.O.Ms.No.23, dated 22.02.2015 that except the plots that were registered in the respective Sub Registrar Offices before the Criminal cases were registered i.e. on 01.03.2015 at Pedapadu, West Godavari District, the rest of the land shall cover under the above G.O., was subsequently remedied by way of issuance of G.O.Ms.No.19, dated 09.02.2021. Therefore, the petitioner association cannot contend that the flats of Fortune Helapudi Apartment are outside the purview and scope of investigation under the APPDFE Act, 1999. The provisions of the Act make no distinction as regards the amassment of properties by the accused of conducting its business in violation of Section 5 of the Act,1999 read with the other provisions of IPC. The entire property and the transactions which have been conducted by the accused company would be within the zone of proceeds of attachment by the competent authority under the provisions of the Act in order to secure its administration and disposal in accordance with law to meet the pending claims of the depositors whose monies have not been refunded in accordance with the agreed terms by the accused company. The amended G.O.Ms.No.19, dated 09.02.2021 omitting the note to G.O.Ms.No.23 dated 22.02.2015 has been placed before the Special Court by way of memo and the same was taken on record by Special Court and pursuantly made the orders of attachment absolute. The amendment to G.O.Ms.No.23, dated 15.02.2015 issued vide G.O.Ms.No.19, dated 09.02.2021 was not placed before the Court for its consideration and thus the observations made in the decision in 2021(1)ALT 599(AP) cannot be considered as a direction to exclude the schedule property from the purview of investigation by the competent authority and the proceedings before the Special Court under the APPDFE Act, 1999.

(ii) The objectives of the APPDFE Act inter alia include securing the monies which are amassed by the accused under the provisions of the Act, so as to secure the means to meet the obligations flowing from the deposits collected from the depositors. The same can only be secured by disposing of the property so secured by the accused by deploying the deposits received from the depositors under Section 10 of the Act r/w. the Rules framed thereunder. The said proceedings of the administration of property and the auction of the said property so as to primarily first cater to the meeting of the payment dues to the respective depositors or securing the return of the monies deposited by them are conducted under the supervision of the designated special Court under the provisions of the APPDFE Act,1999. The allegations against the accused in crime registered emanate from the violation of Section 5 of the APPDFE Act,1999, which is not a schedule offence under PMLA Act. Therefore, the objectives sought to be achieved under the State Act cannot be frustrated by the supervening orders of attachment issued under the PMLA more specifically, in the context of the primary objective of the State Act inter alia to mitigate the hardship of depositors who have suffered on account of the default of the accused in repaying the dues arising from such deposits. Therefore, to subserve the ends of justice and to ensure that there is no frustration of the objectives of the State imposed upon it under a validly made State Law to protect the interest of depositors and also the public interest, the continuance of the proceedings under the State Act is very much essential. The remainder of the sale proceeds, if any, after meeting out the requirements of payment to the depositors, shall be continued to be remained in deposit with the Special Court subject to such further conclusion of proceedings under the PML Act.

12. The contentions raised by the Directorate of Enforcement in all these writ petitions, can be summarized as under:

Since the petitioner in W.P.No.2899 of 2022 viz.,Avva Venkata Rama Rao, Chairman of M/s. Agri Gold Farm Estates India Private Limited has been arrayed as accused in the FIR No.3 of 2015, dated 09.01.2015 and charge sheet No.5 of 2019 was filed by CID, Andhra Pradesh for the offences r/w. Section 420, 403, 406, 477A IPC r/w. section 120-B IPC and section 5 of the A.P.Protection of Depositors of Financial Establishments Act, 1999 for cheating the gullible public by collecting deposits from them under the guise of real estate business by making false promises and since the offences under Sections 420 read with 120-B IPC are the scheduled offences under PML Act, 2002, the respondent initiated investigation under the provisions of PML Act to investigate the case of money laundering after recording brief facts of scheduled offence in the File No.ECIR/HYZO/ 09/2018 on 26.12.2018. The investigation under PML Act, 2002 is based on various FIRs registered against Agri gold Group including FIR No.3 of 2015, dated 02.01.2015 by Pedapadu Police Station, Eluru, West Godavari District. During the course of investigation, it is inferred that Agri Gold Company led by Avva Venkata Rama Rao along with his brothers and other

Directors, hatched a plan to run an illegal unregulated Collective Investment Scheme by collecting deposits from public, without the approval of RBI/SEBI or any Government agency, under the name board of Real Estate Business and it is found that the group of companies collected deposits to the extent of Rs.6380 crores. It is observed from the Forensic Audit Report conducted by CID, AP, that various amounts, out of the deposits collected from public, were diverted to their different businesses/ interests, as per their sweet will. The scheme was neither a genuine real estate business nor a genuine CIS can be understood from the fact that Agri gold Group engaged the services of thousands of agents and promised them 20-25% commission on the amount of deposits arranged by them. It is also observed from the investigation under PMLA that the Directors of Agri Gold Group have established various companies in Dubai, UAE and Cayman Islands.The Enforcement Directorate issued a Provisional Attachment Order (PAO) No.04/2020 dated 24.12.2020 and PAO No.12/2021 dated 30.11.2021 and has provisionally attached various movable properties worth Rs.4109.13 Crore and various immovable properties worth Rs.31.99 Crore of Agri Gold Group, its promoters/ Directors and other connected persons respectively. Further, investigation is under progress to trace the remaining Proceeds of Crime amounting to more than Rs.2000 crore. The entire amounts collected by Agri Gold group into their different companies in the form of their unregulated Collective Investment Scheme, are from general public under the pretext of real estate business. All the properties purchased by the Companies and the Directors and other family members, are from these public funds only. The Enforcement Directorate had attached the properties under Section 5(1) of PML Act, 2002 and clearly justified the reasons for such attachment. It is true that ED is also a respondent in PIL No.193/2015, whereas the prayer of the petitioner in the said PIL itself is seeking directions of the Hon'ble Court for investigation by Central Agencies like CBI and ED, as the said Agri Gold scam is massive and spread over various states in India. Hence, the action taken by Enforcement Directorate, in passing an attachment order, is not against any law/ directions of any Court, in fact it is the duty of the central investigative agency under money laundering Act, however, the respondent department will obey the orders of the High Court in PIL No.193 of 2015. There is nothing in the stay order granted by this Court on the proceedings of Adjudicating Authority in relation to OC No.1391 of 2021 debarring the Enforcement Department from conducting any further investigation and proceedings under PML Act. The fresh and new provisional attachment order vide PAO No.12 of 2021, dated 30.11.2021 in

ECIR/HYZO/09/2018 is passed upon further investigation which reveals that companies of Agri Gold Group and its directors are holding various immovable properties. Further, the FIRs in Cr.No.3 of 2019 and Cr.No.36 of 2020 registered by CID, AP, against director of the company regarding fraudulently dealing in properties on fake/forged documents & fake identity, there is every likelihood that the Directors of Agri Gold Group may come up with similar ideas and may deal with the newly found properties by way of further transfer/sale to their known persons so as to avoid any further attachment in future and there is also likelihood that they may buy back the properties being auctioned as per the orders of the High Court in WP (PIL) No.193 of 2015 through their known persons/ benami persons at a cheaper rate, which may entirely defeat the interest of the depositors and frustrate the proceedings under the PML Act. The Agri Gold Group was rapidly diversifying the deposits of the gullible investors in all and sundry sectors and layering them through complex maze of shell companies to obscure the fund trail of this diversion of the public deposits. Whether the scam performed by Agri Gold Group is a Collective Investment Scheme or a contravention of APPDFE Act, 1999, is immaterial for the Enforcement Department. The SEBI pass orders dated 19.02.2015 and 14.09.2015 saying that the collection of deposits by Agri Gold group comes under

Collective Investment Scheme and despite instructions from SEBI, the group collected deposits by dubious means. From the investigation conducted by the respondent department so far, it leave no doubt that the accused had indulged in money laundering. Provisional Attachment orders were passed as stipulated in Section 5 of PML Act by the Authorized Officer of the Department and Original Complaints were filed before the Adjudicating Authority (PMLA) praying for confirmation of the attachment orders. The Adjudicating Authority as per Section 8 of the Act is proceeding with the adjudication proceedings, including issuance of show cause notice to the accused of the crimes, for which they can file a written counter/reply to the Original Complaints filed by the Enforcement Directorate. After following due procedures and after hearing both sides, the Adjudicating Authority would confirm/not confirm the Provisional Attachment orders as stipulated under Section 8(2) and 8(3) of the PML Act,2002, by order in writing. If any party, aggrieved by the said order , can approach the Appellate Tribunal (PMLA) by filing an Appeal under Section 26 of PMLA,2002. If any party is still aggrieved by the orders passed by the Appellate Tribunal, may approach this Court under Section 42 of the PML Act,2002. Hence, it is clear that the PML Act is providing all the remedies to the parties under principles of natural justice. The petitioners have an efficacious statutory remedy available under Section 8 of the PML Act. Instead of exhausting the statutory remedy available in PML Act, these writ petitions have been filed invoking Article 226 of Constitution of India and they are liable to be dismissed.

13. Heard Smt. Dyumani, learned Standing Counsel for Union Bank of India (erstwhile Corporation Bank) for petitioners in W.P.Nos.4043 & 4044 of 2019 and W.P.No.7987 of 2021, Sri S.Vivek Chandrasekhar, learned counsel for petitioner in W.P.No.5183 of 2022, Sri P.Narahari Babu, learned counsel for petitioner in W.P.No.16770 of 2021, Sri P.S.P.Suresh Kumar, learned counsel for the petitioners in W.P.No.9441 of 2020 and W.P.No.2899 of 2022, Sri C.V.Narasimham, learned counsel for the petitioner in W.P.No.11520 of 2023, Sri S.Sriram, learned Advocate General for the Competent Authority-CID, Sri Josyula Bhaskar Rao, learned Standing counsel for Enforcement Directorate and N.Harinath, learned Deputy Solicitor General for Union of India.

14. Smt. Dyumani, learned Standing Counsel for Union Bank of India, while reiterating the contents of the writ affidavit, further contended that M/s. Singaraya Hills Green Power Genco Pvt. Ltd and M/s. Agri Gold Farm Estate India Private Limited are under the management of M/s. Agri

Gold Group and at request of M/s. Singaraya Hills Green power, the petitioner Bank sanctioned Term loan of Rs. 18 crores to acquire land and for repayment of the said term loan, the said company deposited title deed relating to the agricultural lands to an extent of Ac.1064.70 cents and as the said entity could not repay, the bank filed OA No.968 of 2016 before the Debts Recovery Tribunal, Visakhapatnam and pursuant to the orders dated 31.1.2018 passed by the Tribunal, demand notice was issued, followed by Form 16-attachment orders dated 12.02.2019 and Form 17 notice of even date for settling sale proclamation. Thereafter the property was auctioned and M/s. BLG infra projects Private Limited became the highest bidder and the said company had deposited the bid amount into Court. The petitioner bank being the Mortgagee is having interest under Section 58(f) of the Transfer of Property Act and accordingly it had filed CrlMP No.1220 of 2015 in Crime No.3 of 2015 before the Special Court under APPDFE Act,1999 at Eluru under Section 3, 7(3) of the APPDFE Act to raise interim attachment to enable the petitioner to proceed against the mortgaged properties and the said petition is still pending.

The learned counsel for the petitioners would further submit that since the lands were purchased with the credit facility availed by the company from the petitioner Bank, the bank is having first charge and as a first charge holder, the petitioner bank is having priority of charge over others. Therefore, the attachment orders passed by the investigating agency in the predicate offences as well as the Provisional Attachment Order passed by Enforcement Directorate in relation to the property which were purchased with the credit limit advanced by the petitioner bank and mortgaged to the bank are illegal, arbitrary and unconstitutional. Accordingly, prayed to allow the writ petitions vide W.P.Nos.4043 & 4044 of 2019 and W.P.No.7987 of 2021.

15. Sri S.Vivek Chandrasekhar, learned counsel for the petitioner, while reiterating the contents of the writ affidavit in W.P.No.5183 of 2022 and while reiterating the contentions raised by the learned Standing Counsel for the bank, further contended that the petitioner in this writ petition had purchased the property pursuant to proclamation of sale-cum-E auction conducted by Union Bank of India of the properties mortgaged to the said bank. Therefore, the said property stands outside the purview of the definition “proceeds of crime” under Section 2(u) of the Prevention of Money Laundering Act and thus the Provisional Attachment Order has

been issued without proper application of mind. The same is liable to be set aside.

16. Sri P.Narahari Babu, learned counsel for the writ petitioners in W.P.No.16770 of 2021 while reiterating the contents of the writ affidavit, further contended that the members of the petitioner association had purchased their respective flats much prior to registering the above crime i.e. 02.01.2015 and further the Government while issuing G.O.Ms.No.23, Home (ARMS & SPF) Department, dated 20.02.2015 had clearly mentioned that except the plots that were registered in respective Sub-Registrar Offices before the criminal cases were registered at Pedapadu, the rest of the land shall cover under the above G.O. The property purchased by the members of the association was not at all mentioned either in the G.O. issued by the Government or in the orders in the orders passed by the Special Court in CrlMP No.998 of 2015 dated 23.09.2015 in Cr.No.3 of 2015 of Pedapadu P.S. Questioning the notice issued by CID directing the members of the association to deposit the rents in the bank of the 5th respondent authority, members of the association approached this Court and filed Writ Petition vide W.P.No.11515 of 2020 and this Court had set aside the said notices on the ground that as the petitioners are owners of

various flats in the apartments, it is not subject matter of attachment under Section 3 of the APPDFE Act and hence the petitioners cannot be called upon to deposit rent to the credit of CID. The allegations made by the Enforcement Directorate in the Provisional Attachment Order is not correct and the same had been issued without proper appreciation of the facts and circumstances of the case.

17. Sri C.V.Narasimham, learned counsel for the petitioners in W.P.No.11520 of 2023 while reiterating the contents of the writ affidavit, further contended that , G.O.Ms.No.23, dated 20.02.2015 issued by the Government clearly mentions that the plots and other properties which were already sold and registered in the name of the buyers prior to registration of the offence are not attached. A public Interest Litigation vide PIL No.193 of 2015 was filed praying to appoint a committee to enable sale of properties belonging to Agri Gold Group of companies to mobilize and disburse amounts to the depositors as refund of their money. As per directions of the PIL, a committee was constituted vide order dated 09.10.2015 and some of the properties were sold excluding the properties which were sold and registered to the members of the petitioner association in W.P.No.11520 of 2023 and finally the High Court of

Telangana vide final order dated 25.02.2022 directed that all the issues are to be dealt with by the Principal District Judge, a special Court to deal with all the matters pertaining to the attachment made by the 5th respondent-Home Department. The special Court vide its orders dated 16.03.2023 had observed that the properties which are already sold to plot owners/ flat owners should be out of ambit of the attachment. Thus, the issue of attachment of the properties of the members of the petitioner association by the 5th respondent Government vide G.O.Ms.No.23 and others G.Os. is still pending before the Special Court. While so, the 1st respondent-Enforcement Directorate vide impugned provisional Attachment order dated 24.12.2020 had attached all properties that were originally attached by the 5th respondent vide various G.Os. including G.O.Ms.No.23, despite the clear mention made in the said G.O. that the properties stand outside the purview of attachment. The 1st respondent had made Provisional Attachment Order without verifying the facts of the case and without making any enquiries. None of the plot owners were issued notice as mandated under Section 8(2) of the PML Act. The 1st respondent is a party to Public Interest Litigation No.193 of 2015 and the same is bound by the orders passed in the said PIL. Therefore, the Provisional Attachment Order passed by the 1st respondent to the extent of attachment of properties belonging to the members of the petitioner association is illegal and is liable to be quashed. Accordingly prayed to allow the writ petition.

18. Sri P.S.P.Suresh Kumar, learned counsel for M/s. Agri Gold Farm Estates India Private Limited-petitioners in W.P.Nos.9441 of 2020 and 2899 of 2022, while reiterating the contents of the writ petitions, in elaboration would submit that pursuant to the registration of the crime, the Government of Andhra Pradesh by invoking the provisions of Section 3 of the Act, 1999 , issued G.O.Ms.Nos.22 & 23, dated 20.02.2015 and G.O.Ms.73, dated 05.06.2015 and G.O.Ms.No.21, dated 29.02.2016 and attached the properties of the companies worth thousands of crores. Besides the properties of the companies, the personal properties of the writ petitioner, Director and their family members were also attached by the Government. The Special Court, Eluru passed orders on 23.09.2015 attaching all the properties of the Company covered under G.O.Ms.Nos.22,23 and 73 and the petitions filed by CID department before the Special Court, Eluru for confirmation of the attachment in respect of properties covered under the other G.Os. is pending.

19. The learned counsel for the petitioners, in one voice, further contended that a public Interest Litigation vide PIL No.193 of 2015 was

filed and the High Court of Telangana was pleased to appoint a committee to take all steps with a retired judge of High Court and vide final orders dated 25.02.2022 in the said PIL, the High Court, Telangana directed that all the issues are to be dealt with by the Principal District Judge, a special Court to deal with all the matters pertaining to the attachment made by the 5th respondent-Home Department. The Enforcement Directorate is respondent No.8 in the PIL and it is aware of all the proceedings and orders passed in the said PIL. Thus, the Enforcement Directorate is bound by the orders passed in the PIL and are estopped from registering ECIR/HYZO/09/2018 and in passing Provisional Attachment Orders. The reasons to believe mentioned in the Provisional Attachment Orders are not at all sustainable and they do not meet the requirement of Section 5 of PML Act.

The learned counsel for the petitioners further submitted that though there is a statutory remedy provided under Section 8 of PML Act, 2002 to agitate before the Adjudicating Authority, since the Provisional Attachment Orders are passed in violation of the series of orders passed by the High Court in PIL No.193 of 2015 and attaching the properties which were already auctioned by this Court and since the same are in clear statutory violations, the requirement of exhausting the alternative remedy is not a bar for filing the writ petitions. The Provisional Attachment Orders in PAO No.12 of 2021, dated 30.11.2021 and PAO No.4 of 2020, dated 24.12.2020 in proceedings ECIR No.ECIR/HYZO/09/2018 are liable to be quashed and so also the consequential proceedings in OC No.1598 of 2022 and OC No.1391 of 2021. Accordingly, prayed to allow the writ petitions.

20. The learned Advocate General for Competent Authority-CID, while reiterating the contents of the counter, further contended that, the inadvertent mention of note in G.O.Ms.No.23 was omitted by issuing G.O.Ms.No.19, dated 09.02.2021, thus the writ petitioners in W.P.No. 16770 of 2021 and W.P.No.11520 of 2023 cannot claim any benefits of inadvertently mentioned note contained in G.O.Ms.No.23. Further, the orders passed by this Court covered by 2020(1) ALT 599 (AP) was challenged by preferring Writ Appeals and they are pending.

The learned Advocate General further contended that the subject properties were already attached by the State under the provisions of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 and they have been made absolute by orders of the Special Court constituted under the provisions of the Act. The objectives of the Andhra

Pradesh Protection of Depositors of Financial Establishments Act, 1999 inter alia include securing the money which were amassed by the accused under the provisions of the Act, so as to secure the means to meet the obligations flowing from the deposits collected from the depositors. The same can only be secured by disposing of the property so secured by the accused by deploying the deposits received from the depositors, under Section 10 of the Act, read with the Rules framed thereunder. The administration of property and auction of the property to pay back to the depositors from whom monies have been collected by way of deposits would be conducted under the supervision of the designated Special Court under the provisions of the Act,1999. Achieving the objective of meeting the payment obligations due to the depositors in respect of the deposit made by the secured depositors is not one of the objectives of the Prevention of Money Laundering Act,2002. Therefore, the State Act having been passed with the due assent of the Hon'ble President and the proceedings under the PMLA being under the Central Enactment, in the context of the specific provisions of these respective Acts being in addition to existing laws and in derogation thereof would not be a pointer to investing the Enforcement Directorate with supervening powers of attachment to frustrate the objectives of the State Act.

The learned Advocate General would further submit that the accusation made against the accused clearly discloses that he had collected deposits from depositors in contravention of Section 5 of the APPDFE Act, which is not a schedule offence under the PML Act. In the FIR, the accused was charged with IPC offences along with the main charging provision under Section 5 of the APPDFE Act. By that reason alone the proceedings of crime which are detectable during the course of investigation on the basis of such predicate offence, does not render the subject matters to be in the sole domain of the Enforcement Directorate to enforce the provisions of PML Act.

The learned Advocate General further submitted that the objectives sought to be achieved under the State Act cannot be frustrated by the supervening orders of attachment issued under the PML Act more specifically in the context of the primary objective of the State Special Act, assented to by the Hon'ble President, is to inter alia mitigate the hardship of the depositors who have suffered on account of the default of the accused in repaying the dues arising from such deposits. If the subject property is sought to be permitted to be attached subject to further consequences under the PML Act,2002, the entire proceeds of crime would not be available to the State or its machinery under the provisions of the State Act for the purpose of meeting the objectives of the State Act.

The learned Advocate General further submitted that in the event the entire property is confiscated in pursuance of a conviction under the provisions of the PML Act, the property would not be available for being distributed to the depositors and therefore, no Central Enactment, even if subsequent, can be read as causing or enabling frustration of the objectives enshrined in a State Act, whose *vires* had already been upheld by the Hon'ble Supreme Court.

The learned Advocate General further submitted that in a similar fact situation concerning Sarada Chit Funds, the Hon'ble Supreme Court specifically observed that the transfer of invesetigaton to CBI or any consequent investigation by the Enforcement Directorate shall not however affect the proceedings pending before the commissioner of enquiry or stall any action that is legally permissible for recovery of amount for payment to the depositors.

The learned Advocate General further submitted that since so many depositors have committed suicide, it is the primordial interest of the State to ensure that the depositors who have lost money secure their monies or some percentage thereof by auctioning the properties under the provisions of the State Act. The learned Advocate General had also brought to the notice of the Court that the State, to alleviate the agony of the depositors, had remitted nearly Rs.929 crore to the depositors.

The learned Advocate General finally submitted that the unlike other IPC offences the APPDFE Act embodies inbuilt safeguards to ensure that the depositors, whose money was collected by the accused as deposits, be paid by auctioning the properties attached. Therefore, the interests of the depositors would well be subserved if the properties attached are sold and the sale proceeds are administered under the supervision of Special Court designated under the APPDFE Act. Accordingly, prayed to quash the Provisional Attachment Orders of the Enforcement Directorate and so also the consequential proceedings pending before the Adjudicating Authority under PML Act.

In support of his contentions, the learned Advocate General placed reliance on the ***Soma Suresh Kumar vs. Government of Andhra***

Pradesh and others[1] and ***Subrata Chattoraj vs. Union of India and others***[2]

21. Whereas, Sri Josyula Bhaskar Rao, learned Standing counsel for Enforcement Directorate, while reiterating the contents of the counter affidavits further contended that the writ petitions are not maintainable, in view of availability of efficacious alternative remedy. The Prevention of Money Laundering Act contains a mechanism and the persons aggrieved of Provisional Attachment Orders may approach the Adjudicating Authority and prove that the properties attached are not involved in money laundering. Further, the orders passed under Section 8(3) of the Act confirming Provisional Attachment are appealable before the Appellate Tribunal contemplated under Section 26(3) of the PML Act and if aggrieved by the orders of the Appellate Tribunal, further appeal under Section 42 of the PML Act lies to the High Court. Without availing the remedies before the Adjudicating Authority and Appellate Tribunal, the petitioners had straight away filed this writ petition and thus the writ petitions are liable to be dismissed on this ground alone.

[1]. (2013) 10 SCC 677
[2]. 2014(8)SCC 768

The learned Standing counsel would further submit that since FIRs were registered against M/s. Agri Gold Group including predicate offences, investigation was initiated under PML Act in File No.ECIR/HYZO/09/2018 and during the course of investigation, it revealed that the Companies under the Flagship Agri Gold Group, collected deposits from public and transferred the collected funds to other companies in guise of investments/ loans & advances, which was layered further by way of further investment/loans & advances/ Inter Corporate Deposits and this layering was done with a view to obscure the source of the funds and its end utilization. Considering the facts revealed during the investigation, Provisional Attachment orders were issued.

The learned Standing Counsel would further submit that PML Act is a Central legislation and as per Section 71 of the Act, it shall have overriding effect over all the laws for the time being in force. It is no doubt true that ED is also a respondent in PIL No.193/2015, whereas the prayer of the petitioner in the said PIL itself is seeking directions of the Hon'ble Court for investigation by Central Agencies like CBI and ED, as the said Agri Gold scam is massive and spread over various states in India. Hence, the action taken by Enforcement Directorate, in passing an attachment order, is not against any law/ directions of any Court, in fact it is the duty of the central investigative agency under money laundering aspect, however, the respondent department will obey the orders of the High Court in PIL No.193 of 2015. The Enforcement Directorate had attached the properties under Section 5(1) of PML Act, 2002 and clearly justified the reasons for such attachment.

The learned Standing Counsel would further submit that the FIRs in Cr.No.3 of 2019 and Cr.No.36 of 2020 registered by CID, AP, against directors of the company regarding fraudulently dealing in properties on fake/forged documents & fake identity, there is every likelihood that the Directors of Agri Gold Group may come up with similar ideas and may deal with the newly found properties by way of further transfer/sale to their known persons so as to avoid any further attachment in future and there is also likelihood that they may buy back the properties being auctioned as per the orders of the High Court in WP (PIL) No.193 of 2015 through their known persons/ benami persons at a cheaper rate, which may entirely defeat the interest of the depositors and frustrate the proceedings under the PML Act. Thus, there is reason to believe for attaching the properties by issuing Provisional Attachment Order as per Section 5(1) of the PML Act.

In support of his contentions, the learned Standing Counsel for Enforcement Directorate relied on the decisions (1) ***The Deputy Director, Directorate of Enforcement vs. Axis Bank and others***[3], (2) ***B.Rama Raju vs. Union of India***[4], (3) ***Union Bank of India vs. Satyawati Tondon & Ors.***[5] (4) ***Mr. John Kennedy*** vs. **M/s. Martin Property Developers Pvt. Ltd., Coimbatore**[6] (5) ***Sri P.Trivikrama Prasad vs. Enforcement Directorate***[7] (6) ***Union of India and another vs. Kunisetty Satyanarayana***[8], (7) ***Arun Kumar Mishra vs. Union of India***[9] (8) ***Raj Kumar Shivhare vs. Asst. Director, Directorate of Enforcement & Anr.***[10] (9) ***Thansingh Nathumal and Ors. vs. A.Mazid, Superintendent of Taxes***[11] (10) ***M/s. Modern Industries vs. M/s. Steel Authority of India***[12] (11) ***G.Srinivasan vs. The***

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[3]. Orders dated 02.04.22019 passed in CRL.A.No.143/2018 and batch passed by Delhi High Court
[4]. Orders dated 04.03.2011 passed in W.P.Nos.10765, 10769 & 23166 of 2010 passed by Division Bench of this Court
[5]. Orders dated 26.07.2010 passed in SLP(C) No.10145 of 2010 by Supreme Court of India
[6].Orders dated 17.12.2020 passed in W.P.Nos.25177 and 25231 of 2019 of High Court of Madras
[7]. Orders dated 16.10.2014 passed in W.P.No.21124 of 2014 by High Court of Andhra Pradesh
[8]. Orders dated 22.11.2006 passed by Hon'ble Supreme Court in Appeal (civil) 5145 of 2006.
[9]. Orders dated 31.01.2014 passed by High Court of Delhi in LPA 99/2014, CMs No.2003/2014 & 2004/2014.
[10]. Orders dated 12.04.2010 passed by Hon'ble Supreme Court in Civil Appeal No.3221 of 2010.
[11]. 1964 AIR 1419
[12].Orders dated 15.04.2010 passed by Hon'ble Supreme Court in Civil Appeal Nos.3305-3306 of 2010

Chairperson, Adjudicating Authority under PMLA, New Delhi[13] (12) ***Smt. Nabla Begum vs. Union of India & Others***[14] and (13) ***Karampal Goyal vs. Assistant Director, Directorate of Enforcement***[15].

22. Perused the material available on record, considered the submissions made by learned counsel for both parties and also the judgments relied on by learned counsel for both the parties.

23. There is no much dispute regarding the factual aspects of the matters. Based on a complaint lodged by one of the customers, the Station House Officer, Pedapadu Police Station, West Godavari District, registered a case against M/s. Agri Gold Farm Estates India Private Limited under Sections 120B, 420 IPC, Section 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999, Section 45 of RBI Act and Sections 3,4 and 5 of Prize Chit & Money Circulation (Banning) Act, 1978. Subsequently, the investigation of the case was referred to CID Department of the State of Andhra Pradesh. The Government of Andhra Pradesh, by invoking the provisions of Section 3 of the APPDFE Act, had issued G.O.Ms.No.22, & 23 of Home (Arms & SPF) Department, dated

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[13].Orders dated 01.04.2011 passed by High Court of Madras in W.P.No.530 of 2011
[14].Orders dated 03.04.2012 passed in OWP No.1468 of 2011 of Jammu & Kashmir High Court.
[15].Orders dated 10.01.2012 passed by Punjab-Haryana High Court in CRM M No.693 of 2011.

20.02.2015 and G.O.Ms.No.73 of Home (Gen A2) Department, dated 05.06.2015 and G.O.Ms.No.21 of Home (General-A2) Department dated 29.02.2016 and attached the property of the company worth thousands of crores situated in the State of Andhra Pradesh, States of Telangana, Karnataka & Odisha. Thereafter, CID filed petitions before the Special Court, Eluru seeking confirmation of the attachment. The Special Court, Eluru passed orders on 23.09.2015 by attaching all the properties of the company covered under G.O.Ms.No.22, 23 and 73. Later, the CID filed petitions before the Special Court, Eluru for confirmation of attachment of the properties in respect of other properties covered in other G.Os. and the same is pending adjudication before the Special Court, Eluru.

24. The material would disclose that Telangana Agri Gold Customers and Agents Welfare Association filed Public Interest Litigation vide PIL No.193 of 2015 on the file of the High Court of Judicature at Hyderabad, for the state of Telangana and the State of Andhra Pradesh praying to issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus declaration the inaction of the respondent in not taking any action on the respondent No.7-M/s.Agri Gold Farms Estates India Private Limited, as illegal, arbitrary and unconstitutional, without any valid

reasons, (b) direct the respondents to appoint a committee to conduct Sale/Auction of properties own by respondent no.7 to mobile money, (c) direct the respondents to return money paid by the depositors to save their rights/protect livelihood, d) Direct respondent 1-6 to conduct in depth investigation/enquiry on the lines of Sharada and Sahara scams, e) Direct the respondent 1-6 to appoint an expert committee to assess the assets and liability of Agri Gold i.e., 7th respondent properties, f) Direct the respondent 1,2 and 7 to pay compensation for the agents families who have committed suicides in act of 7th respondent, g) Direct respondent nos.3,4 and 8 to conduct in depth investigation through Central Bureau of investigation (CBI) punishing the culprits forthwith, h) Direct the respondent 1 and 2 to provide appropriate employment for the agents/families, i) Direct the respondent 5 and 6 to grant protection for the petitioner from highly influenced Agri Gold ownership/Management.

25. The unified High Court passed the following order by consent of parties:

1. The following Committee of three members headed by (1) Mr.Justice T.Ch.Surya Rao, retired High Court Judge of this Court, (2) Mr. K.Ramakrishna Rao, IAS, Secretary to Government, Financial Department, Telangana, Hyderabad and (3) Mr.K.Narasimha Murthy, Financial Expert, is constituted to verse the E-auction direction through this order.

The E-auction/sale shall be conducted under the supervision of the Committee. The Committee shall issue appropriate directions, consistent with this and other orders passed so far from time to time for conducting uninterrupted sale and to see that the properties fetch maximum price and the sale is complete within the stipulated time.

Sri P.Ravi Prasad, learned counsel practicing in this Court, is appointed as an Advocate to represent the committee in the ongoing proceedings.

ii. C-1 is appointed as the agency to conduct E-auction under the guidance and supervision of the Committee. The Vice President Mr. Ravinder Kumar Narula, who is present in the Court, has consented for this order.

iii. The Company and C-1 are directed to place on record the modalities of sale of properties shown in Schedule-II on or before 26th October, 2015 before this Court. They shall also place the notifications/ advertisements to be placed on interest to conduct E-auction of the properties covered by Schedule-II. In other words, the extent, mode and manner of advertisement of properties shall be specifically stated in these details.

iv. The Registrar (judicial) shall open a separate account for depositing or crediting the sale proceeds realized from these properties. He shall open the account on receipt of the first Cheque/DD/pay order. It is made clear that the Company/C-1 shall accept the consideration only by Cheque/DD/Pay order or through RTGS and in any case n ot by cash. This Court shall take a serious view of the matter, if it is revealed that cash has been accepted by them.

v. The E-auction is directed to be undertake under supervision of the Committee constituted by this Court and it shall be the responsibility of the Committee and C-1 to maintain complete confidentiality of E-auction details and every care is taken to avoid inside trading of information for direct, indirect, collateral or advantage in conduct of E-auction.

vi. The Chairman of the Company and Agri Group shall make available to C-1 the details of title documents together with legal opinion on the right and entitlement of the company to sell and convey unencumbered right in the properties sought to be auctioned through C-1. C-1 is further directed to display the details made available either through this Court or through the Committee on the portal dealing with the subject E-auction. C-1 is further directed to display by way ofo notice in the proposed E-auction the pendency of the instant PIL and the orders under which the E-auction is being conducted by them (C-1) and that the confirmation of sale and registration of property in favour of successful bidder/ tenderer is subject to further orders of this Court in the instant Public Interest Litigation.

vii. The Company is directed to meet all incidental and ancillary expenses, including reasonable development charges for getting the layout sanctioned for conduct of E-auction and the expenses so incurred by them will be reimbursed by this Court upon being satisfied about the genuineness of such claims by separate orders from time to time. The sale proceeds are directed to be deposited in the account of Registrar (judicial) exclusively for distribution to the depositors as well be directed by this Court upon receiving full and authenticated information from respondent nos. 2 and 6.

viii. C-1 on receipt of complete details as indicated above from Company through Mr. D.Prakash Reddy learned senior counsel places before the Court its action plan, sale advertisement details and the time schedule for undertaking and completing the sale of the properties covered by Schedule II to this order.

These directions shall not be understood as interdicting the pending civil and criminal actions against the Company and Agri Group. It is open for the authorities to take action in accordance with law. The breach of any undertaking or statement/submission of false and exaggerated information will be construed as interference with administration of justice and appropriate action under the Contempt of Courts Act,1971, will be initiated. "

26. The material available on record would further disclose that some of the properties of M/s.Agri Gold Group were auctioned as per the interim directions given by Unified High Court and an amount of

Rs.50,42,70,521/- was credited in the account directed to be opened by the Court. Later, the said PIL No.193 of 2015 along with batch of writ petitions was disposed of on 20.05.2022 and relevant portions of the common orders are extracted hereunder for sake of expediency:

> "A statement at bar has been made that a Special Court i.e. the Court of Principal District and Sessions Judge, Eluru has been constituted for the cases related to Agrigold Farms Estates India Private Limited, Akshaya Gold Farms Villas India Limited et., and the matters are pending before the said Court. He (Sri P.Govind Reddy, learned Special Counsel for the State of Andhra Pradesh) has also informed that the competent authority was also appointed long back in the matter. Meaning thereby, all claims in respect of the depositors are to be adjudicated by the Special Court constituted for the purpose.
>
> Learned Senior Counsel Sri P.B.Vijay Kumar has stated before this Court that various orders have been passed in the present cases and other connected matters from time to time and the Special Court be directed to consider those orders also while passing orders in respect of disbursement of amount. Not only this, he has stated that an amount of Rs.50,42,70,521/- is lying with the Registry of this Court and therefore, the amount be transferred to the Special Court for distribution of the same to the depositors.
>
> After hearing the learned counsel for the parties in the present matters, this Court is of the opinion that it is the Special Court which is having jurisdiction to make equitable distribution of the money realized out of the property attached, among the depositors.
>
> Therefore, the amount of Rs.50,42,70,521/- along with the accrued interest be transferred to the Special Court constituted for the purpose. The petitioners before This Court as well as all other depositors shall be free to file appropriate applications in respect of their claims before the Special Court by furnishing all minute details and the special Court shall proceed ahead in accordance with law keeping in view the statutory provisions as contained in the Act.

> It ha been brought to the notice of this Court that in some of the cases the petitioners are Banks. The said Banks shall also be certainly free to file an application before the Special Court.
>
> It has further been brought to the notice of this Court that there are two writ petitions i.e. W.P.Nos. 23870 and 24347 of 2018 filed by the Bharat Sanchar Nigam Limited (BSNL). The BSNL shall also be free to approach the Special Court or avail any other remedy available under the law.
>
> It has also been brought to the notice of this Court that certain properties are sold on account of the order passed by this Court. Therefore, the Special Court shall now be free to proceed ahead in accordance with law in respect of those properties also.
>
> Resultantly all the writ petitions and the public interest litigations are accordingly disposed of."

27. It is not in dispute that Enforcement Directorate is arrayed as 8th respondent in the above Public Interest Litigation.

28. It is the specific contention raised by the learned Advocate General that objectives of the State Act (APPDFE Act) which include securing the monies by disposing of the properties secured by the accused by deploying the deposits received from the depositors, to answer the claims of the depositors, cannot be permitted to be frustrated by the supervening orders of attachment issued under PML Act, though a subsequent central legislation, since the objects of the said Act,2002 does not include meeting the payment obligations due to the depositors, except confiscation of the proceeds of the crime in case the accused is found

guilty of the schedule offences. The said contention was refused by the learned Standing Counsel for Enforcement Directorate that PML Act being a central legislation that too subsequent to the State Act, with a specific provision contained therein as to the overriding effect of the Act over the other laws for the time being, the provisional attachment orders shall have precedence over the attachment orders made under the State laws.

29. In view of the above contentions, it is necessary to evaluate the aims and objects of both the Acts to ascertain as to the procedure envisaged under which law would better serve the purpose of meeting the obligations of the depositors, whose hard earned money was collected by the accused luring them of high returns to amass wealth.

30. The statement of Objects and Reasons of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 read as under:

> "Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and as put to grave hardship by losing their hard-earned savings. To curb these malpractices, the State Government had decided to bring a law to protect the interests of depositors of the financial establishment in the Sate and for matters connected therewith or incidental thereto. The above issue was also discussed in a conference of the State Chief Ministers and Finance Ministers presided by the Union Finance

Minister on 14.9.1998 at Vigyan Bhavan, New Delhi. The Union Finance Minister also desired that States should take expeditious steps for enacting legislation on the lines of 'Tamil Nadu Protection of Depositors (in Financial Establishments) Act, 1997, to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits.

To achieve the above objection, the Government has decided to make separate law by undertaking legislation."

31. The Act was reserved by the Governor on 13.04.1999 for consideration and assent of the President and on 23.06.1999, the same was granted and the Act was published on 1.7.1999, in the Andhra Pradesh Gazette for general information.

32. The *vires* of the APPDFE Act was upheld by the Hon'ble Supreme Court in ***Soma Suresh Kumar vs. Government of Andhra Pradesh*** (supra 1).

33. Sections 6,9,10, 11 and 14 of the Act are extracted hereunder for sake of convenience:

"**6. Special Court**:- (1) For the purpose of this Act, the Government shall, with the concurrence of the Chief Justice of the High Court, by notification, constitute a District and Sessions Court as a special Court.

(2) No Court including a Court constituted under the Presidency Towns Insolvency Act, 1909 (Central Act III of 1909) and the Provincial Insolvency Act, 1920, (Central Act V of 1920), other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other Court to which the provisions of this Act apply shall stand transferred to the Special Court.

(4) The Special Court shall, on an application by the competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money realized from out of the property attached.

9. Security in lieu of attachment:- Any financial establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Special Court for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of the special Court, satisfactory, and sufficient, it may cancel the ad-interim order of attachment or, as the case may be refrain from passing the order of attachment.

10. Administration of property attached:- The Special Court may, on the application of any person interested in any property attached under this Act and after giving the Competent Authority an opportunity of being heard, make such orders as the Special Court considers just and reasonable for,--

(a) Providing from such of the property attached as the applicant claims an interest in such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in the Special Court under Section 5;

(b) Safeguarding so far as may be practicable the interest of any business affected by the attachment and particularly by in the interest of any partners in such business.

11. Appeal:- Any person including the Competent Authority, if aggrieved by an order of the Special Court, may appeal to the High Court within thirty days from the date of such order.

14. **Act to override other laws** - Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having affect by virtue of any such law."

34. Sub Section (4) of Section 6 of the Act empowers the Special Court to pass orders for the equitable distribution among the depositors of the money realized from out of the property attached.

35. Prevention of Money Laundering Act is a legislation brought by the Parliament to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. The said legislation came into force with effect from 01.07.2005. According to Section 3 of the Act, whomsoever, 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. Section 4 of the Act deals with the punishment for money laundering, which stipulates that whoever commits the offence of money laundering shall be punishable with a rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven (07) years, and shall also be liable to fine. Section 5 of the Act which deals with the attachment of property involved in money laundering, reads as follows:

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

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

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.].

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on

the date of an order made under sub-section (2) of section 8, whichever is earlier.

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

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

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

36. Section 5 of the Act authorizes the Enforcement officials not below a specific rank to attach any property of any person, if he has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act. The Provisional Attachment order in the instant case had been issued invoking the power conferred under this section.

37. Section 5 of the PML Act does not contain any provision as was contained in Section 6 of the APPDFE Act empowering the Adjudicating Authority for issuing a direction as may be necessary for equitable distribution among the depositors of the money realized from out of the property attached.

38. In the instant case, the prime charge against the accused persons is that they have collected deposits from the depositors by making false promises of high returns by contravening Section 5 of the APPDFE Act. As rightly contended by the learned Advocate General, the said provision is not included in the schedule offence under PML Act.

39. The prime intention of any legislation more particularly in the matters relating to economic offences would be to restore back the position or status of victim or deceived as much as possible by recovering the property illgotten from the accused. Mere confiscation of the property to the State would not serve the purpose of legislation, if it would not come to the rescue of the victim.

40. The Prevention of Money Laundering Act, though a self contained code and provides for appeal over the decisions taken by the Adjudicating Authority, did not contain any provision in *pari materia* with that of Sub Section (4) of Section 6 of the APPDFE Act, which comes to the rescue of the depositors that were deceived by the accused, which would always to be the prime intention of any legislation dealing with economic offences in relation to private individuals. The provision contained in PML Act for

confiscation of the property in case the accused person found guilty of the schedule offence, would not cater the needs of the deceived depositors.

41. In view of the above, though the PML Act is a central legislation having overriding effect that too subsequent in point of time to the State legislation i.e. APPDFE Act, the interest of the depositors would well be subserved if the properties of the accused firm remained attached under APPDFE Act so that there may be equitable distribution among the depositors.

42. At this juncture, it cannot be lost sight of the fact that Division Bench of this Court in PIL No. 193 of 2015 filed inter alia to direct respondent nos.3,4 and 8 therein to conduct in depth investigation through Central Bureau of investigation (CBI) for punishing the culprits forthwith, after considering the relevant provisions of the APPDFE Act, had opined that the Special Court which is having jurisdiction to make equitable distribution of the money realised, out of the property purchased, among the depositors. From this, it is clear that, Division Bench of this Court, in view of the provisions of the APPDFE Act, would have thought it fit that the Special Court is competent to deal with the matters for distribution of proceeds of the property among the depositors. Lest, the Division Bench of

this Court in the above PIL would have either directed CBI or Enforcement Directorate to probe into the matter. This also would reinforce the observations made above by this Court that continuance of proceedings in Special Court under APPDFE Act would subserve the interest of the depositors.

43. Almost all the decisions relied on by the learned Standing Counsel for Enforcement Directorate are in relation to ouster of writ jurisdiction when efficacious remedy is available. No doubt, the decisions envisage well established principle of law. However, in view of the facts and circumstances that exist in these matters, more particularly in view of the orders passed in PIL No.193 of 2015, the observations made in the above decisions cannot be made applicable to the facts of the present case.

44. In the decision in ***Subrata Chttoraj vs. Union of India and others*** (supra 2) relied on by the learned Advocate General, the Hon'ble Supreme Court while dealing with Sarada Chit Funds when the matters were transferred to CBI and Investigation by Enforcement Directorate held as follows:

> "44. Transfer of Investigation to the Central Bureau of Investigation (CBI) in terms of this order shall not, however, affect the proceedings pending before the Commissions of Enquiry established by the State Government or

stall any action that is legally permissible for recovery of the amount for payment to the depositors. Needless to say that the State Police Agencies currently investigating the cases shall provide the fullest cooperation to CBI including assistance in terms of men and material to enable the latter to conduct and complete the investigation expeditiously."

45. The Enforcement Directorate may go on investigating the case initiated by it into the offences said to have been committed by accused. However, in view of the reasons given above that the attachment made under the provisions of the APPDFE Act would subserve the interest of the depositors, the Provisional Attachment Orders passed by the Enforcement Directorate are liable to be quashed, for the reason that the same would deter the primary objective of the APPDFE Act in mitigating the hardship of the depositors.

46. All the depositors are natives of this State and the properties attached are situated in this State and the possible inconvenience that may be caused to the depositors, who had parted with their hard earnings with the Company by way of deposits, in approaching the Authority under PMLA Act for pursuing their claims to get back the amount, is also taken into consideration while reaching to the conclusion that proceeding with the matter before the Special Court designated under APPDFE Act would subserve the interest of the depositors.

47. Regarding the claim made by Union Bank of India (corporation bank) vide W.P.Nos.4043 & 4044 of 2019 for declaring G.O.Ms.No.23 and 39 to the extent of the properties mortgaged by M/s.Singaraya Hills Green Power Genco Pvt.Ltd., is concerned, it is brought to the notice of this Court that the Bank had already filed relevant petitions before the Special Court. It is also brought to the notice of this Court that the writ petitions in W.P.No.11520 of 2023 and the petitioners in W.P.No.16770 of 2021 are agitating their claims by virtue of the note contained in G.O.Ms.No.23 before the special Court, Eluru. Therefore, the bank and also the petitioners in W.P.Nos.11520 of 2023 and W.P.No.16770 of 2021 can pursue its remedies before the Special Court.

48. So far as the claim made by M/s.BLG Infra Projects, petitioner in W.P.No.5183 of 2022 is concerned, the same is covered by the writ petitions filed by the bank vide W.P.Nos.4043 and 4044 of 2019. M/s. BLG Infra Projects purchaser can agitate his claim before the Special Court.

49. In so far as the writ petitions vide W.P.Nos.7987 of 2021 filed by Bank, W.P.No.16770 of 2021 filed by Sai Fortune Apartment Owners Association, W.P.No.5183 of 2022 filed by BLG Infra Projects Private Limited, W.P.No.11520 of 2023 filed by All India Agri gold Customers &

Agents Welfare Association and W.P.No.9441 of 2021 filed by M/s. Agri gold Farm Estates Private Limited for quashing PAO No.04/2020 dated 24.12.2020 and also the Writ Petition vide W.P.No.2899 of 2022 filed by Agri Gold Farm Estate India Limited for quashing the Provisional Attachment Order 12 of 2021, dated 30.11.2021 are concerned, the Provisional Attachment Orders 04/2020 dated 24.12.2020 and 12/2021, dated 30.11.2021 are quashed so far as they relate to the properties attached by the investigating agency in the predicate offences and consequently the original complaint vide O.C.Nos.1391 of 2021 and 1598 of 2022 so far as they relate to the properties covered by the attachment made by the investigating agency in predicate offences, are also quashed to that extent.

50. The Enforcement Directorate is at liberty to participate in the proceedings before the Special Court, Eluru under the provisions of APPDFE Act for taking necessary action on the surplus of the amount of the sale proceeds of the auction of the attached properties in accordance with the provisions of the PLM Act. Further, the Enforcement Directorate is free to deal with the properties, which were not attached by the investigating agency of the predicate offence and are covered under

Provisional Attachment Orders impugned in these writ petitions, in accordance with the provisions of the PMLA Act.

51. **Accordingly**,

(a) Writ Petition Nos.4043 & 4044 of 2019 filed by Union Bank of India (corporation bank) and Writ Petition No.5183 of 2022 filed by M/s.BLG Infra Projects, are disposed of and the writ petitioner can raise all the grounds that are available to the Bank in relation to G.O.Ms.NO.23 and 39 before the Special Court in relation to the properties mortgaged to the bank by M/s. Agri Gold Group and were purchased by M/s.BLG Infra Projects in E-auction.

(b) Writ Petition nos.11520 of 2023 and W.P.No.16770 of 2021 are disposed of and the writ petitioners can raise all the grounds in relation to G.O.Ms.No.23 in relation to their flats are concerned.

(c) In so far as the writ petitions vide W.P.Nos.7987 of 2021 filed by Bank, W.P.No.16770 of 2021 filed by Sai Fortune Apartment Owners Association, W.P.No.5183 of 2022 filed by BLG Infra Projects Private Limited, W.P.No.11520 of 2023 filed by All India Agri gold Customers & Agents Welfare Association and W.P.No.9441 of 2021 filed by M/s. Agri gold Farm Estates Private

Limited for quashing PAO No.04/2020 dated 24.12.2020 and also the Writ Petition vide W.P.No.2899 of 2022 filed by Agri Gold Farm Estate India Limited for quashing the Provisional Attachment Order 12 of 2021, dated 30.11.2021 are disposed of by setting aside the Provisional Attachment Orders 4/2020 dated 24.12.2020 and 12/2021 dated 30.11.2021 so far as they relate to the properties attached by the investigating agency in the predicate offences and consequently the original complaint vide O.C.Nos.1391 of 2021 and 1598 of 2022 are quashed so far as they relate to the properties covered by the attachment made by the investigating agency in predicate offences.

(d) The Enforcement Directorate is at liberty to participate in the proceedings before the Special Court, Eluru under the provisions of APPDFE Act for taking necessary action on the surplus of the amount of the sale proceeds of the auction of the attached properties in accordance with the provisions of the PLM Act.

(e) The Provisional Attachment Orders so far as they relate to the properties that are not covered under the attachments made by the investigating agency in predicate offence holds good. The

Enforcement Directorate is free is deal with those properties as per the provisions of the Prevention of Money Laundering Act.

(f) There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed and the interim orders, if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

11th March, 2024.
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HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION Nos. 4043, 4044 of 2019, 7987, 9441 & 16770 of 2021 & 2899 , 5183 of 2022 & 11520 of 2023

11th March, 2024

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