

“ROLES, RESPONSIBILITIES AND RISKS FOR PROFESSIONALS UNDER THE PREVENTION OF MONEY LAUNDERING ACT

ORGANIZED BY CHAMBER OF TAX CONSULTANTS

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ADDRESSING THE ELEPHANT IN THE ROOM

- What is AML and why is it relevant?
- Why PMLA 2002?
- Is the PML Act 2002 in India actually as draconian as they bring it out to be?
- What opportunities does the AML legislation present to me professionally?
- Should my client be worried?
- Should I as a professional be worried?

WHAT IS 'AML' AND WHY IS IT RELEVANT?

- The [Financial Action Task Force \(FATF\)](#) is a global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.
- FATF has developed [40 FATF Recommendations](#), which ensure a co-ordinated global response to prevent organised crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes. There are more than 200 countries and jurisdictions committed to implementing the Recommendations.
- FATF reviews money laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity. FATF monitors countries to ensure they implement the FATF Standards fully and effectively by a process of Mutual Evaluation Reviews, and holds countries to account that do not comply.
- In consultation with members of the accounting profession, FATF has issued various recommendation publications including relating to the [Risk Based Approach for Accountants](#).



THE PREVENTION OF MONEY LAUNDERING ACT, 2002 – ACT 15 OF 2003 -

- An Act 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.
- It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. (Statement of Objects and Reasons)
- It is presumed that when the reward for crime is taken away, crime itself may reduce.

IS THE PML ACT 2002 IN INDIA ACTUALLY AS DRACONIAN AS THEY BRING IT OUT TO BE?

- In one word. Yes.
- Though money laundering is a menace and needs to be dealt with an iron fist, the provisions of the PMLA 2002 are quite draconian.
- Getting Bail after being accused of PMLA is notoriously difficult.
- The infamous twin conditions of Bail in PMLA
- In some cases, the PMLA proceedings exact a heavier toll than the primary offense – Eg. Section 419 of the Cr.P.C. – Cheating by personation – Punishment is three years and offense is bailable. PMLA punishment is not less than three years – may extend to seven and offenses are non bailable.

WHAT OPPORTUNITIES DOES THE AML LEGISLATION PRESENT TO ME PROFESSIONALLY?

- The PMLA consists of multiple proceedings and has three distinct aspects, all that involve an active role of professionals
 - – Civil Proceedings – For Attachment / Confiscation of property
 - - Criminal Proceedings – For the Offense of Money Laundering
 - - Compliance – For Financial Intermediaries, failure to comply can mean proceedings taken out under the Act.

SHOULD MY CLIENT BE WORRIED?

- The PML act is very widely worded in order to cast a wide net.
- The basic offenses such as those listed in CR.P.C. can be invoked against any individual and then if the Enforcement Directorate (ED) so wishes, it may decide to initiate PMLA proceedings.
- Those stuck up in PMLA proceedings may find themselves falling down the proverbial rabbit hole, with multiple proceedings and a freezing of funds bringing business to halt.
- However, PMLA has not been thus far invoked routinely yet.
- If your client is a Financial Intermediary, then the AML Legislation adds to the compliance burden of their organisation.

SHOULD I AS A PROFESSIONAL BE WORRIED?

- Chartered Accountants and Lawyers, amongst other professionals are both privy to sensitive information about their clients and therefore may find themselves receiving summons during investigation.
- Chartered Accountants and Lawyers, amongst other professionals may find themselves involved in strategising / planning company structures etc. and may find themselves being entangled in the offense of money laundering.
- Chartered Accountants and Lawyers, amongst other professionals may find themselves certifying documents or statements and may find themselves being entangled in the offense of money laundering.

OFFENCE OF MONEY-LAUNDERING – AND EXPLANATION

- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.
- *For the removal of doubts, it is hereby clarified that 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:—*
- *Concealment; or possession; or acquisition or use; or projecting as untainted property; or claiming as untainted property - in any manner whatsoever,*

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 or claiming it as untainted property in any manner whatsoever.



THE SCHEDULE OF OFFENSES

- Various Acts under IPC, NDPS Act, Explosive Substances Act, UAPA Act, Arms Act, Wildlife protection, Immoral Traffic (Prevention) Act, Prevention of Corruption Act, Explosives Act, Antiques and Art treasures Act, Customs Act, Bonded Labour, Child Labour, Juvenile Justice, Emigration, Passports, Foreigners, Copyrights, Trademarks, Biological Diversity, Protection of plant varieties and farmer's rights, Environment protection Act, Water / Air pollution control, Unlawful Acts against safety of maritime navigation and fixed platforms on continental shelf, etc.

OTHER SCHEDULED OFFENSES

- SEBI Act offenses - against manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.
- Companies Act – Fraud
- Information Technology Act – Breach of confidentiality and privacy.

PROCEEDS OF CRIME

- “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;]*
- Could this include professional fees?

PUNISHMENT FOR MONEY LAUNDERING

- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.
- **Provided** that where the proceeds of crime involved in money-laundering relate to any offence specified under the NDPS Act, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" has been substituted.

INSTITUTIONAL FRAMEWORK - AGENCIES

- The Directorate of Enforcement was established in the year 1956 with its Headquarters at New Delhi. It is responsible for enforcement of the Foreign Exchange Management Act, 1999 (FEMA) and certain provisions under the Prevention of Money Laundering Act. Work relating to investigation and prosecution of cases under the PMLA has been entrusted to Enforcement Directorate. The Directorate is under the administrative control of Department of Revenue for operational purposes; the policy aspects of the FEMA, its legislation and its amendments are within the purview of the Department of Economic Affairs. Policy issues pertaining to PML Act, however, are the responsibility of the Department of Revenue.
- Financial Intelligence Unit – India (FIU-IND) was set up by the Government of India vide O.M. dated 18th November 2004 as the Central National Agency responsible for receiving, processing, analysing and disseminating information relating to suspicious Financial Transactions. FIU-IND is also responsible for coordinating and strengthening efforts of National and International Intelligence, Investigation and Enforcement Agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

FUNCTIONS OF FINANCIAL INTELLIGENCE UNIT

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- The main function of FIU-IND is to receive cash and suspicious transaction reports, analyse them and as appropriate, disseminate valuable financial information to Intelligence/Enforcement Agencies and Regulatory Authorities .The functions of FIU-IND are:
 - **Collection of Information:**
 - **Analysis of Information:**
 - **Sharing of Information:**
 - **Act as Central Repository:**
 - **Coordination:**
 - **Research and Analysis:**

WHAT IS AN STR? – COMPLIANCE ASPECT

The Prevention of Money Laundering Act, 2002 and the Rules thereunder require every banking company to furnish details of suspicious transactions whether or not made in cash. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith-

- Gives rise to a reasonable ground of suspicion that it may involve the proceeds or crime; or
- Appears to be made in circumstances of unusual or unjustified complexity; or
- Appears to have no economic rationale or bonafide purpose.
- *KYC - Every reporting entity shall verify the identity of its clients and the beneficial owner – Section 11A of the Act*

REPORTING ENTITY TO MAINTAIN RECORDS

- Section 2(wa) - "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;
- Every reporting entity shall:
 - (a) maintain a record of all transactions (five years from the date of transaction between a client and the reporting entity), including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
 - (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
 - (e) maintain record of documents (five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later) evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

ACCESS TO INFORMATION

- (1) The Director may call for from any reporting entity any of the records referred and any additional information as he considers necessary for the purposes of this Act.
- (2) Every Reporting Entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.
- (3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.

POWER OF DIRECTOR TO MAKE INQUIRY

- The Director may, either of his own motion or on an application made by any authority, officer or person, make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity.
- If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by a chartered accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

POWER OF DIRECTOR TO IMPOSE FINES

- If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—
- issue a warning in writing; or
- direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
- direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
- by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to One Lakh Rupees for each failure.
- Section 14- Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.

MAINTENANCE OF RECORDS (RULE 3)

Every banking company or financial institution or intermediary, as the case may be, shall maintain a record of :

- all cash transactions of value of more than Rupees Ten Lakhs or its equivalent in foreign currency;
- all series of cash transactions integrally connected to each other which have been valued below Rupees Ten Lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month;
- all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place;
- all suspicious transactions whether or not made in cash (As Per Rule 3 (D))
- collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

THE RECORDS REFERRED SHALL CONTAIN THE FOLLOWING INFORMATION:- (RULE 3)

- Nature of the transactions;
- Amount of the transaction and the currency in which it was denominated;
- Date on which the transaction was conducted; and
- The parties to the transaction.

PROCEDURE AND MANNER OF MAINTAINING INFORMATION

- Maintain information in soft and hard copy in accordance with RBI or SEBI norms
- Evolve mechanism for maintaining information in accordance with RBI or SEBI norms
- Observe procedure and manner of maintaining records in accordance with RBI or SEBI norms
- The records mentioned in rule 3 shall be maintained for a period of ten years from the date of cessation of the transactions between the client and the banking company, financial institution or intermediary, as the case may be.

FURNISHING OF INFORMATION TO THE DIRECTOR.

- The Principal Officer of a banking company, financial institution and intermediary, as the case may be, shall furnish the information in respect of transactions referred to in rule 3 every month to the Director by the 7th day of the succeeding month. The exception are all those all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place and all suspicious transactions whether or not made in cash (As Per Rule 3 (D))

SEBI GUIDELINES - MASTER CIRCULAR DATED OCTOBER 15TH 2019

- Each registered intermediary should adopt written procedures to implement the Anti Money Laundering Provisions as envisaged under the Anti Money Laundering Act, 2002. Such procedures should include inter alia, the following three specific parameters which are related to the overall 'Client Due Diligence Process':
 - Policy for acceptance of clients
 - Procedure for identifying the clients
 - Transaction monitoring and reporting especially Suspicious Transactions Reporting (STR)

TIMELINES

- The Cash Transaction Report (CTR) (wherever applicable) for each month shall be submitted to FIU - IND by 15th of the succeeding month.
- The Suspicious Transaction Report (STR) shall be submitted within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature. The Principal Officer shall record his reasons for treating any transaction or a series of transactions as suspicious. It shall be ensured that there is no undue delay in arriving at such a conclusion.
- The Non Profit Organization Transaction Reports (NTRs) for each month shall be submitted to FIU - IND by 15th of the succeeding month

FURTHER COMPLIANCES / OBLIGATIONS – SEBI MASTER CIRCULAR

- Employee's Training
- Investors Education
- Screening of employees while hiring
- Appointment of a Principal Officer as a central reference point for reporting of STRs. The said officer is to be intimated to the FIU.
- Appointment of Designated Director – as defined in Rule 2 of the PML Rules.
- Action can be taken against the Designated Director for failure of intermediary to company with AML obligations.

CLIENT PRIVILEGE - LAWYERS

- Section 126 of the Indian Evidence Act, 1872, which deals with Professional communications states that “No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment”, subject to certain conditions as laid down the Section.
- No client privilege for other professionals

CASE STUDY –

NALINI CHIDAMBARAM V. DIRECTORATE OF ENFORCEMENT 2018 SCC ONLINE MAD 5924

- The summons under Section 50(2) were issued on a Senior Advocate seeking evidence upon some matters to do with her client.
- The Senior Advocate appeared through her pleader and sought protection granted to women under Section 160 of the CRPC. The Division Bench of the High Court Dismissed her appeal.
- “The scope and applicability of Sections 126 to 129 of the Indian Evidence Act, 1872, is not required to be gone into at this stage as otherwise we will be entering into a realm of speculation”.
- Liberty was granted to the ED to issue fresh summons to require her appearance in person.

VINOD KUMAR GUPTA V. JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT 2018 SCCONLINE ATPMLA 27

- All professionals such as advocates, solicitors, consultants, chartered accountants, doctors, surgeons receive their professional charges from their respective clients against service provided. Neither can the presumption under section 5(1)(a) be drawn ipso facto that they have the proceed of crime received as professional charges in their possession nor on the basis of presumption can their movable and immovable properties be attached unless a link and nexus directly or indirectly towards the accused or the crime is established within the meaning of section 2(1)(u) of the Act. In the absence of such a link, the professionals are to be treated as innocent persons as unless link and nexus of proceed of crime is established under section 2(1)(u), the proceedings under the Act cannot be initiated.

DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, DELHI V. AXIS BANK & ORS. 2019 LAW SUIT (DEL) 1037: 2019 SCCONLINE DEL 7854 : (2019) 259 DLT 500 : (2019) 2 BC 489 : (2020) 220 COMP CAS 147

- A Resolution Professional appointed under the Insolvency Code does not have any personal stake. He only represents the interest of creditors, their committee having appointed and tasked him with certain responsibility under the said law.

**MURALI KRISHNA CHAKRALA V. THE DEPUTY DIRECTOR CRIMINAL
REVISION CASE NO.1354 OF 2022 AND CRL.M.P.NO.14792 OF 2022,
DATED 23RD NOVEMBER 2022**

- When for issuing certain certificates, a Chartered Accountant is not required to go into the genuineness or otherwise of the documents submitted by his clients, he cannot be prosecuted for granting the certificate based on the documents furnished by the Clients. The Court observed that this could be compared with the legal opinion that are normally given by panel lawyers of banks, after scrutinizing title documents without going into their genuinity. A Panel Advocate, who has no means to go into the genuinity of title deeds and who gives an opinion based on such title deeds, cannot be prosecuted along with the principal offender.
- Would this change when the professional is required to certify the authenticity of the documents but fails to do so?

**RAJIV CHAKRABORTY RESOLUTION PROFESSIONAL OF EIEL V.
DIRECTORATE OF ENFORCEMENT 2022 SCCONLINE DEL 3703**

- The Court observed that an order of attachment when made under the Act does not result in the corporate debtor or the Resolution Professional facing a fait accompli. The statutes provide adequate means and avenues for redressal of claims and grievances. It could be open to a Resolution Professional to approach the competent authorities under the Act for such reliefs in respect of tainted properties as may be legally permissible. A Provisional Attachment Order made by the Enforcement Directorate under the Act does not invest in that authority a superior or overriding right in property. Ultimately the claims of parties over the property that may be attached and the question of distribution and priorities would have to be settled independently and in accordance with law.

CRIMINAL PROCEEDINGS – SPECIAL COURT

- The offense of PMLA is tried in the special court designated for the purpose.
- In order to save time, the trial for the compound offense may also be shifted to the special court if the ED makes an application.
- Section 46 of PMLA makes CRPC applicable to PMLA proceedings before the special court, save as provided by the Act,.
- Final order as to confiscation to be passed by the Special Court as per Section 8(5) of the PMLA

SO YOUR CLIENT RECEIVED A PROVISIONAL ATTACHMENT NOTICE?

- There does not need to be a pre-registered scheduled offense for provisional attachment. It is not right to assume that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. - **Vijay Madanlal Coudhary v. UOI & Ors. 2022 SCC OnLine SC 929**
- Provisional attachment is like 'symbolic attachment'. No third party rights can be created, however, the possession of the property cannot be taken by the ED without adjudication.
- No show cause Notice is required to be issued for provisional attachment. **Gautam Khaitan & Onr. v. UOI & Anr. 2015 SCC OnLine Del 7071**
- Properties of third parties can be provisionally attached by the ED if suspected to be proceeds of crime even if the party is a bonafide third party. The provisional attachment of property is not restricted in the hands of accused persons alone **C. Chellamuthu v. Deputy Director 2015 SCC OnLine Mad 13123 : (2016) 1 LW 132**
- Appearance before the Adjudicating Authority in response to a show cause notice would not imply a submission to its jurisdiction. Raising an objection regarding jurisdiction before the authority issuing the impugned notice and suffering an adverse order does not result in waiver of the right of the objector to question the resultant order before a competent forum subsequently - **Rose valley Real Estate and Constructions Ltd. & Anr. V. Union of India & Ors. 2014 SCC OnLine Cal 17746**

'REASONS TO BELIEVE'

- The existence of reasons to believe is a requirement in Section 5, 8, 16, 17, 18 etc. for the initiation of action under the Act.
- A mere mechanical recording that the property is likely to be concealed, transferred or dealt with would not meet the requirements of Section 5(1) of the Act. - ***Mahanivesh Oils & Foods Pvt. Ltd. v. Directorate of Enforcement in 2016 SCC OnLine Del 475***
- While carrying out the provisional attachment, the attaching authority did not record reason to believe that the Petitioner was in possession of any proceeds of crime and that such proceeds of crime were likely to be concealed, transferred etc., which may frustrate any proceedings relating to confiscation of such proceeds as is the mandatory requirement under Section 5(1) of the Prevention of Money Laundering Act. The show cause notice under Section 8(1) of Act was issued in a mechanical manner without application of mind and without forming any *reason to believe* that the Noticee had committed an offence under Section 3 or was in possession of proceeds of crime. The adjudicating authority did not record any reason that the provisional attachment should continue. These errors are jurisdictional errors - ***VANPIC Ports (P) Ltd. v. Directorate of Enforcement, 2022 SCC OnLine TS 1793***
- **Regional Office, Syndicate Bank, v. The Joint Director, Directorate of Enforcement, Jaipur, FPA -PMLA-1853/JP/2017 dated May 21, 2019** the Appellate Tribunal set aside an attachment order where the Directorate had not communicated any reasons to believe while passing the Provisional Attachment Order by relying on the Judgement of the Supreme Court in ***C.B. Gautam v. Union of India 1993 (1) SCC 78.***

REASONS TO BELIEVE TO BE IN WRITING

- The absence of recording of reasons to believe under Section 5(1) of Prevention of Money Laundering Act does not result in violation of constitutional right to property of the citizens since it is only a provisional attachment which would be valid only for a maximum period of 180 days or less. Although the Section provides for recording of reasons to believe by the authority, failure to record at worst is only a statutory infraction and the same can be pleaded before the Adjudicating Authority. In such circumstances, non-recording of reasons by the Authority initiating action under Section 5 of Prevention of Money Laundering Act becomes curable while initiating action under Section 8 of the Act by the Adjudicating Authority -**Mohamed Ibrahim Sait v. Deputy Director & Ors. 2019 SCC OnLine Mad 8561**
- Even when the Deputy Director has reasons to believe that the non-attachment of property may lead to the frustration of any proceedings under the Act, if the said reasons for such beliefs were not recorded in writing, the provisional attachment order could be stayed (as an interim measure), in light of the condition precedent contained within the second proviso to Section 5(1) of Prevention of Money Laundering Act. **Aftabuddin Ahmed & Ors. V. Enforcement Directorate & Ors. 2020 SCC OnLine Gau 3818**
- **Final position Vijay Madanlal Coudhary v. UOI & Ors. 2022 SCC OnLine SC 929** held that it is only upon recording satisfaction regarding the twin requirements referred to in sub-section (1) of Section 5, can the authorised officer proceed to issue order of provisional attachment of such proceeds of crime.

IS BEING PROCEEDS OF CRIME ENOUGH FOR PROVISIONAL ATTACHMENT OF PROPERTY

- A plain reading of the provisions of Section 5(1) does not support the contention that the moment any person is found to be in possession of any proceeds of crime, it must be presumed that such person would be likely to conceal, transfer or deal with such proceeds to frustrate confiscation proceedings under Chapter III of Prevention of Money Laundering Act. **Digambar Kamat & Ors. V. Joint Director 2020 SCC OnLine Bom 1899**
- There has to be a satisfaction that if the property involved in money-laundering or 'proceeds of crime' are not attached, such non-attachment might frustrate the confiscation proceedings under the Act. **Vijay Madanlal Coudhary v. UOI & Ors. 2022 SCC OnLine SC 929**

TO WRIT OR NOT TO WRIT

- The existence of an alternative and efficacious remedy weighs in on the mind of a constitution court while entertaining a writ petition.
- High Court refused to interfere with the provisional attachment while holding that the order of provisional attachment was like a 'show cause notice' and that a writ petition at the stage of show cause notice is not maintainable. **Namrata Marketing Pvt. Ltd. v. UOI (2021) 4 All LJ 519 : 2021 SCC OnLine All 257**
- As the attachment is only provisional, the Bank could appear before the adjudicating authority and disprove the claim that the moneys would be 'proceeds of crime'. **Indian Overseas Bank v. Government of India & ors. 2016 SCC OnLine Mad 4247**
- The provisional attachment order as well as the complaint under Section 8 of the Prevention of Money Laundering Act set aside where a plain reading of the order for provisional attachment did not indicate that there is any material on the basis of which the authorised officers of the Enforcement Directorate could have possibly concluded that the investments made by the Petitioner were 'derived or obtained' as a result of any criminal activity relating to a scheduled offence. **Himachal EMTA Power Ltd. v. UOI & Ors. 2018 SCC OnLine Del 11078**
- **Joseph Massey & Ors. v. Union of India 2016 SCC OnLine Del 2839 : (2016) 338 ELT 522 : (2016) 157 DRJ 99**, a show cause notice does not adversely affect the noticee and furnishes no cause of action to a noticee to maintain a petition under Article 226 of the Constitution of India there against, unless it is issued by a person having no authority/jurisdiction to do so or is otherwise patently illegal.

IMPORTANCE OF DEFINITION OF PROCEEDS OF CRIME

- The attachment under Section 5 must only be in respect of property which appears to be proceeds of crime and not all the properties belonging to concerned person who would eventually face the action of confiscation of proceeds of crime, including prosecution for offence of money-laundering. **Vijay Madanlal Coudhary v. UOI & Ors. 2022 SCC OnLine SC 929**
- Where the attachment order specified the quantum of the amounts attached, the High Court allowed the Petitioners to operate their bank accounts subject to maintaining a balance of money corresponding to the amounts attached. **ART Housing Finance (India) Limited v. Directorate of Enforcement & Ors. 2020 SCC OnLine Del 2116,**

NOTICE RECEIVED BY BANK FOR ATTACHMENT OF A PROPERTY MORTGAGED TO IT

- The Adjudicating Authority is obliged under the proviso to Sub-Section (2) of Section 8 to issue a notice to every person, who claims the property to be his own and to provide an opportunity of being heard even to such a person. **Dr. V.M. Ganesan v. Jt. Director, Directorate of Enforcement 2014 SCC OnLine Mad 10702: (2015) 1 Mad LJ 870**
- Properties acquired prior to the commission of the scheduled offense and mortgaged to the bank and also mortgaged to the bank prior to the commission of such scheduled offense could not by any stretch be considered as proceeds of crime in the hands of the mortgagee bank. **Joint Director Directorate v. Naresh Grover & Anr 2019 SCC OnLine Del 12042**
- When monies are siphoned off from a bank holding public money, the bank is the victim and cannot be made to suffer. Even if the manager is accused of wrong doing, the bank is not the manager and is the victim. **Nasreen Taj & 4 Ors. v. Deputy Director Directorate of Enforcement 2017 SCC OnLine ATPMLA 19**

THANK YOU !

