

**IN THE COURT OF SPECIAL JUDGE UNDER
THE PREVENTION OF MONEY LAUNDERING ACT
AT GREATER BOMBAY**

ORDER BELOW APPLICATION EXHIBIT NO.114

IN

PM.L.A. SPECIAL CASE NO.4 OF 2018

IN

ECIR/MBZO-I/03/2018

Punjab National Bank .. Applicant

V E R S U S

1. Deputy Director
Directorate of Enforcement. .. Respondent/Complainant.

2. Firestar International Ltd.
(through the Resolution Professional) .. Proforma Respondent.

Ld. Advocate Mr. Aditya Malhotra alongwith Mr. Lalan Gupta i/b
Shardul Amarchand Mangaldas and Co. for the Applicant.

Ld. PP. Mr. Arvind Aghav for Respondent/Complainant.

**CORAM : HIS HONOUR SPECIAL JUDGE
SHRI. V.C. BARDE
SPECIAL COURT
(Court Room No. 50)**

DATE : 13th August, 2021.

O R D E R

1. The present is an application on behalf of applicant-Punjab National Bank (for short 'PNB'), being interested person, under Section 8(8) and Section 8(7) of the Prevention of Money Laundering Act, 2002 (for short 'P.M.L.A. Act') read with Rule 3A-2 of the Prevention of Money Laundering (restoration of confiscated property) Rules, 2016,

claiming release of mortgaged/hypothecated/guarantor properties, which have been exempted from confiscation vide confiscation order dated 08.06.2020 passed in Criminal Miscellaneous Application No.998 of 2018, as mentioned in Schedule-A to the application. The application is so filed by PNB in twin capacities: in its individual capacity as a claimant and in the capacity of being the lead bank for PNB Consortium and being the authorized representative bank for UBI Consortium to file the present application, as described in the application. It is contended that prosecution complaint filed by the Enforcement Directorate (for short 'E.D.') in the present proceedings describes a series of incidents by way of which accused no.1-Nirav Modi and certain firms/companies/entities controlled by him including the Solar Exports, Diamond R US and Stellar Diamonds i.e. Accused Nos.16 to 18-Nirav Modi's Firms, have defrauded PNB to the tune of more than Rs.7029,06,87,950.65 by obtaining numerous Letters of Undertaking (for short 'LOUs') from PNB in an unauthorized manner. The aforesaid fraud has been committed with the aid of the group of companies controlled by Nirav Modi, which *inter alia* include FIL and FDIPL i.e. accused nos.19 and 20-Nirav Modi's companies. Although no underlying credit facilities were sanctioned by PNB to the Nirav Modi's Firms for issuance of any LOUs, the Nirav Modi's Firms illegally and unauthorisedly obtained the LOUs as per the *modus operandi* elaborated upon in the prosecution complaint. While these unauthorized LOUs were purportedly issued for facilitating the import of diamonds, semi-precious stones, fresh water pearls, jewellery and precious stones, in reality, the funds procured against the LOUs were not used for any genuine transactions and were instead siphoned away for the unjust enrichment of Accused no.1-Nirav Modi and his affiliates. Long-running fraud committed on

PNB, came to light for the first time in the month of January-2018, after the retirement of the delinquent PNB Officers. On 16.01.2018, the Nirav Modi's Firms, motivated by their previous successful attempts to obtain unauthorized LOUs, approached PNB's Brady House Branch with a request for issuance of LOUs for facilitating the procurement of buyers' credit for making payment to its overseas suppliers. The officials at the said Brady House Branch requested the representatives of the Nirav Modi's Firms to furnish at least 100% cash margin for issuing LOUs for raising buyers' credit. In response to such requirement, the said representatives of the Nirav Modi's Firms blatantly refused to furnish any cash margin and contended that the Nirav Modi's Firms had been availing several LOUs without any such requirement for the past several years. These alarming acts of the Nirav Modi's Firms and their partners and beneficiaries caused PNB to trigger an immediate detailed scrutiny and investigation into the matter. PNB detected that the Nirav Modi's Firms, their partners and beneficiaries had caused fraudulent issuance of several LOUs through PNB's Swift Messaging system, despite the fact that the Nirav Modi's Firms did not enjoy any credit facility with PNB. Further, the underlying requirements in place for the issuance of LOUs had not been complied with by the Nirav Modi's Firms. PNB filed a complaint dated 29.01.2018 with the Central Bureau of Investigation (for short 'C.B.I.'). Subsequently, PNB filed further complaints with C.B.I. on 13.02.2018 and 4.03.2018. On basis of the complaint dated 29.01.2018, C.B.I. lodged First Information Report (for short 'F.I.R.') dated 31.01.2018. PNB had also lodged a complaint with E.D. on 13.02.2018. ECIR/MBZO-I/03/2018 dated 14.02.2018 was recorded by E.D. for investigation of the offence of money laundering and E.D. filed the prosecution complaint in the

present proceedings. Several properties have been attached by E.D. on the basis of the information provided by PNB. Amongst other things, on account of FIL and FDIPL's close proximity to accused no.1-Nirav Modi and the Nirav Modi's Firms, and given their involvement in the fraud, it was determined that FIL and FDIPL were in default of the aforesaid facility agreements. The PNB Consortium and UBI Consortium have recalled loans provided to FIL and FDIPL. The total outstanding debt payable by FIL to the PNB Consortium is in excess of Rs.1264,97,92,907.61 with costs and interest @ 16.45% per annum from 24.07.2018. The total outstanding debt payable by FDIPL to the UBI Consortium is in excess of Rs.232,15,92,636/- with costs and interest @ 16.20% per annum from 27.07.2018. The claimants state to have clearly suffered a quantifiable loss on account of the fraud committed by the accused, who are being prosecuted in the captioned proceedings. The claimants' quantifiable loss has been recognized by the DRT who has passed Judgments in their favour. Proceedings have been commenced under the I&B Code against FIL, on account of its default to pay it dues owed to its financial creditors. Pursuant to the same, the NCLT has passed order dated 18/11/2019 in CP No.2019/I&BP/2019, wherein a Resolution Professional had been appointed *qua* FIL. In view of the aforesaid order, there is presently a moratorium in place which began with immediate effect from 18.11.2019, with respect to the properties owned by FIL till the completion of the Corporate Insolvency Resolution Process, approval of a Resolution Plan or till the NCLT passes an order for liquidation. The moratorium is presently still in effect. Due to the aforesaid order and subsisting moratorium, PNB, PNB Consortium and UBI Consortium filed appropriate applications in proceedings before the DRT seeking a

stay of the proceedings against FIL. Pursuant to the said application DRT has taken on record the said order dated 18.11.2019, and stayed proceedings in terms of O.A. No.153/2019, RC No.30/2019 and RC No.31/2019 against FIL. Accordingly, the claimants cannot presently proceed against the properties of FIL, and hence, such properties shall be released/restored to the Resolution Professional appointed in relation to FIL. Several secured and unsecured properties of accused no.1-Nirav Modi, Nirav Modi's Firms, Nirav Modi's Companies and other entities/individuals controlled by accused no.1-Nirav Modi, most of whom are also accused in the present proceedings, have been provisionally attached by E.D. Further, E.D. has filed various Original Complaints and Original Applications before the Adjudicating Authority, being O.C. Nos.909, 985, 988, 1023, 1024, 1030, 1031, 1032, 1050, 1057, 1058 of 2018 and 1106 of 2019 and O.A. No.185 of 2018-seeking confirmation of the provisional attachment and/or confirmation of retention of seizure. PNB, in its individual capacity and on behalf of PNB Consortium and UBI Consortium, has filed Impleadment Applications in O.C. Nos.909, 985, 988, 1023, 1024, 1030, 1031, 1032, 1050, 1057, 1058 of 2018 and O.C. No.1058 of 2018, O.C. No.1106 of 2019. PNB, PNB Consortium and UBI Consortium, have also participated in the aforesaid proceedings before the Adjudicating Authority and have advanced their respective claims against the attached properties. The Adjudicating Authority has *inter alia* confirmed attachment in O.C. Nos.909, 985, 988, 1023, 1024, 1050, 1057 of 2018, O.C. No.1058 of 2018 and O.C. No.1106 of 2019 and O.A. No.185 of 2018. The attached properties of which the PNB Consortium-the claimant is presently seeking release/restoration of, are properties of FIL which have been attached/seized in terms of the

O.C.Nos.909, 985 of 2018 and O.A.No.185 of 2018. The Adjudicating Authority has confirmed the attachment in the said Original Complaints/Original Application. The Adjudicating Authority has, on occasion, indicated that a claimant with a legitimate interest in the confiscated property, such as a bank, ought to approach Court under Section 8(8) of the P.M.L. Act. As an instance, claimant states that in O.C. No.988 of 2018, PNB had submitted that it had a legitimate right and interest in the provisionally attached unsecured properties, and hence, these properties ought to have been released to PNB. As per Order dated 20.11.2018, the Adjudicating Authority had indicated that the appropriate remedy for a claimant such as PNB would be to approach Court under Section 8(8) of P.M.L. Act. PNB, in its individual capacity and on behalf of the UBI Consortium, and PNB Consortium, filed FPA-PMLA-2570/MUM/2018 before the Appellate Authority under P.M.L. Act against the Adjudicating Authority's order dated 6.08.2018 in O.C. No.909 of 2018. The PMLA Appellate Authority vide order dated 5.10.2018, passed a *status quo* order against the twenty-one immovable properties, both secured and unsecured, which were attached. PNB has also filed FPA-PMLA-3079/MUM/2019 before the PMLA Appellate Authority against the Adjudicating Authority's order dated 02.08.2018 in O.C. No.985 of 2018. The PMLA Appellate Authority vide order dated 09.09.2019 passed a *status quo* order. It is contended that in view of the fact that the Adjudicating Authority has confirmed attachment of the properties in the various Original Complaints mentioned above, including in Provisional Attachment Order No.02/2018 dated 24.02.2018, in O.C. No.909 of 2018 and Provisional Attachment Order No.06/2018 dated 21.05.2018 in O.C. No.985 of 2018, the remedy available to the applicant on behalf of the

claimants, is to approach this Hon'ble Court under Section 8(8) and Section 8(7) of P.M.L. Act for release of the attached properties and restoration of the attached properties to the Resolution Profession appointed with respect to FIL in terms of CP No.2019/I & BP/2019. PNB, in its own capacity and on behalf of the PNB Consortium and UBI Consortium, had also received notice, issued from the Special Court under the Fugitive Economic Offenders Act (for short 'F.E.O. Act') in Criminal Miscellaneous Application No.998 of 2018, being the application filed by E.D. against Nirav Modi under Section 4 read with Section 12 of the Act. The said notice had been issued to PNB as an 'interested party' which has an interest in the properties directly and indirectly owned by Nirav Modi, against which confiscation was being sought by E.D. The properties which are the subject-matter of the Fugitive Application also comprise of part of the properties which have also been attached by E.D./Adjudicating Authority, and are subject matter of the present proceedings. PNB, on its own behalf and on behalf of the PNB Consortium and UBI Consortium, has filed its reply dated 29.10.2018 to the Fugitive Application and an application dated 10.01.2020 under Section 12(7) of F.E.O. Act seeking exemption of various secured properties which are charged to PNB, UBI Consortium and PNB Consortium. PNB had filed documents which support the aforesaid claims of the claimants including mortgage deeds, hypothecation deeds, guarantor deeds etc. Special Court adjudicated upon the Fugitive Application and vide its Order dated 5.12.2019, declared accused no.1-Nirav Modi as a 'fugitive economic offender' under F.E.O. Act. Further, vide its Order dated 08.06.2020, the Special Court was pleased to exempt guarantor, mortgaged and hypothecated properties identified under Schedule-M of the Fugitive Application from

confiscation under Section 12(7) of F.E.O. Act. The operative portion of the Order of the Special Court is as under:

“2. Claim and the application (Exhibit-52) of interested parties, being respondent nos.2, 5 to 11, is partly allowed to the extent of their claim in respect of secured debts only by way of mortgage, hypothecation and guarantee deeds.

3. The properties of respondent no.1 as mentioned in List of Properties at Exhibit-M (I) to M (XII), excluding the properties claimed by interested parties under Section 12(7) of F.E.O. Act being respondent Nos.2, 5 to 11 which are only secured by mortgage, hypothecation and guarantee as per Schedules-I to IV at Exhibit-23 corresponding to Schedule I to VI of Exhibit-52 and to the extent of valuable paintings seized by Income Tax Department as per Exhibit-M (XII) to the application Exhibit-1, shall be attached by applicant under the provisions of F.E.O. Act within one month from today, and after attachment thereof, the said properties shall stand confiscated to Central Government under Section 12(2) and (8) of the Fugitive Economic Offenders Act, 2018.

4. Exemption of the properties and exclusion thereof under Section 12(7) in favour of respondent nos.2, 5 to 11, will only entitle them to proceed with their claim before the Competent Court, Authority or Tribunal in the manner provided by law.”

The above Confiscation Order has exempted from confiscation under F.E.O. Act, mortgaged, hypothecated and guarantor properties which were listed out in Exhibit-M of the Fugitive Application. However, these properties, some of which the present Application pertains to, remain attached under PMLA in terms of O.C. Nos.909 and 985 of 2018 and O.A. No.185 of 2018, and therefore, the liquidator appointed vide order of the NCLT dated 26th February 2020 in respect of FIL, cannot proceed against these attached properties, in order to recover part of the quantified loss of the claimants. The claimants' quantified loss is far greater than the total value of the attached

properties of FIL which is approximately INR 358.71 Crores, and the total value of the attached properties which is approximately INR 127.90 Crores, and the total value of the attached properties which is approximately INR 2,324.97 Crores, being the cumulative amount mentioned in the Main Application and Supplementary Application. The properties which were exempted under F.E.O. Act and which the applicant, on behalf of the PNB Consortium, is presently seeking release/restoration against, merely amount to approximately INR 108.3 Crores, being the mortgaged, hypothecated, guarantor properties relating to FIL, which were already exempted under F.E.O. Act in terms of Fugitive Application but remain attached under P.M.L. Act. The applicant stated that it is not seeking release/restoration of the properties which are identified in the supplementary application dated 19.03.2021 filed by E.D. and attachment Order Nos.1 and 2 of 2021 dated 10.03.2021 and 18.03.2021, respectively, under F.E.O. Act. PNB being the victim of the fraud, having suffered a quantifiable loss, and since PNB has a legitimate interest in several attached properties which may have been acquired using funds illegally obtained from PNB, it has prayed that it qualifies as a claimant in terms of Section 8(8) of P.M.L. Act. It contended that its claim shall be considered by Court on account of the fact that PNB has acted in good faith, has suffered the loss despite having taken reasonable precautions and is not involved in the offence of money laundering. The properties identified in Schedule-A shall be released to the Resolution Professional/Liquidator appointed in terms of the order dated 18.11.20219 passed by the NCLT on account of these properties being owned by FIL, which is presently subject to Corporate Insolvency Resolution Process. In the event that a Liquidator is appointed in terms of FIL during the course of the present

proceedings, then the properties ought to be released to such Liquidator. The proceeds of the sale of the said properties will be used to satisfy the claimants who have a legitimate claim against FIL including the Claimants herein, in accordance with the terms of I & B Code. The applicant has restricted its claim to those properties of FIL in which it has a legitimate interest and which have also been exempted from confiscation in terms of the Confiscation Order dated 08.06.2020, under F.E.O. Act. Some of the assets attached by E.D. vide O.C.No.909, 985 of 2018 and O.A. No.185 are amenable to market fluctuations and any delay in liquidating the same may reduce their value, and hence, it is contended that there is a need for immediate and speedy disposal of the assets to realize their best value. It is prayed by claimants that the attached assets be restored, so that the same may be sold immediately without any delay. On the above contentions, the applicant-Bank has requested to release the properties mentioned in Schedule-A with direction to prosecution to prepare a fresh inventory and valuation and consequent orders.

2. The prosecution-E.D. filed reply to the application through its Assistant Director conversant with the facts of this case. She submitted to deal with the application as laid down under Section 8(7) of P.M.L. Act by passing orders. She submitted that in case the court deems it fit to allow the application, it shall take an undertaking from the applicants to return the said amount with interest in case the court at any point in time deems it fit and appropriate, in the interest of justice, to deposit the said amount in the court or to the respondent, without any delay in terms of Section 8(7) of P.M.L. Act read with Rule 3A(2) of the Prevention of Money Laundering (Restoration of Confiscated

Property) Rules, 2016. Special F.E.O.A. Court was pleased to declare Nirav Modi, a Fugitive Economic Offender and allow the confiscation of his freehold properties to the tune of Rs.329.6 Crores, by Respondents/ Government of India vide its order dated 08.06.2020. The Special Court had given the liberty to the applicant to apply under Section 8(8) and 8(7) under P.M.L. Act. No prejudice shall be caused in restoring the assets to the applicant as upon confiscation of these assets on conclusion of the trial, the same are anyway liable to be restored to the applicants as per Section 8(5) of P.M.L. Act read with the Prevention of Money Laundering (Restoration of Confiscated Property Rules), 2016; except the assets already confiscated by the Government of India in lieu of the order of Special F.E.O.A. Court. It is contended that the accused in the case alleged that certain properties (shares and debentures) being amenable to market fluctuations, which are at an all-time high, require to be liquidated without delay in order to realise their best value. Since the applicants, barring applicant nos.7 and 8 are public banks, the money sought to be recovered is public money, and thus, restoration of assets in favour of the applicants lies in public interest. The applicant banks, barring two banks, are PSU Banks, have the backing of the state, and thus, carry with themselves a sovereign guarantee. Thus, in the unlikely event of the respondents prevailing, the banks would be in a position and capacity to return the proceeds of sale of assets to the respondents. As a safeguard for this possibility, the complainant submitted that this Court may order the applicants to file a guarantee in this respect.

3. Heard the learned Advocate for the applicant and learned P.P. for respondents. Perused the record of the case.

4. At the outset, it is necessary to mention here that the instant prosecution is lodged by complainant-E.D. against the accused persons for the offence of money-laundering as contemplated under Section 3 and punishable under Section 4 of P.M.L. Act. The properties of accused persons reported in the proceeding came to be attached by them. Apart from proceeding under P.M.L. Act by way of complaint, the complainant-Directorate has also filed a Petition for declaration of accused-Nirav Modi as a fugitive economic offender, which came to be registered as Criminal Miscellaneous Application No.998 of 2008, before the same Special Court. The order of declaration of the said accused as fugitive economic offender under Section 12(1) of F.E.O Act came to be passed on 05.12.2019, and thereafter, the matter as to confiscation of property proceeded further as per the said Act. The proceeding in respect of confiscation came to be disposed of on 08.06.2020 wherein applicant-Bank appeared for itself as well as for consortium of banks as mentioned therein. It is observed therein, with regard to dealing with property of a fugitive economic offender, pertaining the powers of the Court of the Special Court as under:

“41. Therefore, this Court as a Special Court having been constituted under Section 2(n) of F.E.O. Act, can deal with the matter of confiscation after declaring an offender as F.E.O. as envisaged by Section 12(2) and exemption claimed by any interested person under Section 12(7) stating to have acquired interest bona fide in the property which is proceeds of crime. It is pertinent to refer here to the contention of applicant-E.D. in reply to petition (Exhibit-52) of PNB Consortium, wherein it is stated that though PNB is victim of mammoth fraud committed by respondent no.1 resulting into huge losses to them, and the Special Court may exempt property under Section 12(7) of F.E.O. Act, as the properties contained in this proceeding are also subject matter of P.M.L.A. prosecutions (P.M.L.A. Case Nos.4 of 2018 and 03 of 2019), such exemption shall only be done under Section 8(8)

of P.M.L.A. Thus, the contention of applicant-E.D. is to decide the matter as to confiscation or exemption of property for the bona fide claim of interested party only under Section 8(8) of P.M.L.A. and not under the present proceeding, in which the respondent no.1 is declared as an FEO.

*“43. In this respect, it is necessary to refer here to the observations of Hon'ble Delhi High Court in the case of **Deputy Director E.D. V/s. Axis Bank** (supra), wherein it is held at paragraph no.171 (i) that the process of attachment which leads to confiscation of proceeds of crime under P.M.L.A. is in the nature of civil sanction running parallel to investigation and criminal action vis-a-vis the offence of money laundering. Keeping in view the nature of the proceeding as to confiscation under P.M.L.A. and F.E.O., the Special Courts under both the Acts may decide the said matter on conclusion of the main matter therein. However, in the instant case, the applicant-E.D. chooses to adopt the course provided by Section 8 of P.M.L. Act for confiscation/exclusion, after declaration of respondent no.1 as FEO; whereas the victim of massive fraud-PNB requests for exempting the properties of the respondent no.1 from confiscation in this proceeding, invoking jurisdiction under Section 12(7). As held above, as F.E.O. Act, legislated subsequent to P.M.L. Act, contains provision as to overriding effect thereof, this Court can proceed with the matter as to confiscation or exemption as claimed by both the sides above. In this view of the matter, after declaring respondent no.1 as FEO, while deciding such confiscation or exemption, as the case may be, if interested party-PNB/Consortium is proving to have acquired interest bona fide in the properties, it is entitled therefor in this proceeding itself. So also, applicant-E.D. is entitled to proceed with confiscation as is claimed by them in the main application for declaration and confiscation. Accordingly, the matter is taken up for order under Section 12(2) of F.E.O. Act, and the exemption of property from confiscation in favour of interested person acquiring bona fide interest can be decided while making order as laid down under Section 12(7) of F.E.O. Act.”*

In view of the above observations in Criminal Miscellaneous Application No.998 of 2018, it is clear that the property which is

excluded/exempted from confiscation is left to be dealt with by the applicant/consortium of banks in the manner provided by law, and accordingly, it is necessary to refer hereto the final order in Criminal Miscellaneous Application No.998 of 2020 as under:

“1. Application (Exhibit-1) in terms of part of prayer clause (ii) for confiscation of the properties of Respondent No.1 as per Section 12(2) of the Fugitive Economic Offenders Act, 2018, is hereby partly allowed.

2. Claim and the application (Exhibit-52) of interested parties, being respondent nos.2, 5 to 11, is partly allowed to the extent of their claim in respect of secured debts by way of mortgage, hypothecation and guarantee deeds.

3. The properties of respondent no.1 as mentioned in Lists of Properties at Exhibit-M (I) to M (XII), excluding the properties claimed by interested parties under Section 12(7) of F.E.O. Act being respondent Nos.2, 5 to 11 which are only secured by mortgage, hypothecation and guarantee as per Schedules-I to IV at Exhibit-23 corresponding to Schedule I to VI of Exhibit-52 and to the extent of valuable paintings seized by Income Tax Department as per Exhibit-M (XII) to the application Exhibit-1, shall be attached by applicant under the provisions of F.E.O. Act within one month from today, and after attachment thereof, the said properties shall stand confiscated to Central Government under Section 12(2) and (8) of the Fugitive Economic Offenders Act, 2018.

4. Exemption of the properties and exclusion thereof under Section 12(7) in favour of respondent nos.2, 5 to 11, will only entitle them to proceed with their claim before the Competent Court, Authority or Tribunal in the manner provided by law.

5. The applicant is at liberty to prosecute a remedy as per law in respect of the paintings seized by Income Tax Department.

6. The proceeding stands disposed of. However, liberty is granted to applicant as per prayer clause (iii) to file supplementary application in case further properties of respondent no.1 are identified.”

5. Now the applicant alongwith consortium of banks has approached the Court in this prosecution, under Section 8(8) and Section 8(7) of P.M.L. Act for release of the property attached by E.D. mentioned in Schedule-A to the application. Section 8(7) of P.M.L. Act deals with passing appropriate order of confiscation or release of property in respect of which the Adjudicating Authority has confirmed attachment under Section 8(3). Section 8(7) runs as under:

“(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.”

6. Section 8(8) of P.M.L. Act deals with direction to the Central Government to restore any confiscated property to the legitimate Claimant, which runs as under:

“(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of

restoration of such properties during the trial of the case in such manner as may be prescribed.”

7. In the instant case, the confiscation and exemption therefrom of certain properties attached by E.D. in respect of which Adjudicating Authority has passed an order, is directed as per final order in Criminal Miscellaneous Application No.998 of 2018, which was filed by prosecution-E.D. under F.E.O. Act. As observed above, the property mentioned therein is excluded from confiscation in respect of PNB and Consortium of Banks. The said excluded property is now sought to be released in favour of Claimant-PNB and others in pursuance of provisions of Section 8(7) and 8(8) of P.M.L. Act, which were also attached under the said Act under which the present prosecution is filed. In the final order in Criminal Miscellaneous Application No.998 of 2018 dated 08.06.2020 with regard to proceeding with property by the prosecution-E.D. under F.E.O. Act, the observations of the Special Court are already mentioned above.

8. The properties as directed in the said final order dated 08.06.2020 in Criminal Miscellaneous Application No.998 of 2018 under Section 12(7) of F.E.O. Act, are permitted to be dealt with as per law which are claimed by Claimant-Bank. Further direction was given in respect of attachment of the properties to be confiscated to the Central Government under F.E.O. Act. Under Section 2(n) of F.E.O. Act, the Special Court dealing with cases under F.E.O. Act is a Designated Special Court under Section 43(1) of P.M.L. Act. The said Court has decided the F.E.O. proceeding, before which P.M.L. Act case is also pending.

9. Thus, in view of the observations in the order dated 08.06.2020 in Criminal Miscellaneous Application No.998 of 2018, granting exemption of properties under Section 12(7) of F.E.O. Act, relaxation of attachment of properties as claimed by applicant-PNB and Consortium is granted, and they may proceed with the said excluded property as per law. Under Section 8(7) of P.M.L. Act mentioned above, the attachment made under P.M.L. Act is released for dealing with the excluded property in the manner provided in the order dated 08.06.2020 in F.E.O. proceedings. Hence, I proceed to pass the following order.

Order

Application (Exhibit-114) in P.M.L.A. Special Case No.4 of 2018 is allowed as under:

- 1) The property mentioned in Schedule-A to the application which is exempted from confiscation by final order in Criminal M.A. No.998/2018, as per Section 12(7) of F.E.O. Act, shall be released in favour of the claimant-Resolution Professional/Liquidator appointed with respect to the FIL in terms of CP No.2019/I&BP/2019, after obtaining an undertaking to be filed in the Court to return or restore it as per the direction of this Court as and when directed to do so, or the value thereof, as the case may be.
- 2) While releasing the property as above by prosecution-E.D. which is attached by them, an appropriate inventory/memo/list thereof shall be drawn before handing over the property to the concerned authority.
- 3) After release of the said property from attachment by the prosecution-E.D., it shall be dealt with strictly in the manner provided by law in view of the final order in Criminal M.A.No.998/2018.

Exhibit No.114

: 18 :

PMLA.Spl.No.4/2018

Application (Exhibit-114) stands disposed of accordingly.

Date: 13.08.2021

(V. C. BARDE)
Special Judge
City Civil & Sessions Court,
Gr. Bombay.

Dictated on : 13.08.2021

Typed on : 17.08.2021

Signed by HHJ. : 17.08.2021

“ CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

18.08.2021/12.45 p.m.
UPLOAD DATE AND TIME

Mrs. Pradnya S. Naik
NAME OF STENOGRAPHER (S.G.)

| | |
|--|--------------------------------|
| Name of the Judge (with Court Room No.) | Shri. V.C. BARDE (CR.No.50) |
| Date of Pronouncement of JUDGEMENT/ORDER | 13.08.2021 |
| JUDGEMENT/ORDER signed by P.O. on | 17.08.2021 |
| JUDGEMENT/ORDER uploaded on | 18.08.2021 |