

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-PMLA-2454/DLI/2024 AD.
MP-PMLA-451/DLI/2024 Misc.
MP-PMLA-8028/DLI/2021 Misc.
MP-PMLA-7899/DLI/2020 Stay
MP-PMLA-7898/DLI/2020 Exem.
FPA-PMLA-3802/DLI/2020

The Deputy Director,
Directorate of Enforcement, Delhi ... Appellant

Versus

Chanda Kochhar & Ors. ... Respondents

Advocates/Authorized Representatives who appeared

For the Appellant	:	Mr. Zoheb Hossain, Spl. Counsel, Mr. N.K. Matta, SPP Mr. Vivek Gurnani, Mr. Kanishk Maurya, Mr. Aaditya Raj Sharma, Mr. Faizan Khan, Advocates Mr. Rakesh Bansal, EO, ED
For the Respondents	:	Mr. Vikram Chaudhri, Sr. Advocate Ms. Arveen Sekhon, Ms. Muskaan Khurana, Advocates

JUSTICE MUNISHWAR NATH BHANDARI	:	CHAIRMAN
SHRI BALESH KUMAR	:	MEMBER

FINAL ORDER
03.07.2025

FPA-PMLA-3802/DLI/2020

By way of this appeal under Section 26 of the Prevention of Money Laundering Act, 2002 (in short `the Act of 2002`), a challenge has been made to the order dated 06.11.2020 passed by the Adjudicating Authority denying confirmation of the Provisional

Attachment Order. The appeal is accordingly filed by the Directorate of Enforcement.

2. The respondents have raised preliminary objection to the maintainability of the appeal filed by the Deputy Director. It is submitted that as per Section 26 of the Act of 2002, appeal can be filed by the Director of Directorate of Enforcement or a person aggrieved thus, at the outset, the appeal preferred by the Deputy Director deserves to be dismissed being not maintainable.

3. This Tribunal would decide the issue of maintainability of the appeal raised by the respondents at the first instance.

4. The learned counsel for the respondents made a reference of Section 26 of the Act of 2002 to indicate that an appeal against the order of the Adjudicating Authority can be preferred by the Director or any person aggrieved by the order. Referring to the word 'Director', it is submitted that the Director would not include the Deputy Director. In fact, whenever any officer other than the Director is allowed to take action, a specific reference to this effect is made or Notification is issued. It is not provided under Section 26 of the Act of 2002.

5. The Deputy Director would not fall in the definition of "person aggrieved" to the order of the Adjudicating Authority. The word "person" has been defined under Section 2(s) of the Act of 2002 which includes an individual or others but does not include the Deputy Director or any other authority of the Enforcement

Directorate, rather if Section 2(s) of the Act of 2002 is applied, the person may include: -

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and lastly
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

6. The counsel for the appellant on the other hand submitted that “person aggrieved” cannot be given limited meaning, rather the “person aggrieved” would include any one who is not satisfied with the order of the Adjudicating Authority and, therefore, can challenge the order by maintaining an appeal. The definition of “person aggrieved” cannot be kept limited, rather appeal can be filed other than the parties before the Adjudicating Authority if it remains aggrieved by the order.

7. The impugned order was passed by the Adjudicating Authority in utter disregard to the provisions of law and facts, therefore, a decision was taken by the Director of Enforcement to challenge the said order. Since decision for filing the appeal was taken by the Director and accordingly on the authorization of the Director to the Deputy Director, the appeal was filed. It was alleged by the respondent that despite a request, record file was not shown to prove that the Directorate made a decision to file the present appeal.

8. The counsel for the appellant pleaded that the record file of the ED was called by the Tribunal and shown to the learned counsel for the respondents. The record revealed that the decision to file appeal was taken by the Director and accordingly the appeal was filed in pursuance to the aforesaid decision but by the Deputy Director as per the authority given to him.

9. It was stated by the counsel for the appellant that appeal has been filed by the Director, may be through the Deputy Director. In view of the above, the objection to the maintainability of the appeal is not sustainable, rather the respondents were satisfied on perusal of the record called upon by the Tribunal to find out as to who had taken the decision to file the appeal. In pursuance to the direction of the Tribunal, the record was called and on a further direction, it was shown to the respondents for their perusal. The appeal has been filed at the instance of the Director of Enforcement Directorate, who is otherwise competent to file the appeal.

10. The learned counsel for the appellant submitted that the appeal is not required to be sworn or to be signed by the authority or the officer on whose behalf it is filed, rather it can be signed by the authorized person. To illustrate, it was submitted that litigation or decision is taken in the name of the President or Governor but litigation is always taken up by the Under Secretary or officers acting at the instance of the President or Governor which is the case in hand because the Director had authorized the Deputy

Director to file the appeal after taking decision by him to challenge the order.

11. To support his argument, the learned counsel for the appellant gave reference to the judgment of the Calcutta High Court in the case of **Nilesh Pareekh Vs. Asst. Director, Enforcement Directorate, Kolkata & Ors.** report in (2021) SCC Online Cal 1694 where the same issue was considered and decided. The objection of similar nature was not accepted by the Calcutta High Court in the case of **Nilesh Pareekh** (supra). Therefore, the prayer was made to reject the preliminary objection raised by the respondents to the maintainability of the appeal.

12. We have considered the rival submissions raised by the counsel for the parties on the issue of maintainability of the appeal. It was taken as preliminary issue to be decided at the first instance.

13. The objection to the maintainability of the appeal has been raised in reference to Section 26 of the Act of 2002. For ready reference, the provision aforesaid is quoted thus:

“26. Appeals to Appellate Tribunal.

(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any [reporting entity] [Substituted for the words "banking company, financial institution or intermediary" by Act No. 2 OF 2013] aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal after giving an opportunity of being heard entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal”.

14. Section 26(1) provides for an appeal to the Appellate Tribunal by the Director or any person aggrieved by an order made by the Adjudicating Authority under the Act of 2002 save as otherwise provided under sub-section (3) of Section 26.

15. In the instant case, the appeal has been filed by the Deputy Director, ED for the Directorate of Enforcement. According to the respondents, he was not competent to file the appeal thus appeal is not maintainable. The appeal could have been preferred only by the Director which does not include any other officer than the Director in absence of any provision to this effect under Section 26

of the Act of 2002 or elsewhere and otherwise Director does not include the Deputy Director.

16. The issue was seriously contested by the counsel for the appellant who submitted that the appeal has been filed by the Director who authorized the Deputy Director to file the appeal and, therefore, it is by the competent authority.

17. The respondents on the other hand submitted that Section 26 of the Act of 2002 does not recognize authorization of power to any other officer than the Director.

18. The argument in reference to the definition of “person” under Section 2(s) of the Act of 2002 and quoted in the preceding paras was also given which cannot be expanded beyond the provision and Deputy Director does not fall in the definition of “person”.

19. The learned counsel for the respondents has emphasized that when legislature does not intent to give competence other than the Director, then appeal could not have been filed by the Deputy Director. The reference of Sections 5(1), 17(1) and 19(1) of the Act of 2002 was given where the authority has been given to the Director and other officers which is missing under Section 26 of the Act of 2002.

20. The respondents further made a reference of Section 48 of the Act of 2002 to indicate that who are the authorities under the Act of 2002. The descriptions of the authorities have been indicated specifically under clause (a), which are Director or Addl. Director or Joint Director. So far as Deputy Director is concerned, it is given

under clause (b). If equivalence of post is also taken from Section 48 of the Act of 2002, the Deputy Director has not been given equivalence to the Director. Thus, on the strength of the provisions aforesaid also, the prayer was made to dismiss the appeal being not maintainable. The reference of the various judgments on the issue was given and would be considered by us.

21. The reference to Section 26 of the Act of 2002 has been given which provides appeal to the Appellate Tribunal by the Director or any person aggrieved by the order of the Adjudicating Authority. In the instant case, the appeal has been signed by the Deputy Director and, therefore, objection to the maintainability of the appeal was raised. It is with specific allegation that there is nothing to indicate that a decision for filing the appeal was taken by the Director and on the aforesaid decision, the appeal was filed under the signature of Deputy Director. To have a clarification on the issue, this Tribunal called upon the record when allegation was made by the respondents that even the record was not shown to them to indicate that a decision for filing the appeal was taken by the Director. In pursuance to the direction of the Tribunal, the record was produced but initially the counsel for the appellant kept reservation to show the record to the counsel for the respondents. However, on intervention of the Tribunal and to have fair play, the record was shown to the counsel for the respondents to find out that decision to file appeal against the impugned order was taken by the Director or any other officer subordinate to him. The record

confirmed that decision to file the appeal was taken by the Director with authorization to the Deputy Director to file the appeal. The decision to file appeal was not taken by the Deputy Director but by the Director who is competent to file the appeal also. The respondents have shown satisfaction on it but we need to decide the issue which was made a preliminary issue on the objection to the maintainability of the appeal.

22. The counsel for the respondents made a reference of Sections 5(1), 17(1) and 19(1) of the Act of 2002 to indicate that whenever an authority is to be given to the officer other than the Director, it is specified under the provision. The reference of those provisions remains of no consequence once it was shown that the decision to file the appeal was taken by the Director who is otherwise competent to file it and for that even reference of Section 48 of the Act of 2002 would not be relevant.

23. The appellant otherwise submitted that if it is taken to be appeal at the instance of the Deputy Director, he too was competent to file the appeal falling in the definition of the “person aggrieved”. It is with a clarification that the definition given under Section 2(s) of the Act of 2002 is an inclusive definition thus the reference of persons given therein is to be taken illustratively. Section 2(s) of the Act of 2002 has been quoted by us earlier which starts with “person” includes. The counsel for the respondents could not clarify to keep the meaning of “person” given under Section 2(s) limited to the persons given illustratively. It is not an

exhaustive definition but inclusive in nature, therefore “person” can be other than included in the definition. In common parlance “person aggrieved” would mean a person against whom the proceedings were initiated with an adverse order. We are not elaborating the issue further in the light of the decision of the Director for filing the appeal and the issue aforesaid has otherwise been settled by the Calcutta High Court in the case of **Nilesh Pareekh** (supra). Relevant paras 5 to 20 are quoted hereunder for ready reference:

"5. We heard the learned counsels appearing on behalf of the parties and perused the memorandum of appeal, the impugned judgment and order and the other orders referred to as also the notes of arguments submitted by the parties.

6. The prime contention of the appellant is that in view of Section 26(1) of the PML Act, the Director of the Enforcement Directorate and not the Enforcement Directorate itself, through its Assistant Director, was entitled to file an Appeal before the learned Tribunal. According to the appellant, the Directorate did not come within the sweep of the word 'person' as defined in section 2(s) of the said Act and as such, it could not file an appeal as an 'aggrieved person'.

7. Section 26(1) of the PML Act provides as follows:

"Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal".

8. Therefore, even as per Section 26(1) of the said Act, not only the Director but also an aggrieved person may file such an appeal. Thus, it gives a rather expansive definition of an 'appellant'.

9. First, let us explore whether the Enforcement Directorate per se has a right to file an appeal under

section 26 of the PML Act even without making use of the expression 'an aggrieved person'.

10. The Enforcement Directorate happens to be the specialised financial Investigating Agency under the Department of Revenue, which is entrusted to enforce the provisions of the PML Act. As such, it will be utterly fallacious to suppose that only the Director would be aggrieved by an order of exoneration and not the Directorate itself. Then, it will be like missing the woods for the trees. Perhaps the Enforcement Directorate, which is an arm of the State, would be more aggrieved with such an order and thus, be endowed with a better locus than the Director himself for filing the appeal in question.

11. Section 26 is a provision enabling certain entities to file an appeal. In this, so far the Directorate is concerned, the Legislature thought it prudent to specify the Head of the Directorate i.e., the Director as the authority to initiate an appeal. This, however, cannot preclude the Enforcement Directorate itself from preferring an appeal if it decides to do so for some reason. In doing so, the Directorate may fairly be represented by any of its authorities, especially the ones who have been specifically mentioned in section 48 of the Act.

12. Had the appeal been filed by the Assistant Director in his own name instead of by the Director, then a question could have at all arisen about proper adherence to the provisions of section 26 of the Act in filing an appeal. But, when the Directorate itself files the same, whether through the Assistant Director or any other authority as mentioned in the Act itself, it is a substantial compliance of the said provision.

13. Moreover, section 68 of the PML Act espouses a spirit of pragmatism and shuns thwarting actions taken under the said Act merely on the excuse of technicalities.

14. It is germane to notice that although section 42 of the PML Act provides for an appeal by an aggrieved person, appeals galore are filed by the Directorate, even through the Assistant Director, and these are not shut out by Courts on the anvil of section 2(s) of the Act.

15. Therefore, now we need to delve into the issue of whether the Enforcement Directorate could also invoke the locus of an 'aggrieved person' in filing an appeal under section 26 of the PML Act.

16. Section 2(s) of the PMLA Act, defining the word 'person', albeit by enumerating what it would include, does not render it implausible that it may include the Directorate or any of its authorities within its ambit. It is an inclusive definition and not an exhaustive one.

17. In *S.K. Gupta v. K.P. Jain*, (1979) 3 SCC 54, a Three Judges' Bench of the Hon'ble Apex Court, laid down as follows-

"24. The noticeable feature of this definition is that it is inclusive definition and where in a definition clause the word 'include' is used it is so done in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (see *Dilworth v. Commissioner of Stamps*)..."

18. The ratio laid down in *S.K. Gupta* (supra) was subsequently followed by a Division Bench of the Hon'ble Supreme Court in *Ramanlal Bhailal Patel v. State of Gujarat*, (2008) 5 SCC 449 and it was held as under-

"23. The word 'person' is defined in the Act, but it is an inclusive definition, that is 'a person includes a joint family'. Where the definition is an inclusive definition, the use of the words 'includes' indicates an intention to enlarge the meaning of the word used in the statute..."

19. It is true that in the instant case, there is no interpretation clause present to qualify the inclusive definition. However, section 48 of the PML Act, as referred to above, squarely brings an aggrieved entity like the Enforcement Directorate within the ambit of a 'person' as described in section 2(s) of the Act.

20. Therefore, on both the counts, the Enforcement Directorate should be competent to file an appeal under section 26 of the PML Act".

The Calcutta High Court held that the Enforcement Directorate happens to be the specialized financial Investigating Agency under the Department of Revenue, which is entrusted to enforce the provisions of the Act of 2002. As such, it would be utterly fallacious to suppose that only the Director would be aggrieved by an order of exoneration and not the Directorate itself. Then, it will be like missing the woods for the trees. The Enforcement Directorate would be aggrieved to the orders passed against them and thus be endowed with a better locus than the Director himself for filing the appeal in question.

24. It was further held that the Legislature was prudent to specify the Head of the Directorate i.e., the Director to be an authority to initiate the appeal. This, however, cannot preclude the Enforcement Directorate itself from preferring the appeal if it decides to do so for some reason. In doing so, the Directorate may fairly be represented by any of its authorities, especially the ones who have been specifically mentioned in Section 48 of the Act of 2002. The objection to the maintainability of the appeal in the hands of an officer other than the Director was not accepted.

25. The reference of judgment of the Apex Court in the case of **S.K. Gupta Vs, K.P. Jain** reported in (1979) 3 SCC 54 was also given where the use of word “include” to define word “person” is not taken to be an exhaustive definition but inclusive in nature and, therefore, meaning can be enlarged.

26. In the light of the judgment of the Calcutta High Court in the case of **Nilesh Pareekh** (supra), we cannot take a view different than what has been settled by the High Court and otherwise on the facts of this case, we find that the appeal has been filed by the Director as per Section 26 of the Act of 2002 though signed by the Deputy Director. Once the decision was taken by the Director to file the appeal aggrieved by the order and the authority to sign the appeal was given by the Director to the Deputy Director, that *per se* cannot be said to be the appeal at the instance of the Deputy Director and otherwise title of the appeal would not govern the issue when the record produced by the appellant shows a decision to file the appeal by the Director himself. Thus, in the light of the discussion made above, we are unable to accept the preliminary objection raised by the respondents. Accordingly, we hold that the appeal is maintainable and for that preliminary objection is rejected.

27. In the light of the decision on the preliminary objection at the first instance, we can now proceed to address the issues raised by both the parties on merits.

Issues raised on merits:

28. This appeal has been preferred by the Directorate of Enforcement to challenge the order dated 06.11.2020 passed by the Adjudicating Authority denying the confirmation of the Provisional Attachment Order dated 10.01.2020 in Original Complaint (OC) No. 1258/2020.

Brief facts of the case:

29. An FIR was registered by the CBI, BS&FC, New Delhi on 22.01.2019 for an offence under Section 120-B & 420 IPC and Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act"). The allegation against the accused was about the criminal conspiracy, cheating, illegal gratification, criminal misconduct and abuse of official position by the public servant. It was for sanction of loan to Videocon Group of Companies in contravention of the Rules and policies of the ICICI Bank. The loan granted to the Videocon Group of Companies for a sum of Rs.1730 Crores turned Non-Performing Assets (NPA) and resulted in wrongful loss to the ICICI Bank and wrongful gain to the borrowers and the accused persons.

30. During June-2009 to October-2011, ICICI Bank had sanctioned 6 high value loans to various Videocon Group of Companies. On 26.08.2009, Rupee Term Loan (RTL) of Rs. 300 Crores was sanctioned to M/s Videocon International Electronics Ltd. (M/s VIEL) in contravention of the rules and policy by the sanctioning committee of ICICI Bank. Ms. Chanda Kochhar was one of the members of the sanctioning committee, who in criminal conspiracy to cheat ICICI Bank dishonestly by abusing her official position sanctioned the loan of Rs.300 Crores in favour of M/s VIEL.

31. On 07.09.2009, loan of Rs. 300 Crores was disbursed to M/s VIEL and on the very next day i.e. on 08.09.2009, Mr. V.N. Dhoot

of VIEL transferred an amount of Rs. 64 Crores to NRPL managed by Mr. Deepak Kochhar, husband of Ms. Chanda Kochhar through M/s SEPL. This was the first major capital received by M/s NRPL to acquire its 1st power plant. Thus, Ms. Chanda Kochhar got illegal gratification/undue benefit through her husband from M/s VIL/ Mr. V.N. Dhoot for loan of Rs. 300 Crores to M/s VIEL.

32. M/s NRPL was incorporated on 24.12.2008. Mr. Deepak Kochhar, Mr. V.N. Dhoot and Mr. Saurabh Dhoot were the 1st Directors of the company. Mr. V.N. Dhoot & Mr. Saurabh Dhoot resigned from the directorship of this company w.e.f. 15.01.2009. However, before resigning from the directorship, Mr. V.N. Dhoot allotted 19,97,500 warrants to Mr. Deepak Kochhar at the rate of Rs. 10/- per warrant, on initial payment of Re. 1/- per warrant. Deepak Kochhar was thus himself holding 50% shareholding in NRPL through PCSPL. On 05.06.2009, the shares of M/s NRPL held by Mr. V.N. Dhoot (24996) and Deepak Kochhar group (Pacific Capital Services Pvt. Ltd. - 24999) were later on transferred to M/s SEPL, which became 95% shareholder of M/s NRPL.

33. M/s SEPL was incorporated on 03.07.2008 where Mr. V.N. Dhoot (9990 shares) and his associate, Mr. Vasant Kakade (10 shares) were the 1st Directors. Mr. V.N. Dhoot resigned from directorship of M/s SEPL on 15.01.2009 and the control of the said company was transferred to Mr. Deepak Kochhar by selling / transferring his shares to Pinnacle Energy (PE) managed by Mr. Deepak Kochhar in 2012.

34. The respondent Ms. Chanda Kochhar was the Member of Loan Sanctioning Committee and in one Committee she even chaired the meeting and thereby loan was sanctioned not only to M/s Millennium Appliances India Ltd. (M/s MAIL), a Videocon Group of Companies, for a sum of Rs.175 Crores but to its other companies i.e. M/s Sky Appliances Ltd. (M/s SAL), a sum of Rs.240 Crores, M/s Techno Electronics Ltd. (M/s TEL), a sum of Rs.110 Crore, M/s Applicomp India Ltd. (M/s AIL), a sum of Rs.300 Crores and M/s Videocon Industries Ltd. (M/s VIL), a sum of Rs.750 Crores. The loan to M/s SAL, M/s TEL and M/s AIL was sanctioned enabling them to repay the unsecured loan availed by these companies from M/s VIL. Re-financing of the existing loans of Videocon Group of Companies was done by sanctioning a loan to M/s VIL to the extent of Rs.750 Crores. Sanction of the loan of Rs.1575 Crores was in violation of the Credit Policy of the bank during the relevant period. These loans were thereafter turned NPA on one hand and on the other hand, ICICI Bank released the security available with them in the form of FDR of Rs.50 Crores in the accounts of M/s SAL and M/s TEL.

35. The background of the case has been given in reference to the respondent Ms. Chanda Kochhar who took over the charge of Managing Director (MD) and Chief Executive Officer (CEO) of the ICICI Bank on 01.05.2009 and all those credit limits to Videocon Group of Companies were sanctioned after she took over as MD and CEO of the bank. The respondent Ms. Chanda Kochhar was a

Member in the Committee which sanctioned loan of Rs.300 Crores to M/s VIEL and Rs.750 Crores to M/s VIL.

36. The allegation was made even about the conflict of interest of Ms. Chanda Kochhar who chaired the meeting of Sanctioning Committee on 26.08.2009 for grant of loan and further chaired the meeting of Recommending Committee for the loan of Rs.750 Crores where she remained Member of the Sanctioning Committee. It is apart from the fact that she chaired the meeting of Recommending Committee even for the loan of Rs.1730 Crores. The conflict of interest was referred due to the interest of the respondent Deepak Kochhar in M/s VIL and its entities yet without disclosing about the interest, she chaired few meetings and otherwise remained the Member of the Committee for sanction of the loan to Videocon Group of Companies.

37. Out of the 7 RTLs mentioned in the FIR, 5 RTL proposals were put up as urgent proposals. 4 RTL proposals (including Rs. 300 crore loan proposal of M/s VIEL) out of the 5 RTL proposals (urgent proposals) were placed directly before the Committee (sanctioning and recommending) in hard copy. ICICI Bank has admitted that the copy of urgent proposals put up in hard copy before the sanctioning committees of ICICI Bank for loan proposals to Videocon Group are not traceable.

38. In "urgent proposal", the proposal was placed before the Sanctioning Committee without the comments/inputs of any Control Group (including Risk Management Group) or Risk

Rationale. The Chairman and Members of the Committee had entire discretion to admit or not to admit a proposal based on their Note at the meeting. Urgent Proposals did not fulfil the objective of comprehensive broadcast (theoretically as well as practically) i.e. being visible beforehand to the members of committee and to all the control groups (who could have verified at their end that their comments are incorporated/addressed in the uploaded final note).

39. The loan proposal of Rs.300 Crores was also under urgent proposals and sanctioned by the Committee which was chaired by the respondent Ms. Chandra Kochhar where she was having discretion to admit or not to admit the proposal for consideration of the Committee. Post approval of the Sanctioning Committee, the proposal note was modified and uploaded on secretarial site within six working days to which FIR clearly states that the loan was sanctioned in contravention of the rules and credit policy by the Sanctioning Committee and respondent Ms. Chanda Kochhar with dishonest intention and abusing the official position. It is also alleged that the loan of Rs.300 Crores was sanctioned for specific purposes i.e. for capital expenditure requirements on machinery, accessories and spare parts for manufacturing of display units. In violation of it, the Company transferred Rs.64 Crores to M/s NRPL through M/s SEPL. It was alleged that out of Rs.300 Crores loan sanctioned by the ICICI Bank, an amount of Rs.283.45 Crores was disbursed on 07.09.2009 involving web of Industries, Rs.64 Crores was transferred to M/s Supreme Energy Private Ltd. (M/s SEPL)

and thereupon M/s Nupower Renewables Pvt. Ltd. (M/s NRPL) received vide Cheque No. 10010423 on 08.09.2009 i.e. a day after the disbursement of loan by the ICICI Bank and thereby using it for the purpose other than that for the loan was sanctioned.

40. The loan was to be repaid in 20 equal quarterly instalments after a moratorium period of 2 years from the date of first withdrawal and thereby principal repayment was to start from September, 2011. The repayment was not made by the Videocon Group of Companies and it was also found that ICICI Bank was never holding the assets equivalent to the outstanding principal amount of a sum of Rs.1730 Crores thus without properly securing the amount, loan was sanctioned. The matter was ultimately taken in the Board of Directors of ICICI Bank and in its meeting on 30.01.2019. It was noted that for arm's length transactions to Respondent No.1's husband Mr. Deepak Kochhar, there was complete absence of dealing with conflict of interest and true disclosure or recusal requirements were established about her involvement and thereby Enquiry Report headed by Justice (Retd.) B.N. Srikrishna concluded with the following violations:

- (i) ICICI Bank Code of Conduct and the Framework for dealing with conflict of interest (drawn from the RBI Working Group report of 2006), her fiduciary duty under common law and as enshrined under the Companies Act;

- (ii) the provisions of the Deeds of Covenants executed by directors of banking companies by RBI;
- (iii) the provisions of the RBI's Master Circular on Loans and Advances relating to Conflict of Interest;
- (iv) the violations of the ICICI Bank Code of Conduct would also constitute violations of the SEBI Listing Regulations' provisions by Ms. Chanda Kochhar;
- (v) Board of ICICI Bank found her guilty of wilful and gross misconduct, gross negligence and that her actions were detrimental to the interests of the Bank;
- (vi) Separation of Chanda Kochhar from ICICI Bank to be regarded or treated as consequences. 'Termination for Cause', with attendant companies;
- (vii) The actions decided by the Directors with respect to her are commensurate with the findings and guilt established and also duly proportionate to the findings established in the Enquiry Report and the violations noted of which she is guilty.

41. In the investigation conducted in pursuance to the ECIR recorded by the appellant, the statements of many accused and even employees connected with the Companies were recorded under Section 50 of the Act of 2002 which revealed that the appellant Mr. Deepak Kochhar was in control of the affairs of M/s NRPL, rather he was Managing Director of the company.

42. In the light of the facts given above, the appellant attached Flat No. 45, CCI Chambers, Churchgate, Mumbai, the property of M/s NRP and cash of Rs.10.5 Lakhs. The Adjudicating Authority refused to confirm the attachment of the property after recording detailed reasons for it. Aggrieved by the order, the appeal has been preferred by the Enforcement Directorate.

Arguments of the appellants:

43. The learned counsel for the appellants submitted that the Adjudicating Authority exceeded to its jurisdiction to comment on the FIR as well as on the preliminary enquiry conducted by the CBI before registering the FIR. It was ignoring the serious allegations against the respondents and despite commission of predicate offence and the offence of money laundering, the order of provisional attachment was not confirmed based on surmises and conjectures.

44. The learned counsel for the appellant submitted that the respondent Chanda Kochhar was Chairman of the Sanctioning Committee and chaired the meeting on 26.08.2009 for sanction of loan of Rs.300 Crores to Videocon Group of Companies and chaired even the meeting of Recommending Committee dated 28.10.2011 for a loan of Rs.750 Crores followed by the meeting of Sanctioning Committee on 31.10.2011 where she remained the Member. She chaired the meeting of Recommending Committee for sanction of Rs.1730 Crores and remained Member of the Sanctioning Committee for the aforesaid loan in a meeting held on 26.04.2012.

45. The counsel submitted that immediately on disbursement of loan of Rs.300 Crores, Mr. V.N. Dhoot of Videocon Group of Companies transferred an amount of Rs. 64 Crores to M/s NRPL managed by Deepak Kochhar, husband of Chanda Kochhar. The amount was routed through M/s SEPL. The evidence was collected to reflect that M/s NRPL was managed by Deepak Kochhar. It was incorporated on 24.12.2008 where Deepak Kochhar and V.N. Dhoot along with Saurabh Dhoot were the first Directors of the Company. On 05.06.2009, the shares of M/s NRPL held by V.N. Dhoot (24996) and Deepak Kochhar Group (Pacific Capital Services Pvt. Ltd.-22,500) were transferred to M/s SEPL, which became 95% shareholder of M/s NRPL.

46. M/s SEPL was incorporated on 03.07.2008 where Mr. V.N. Dhoot held 9990 shares and his associate Mr. Vasant Kakade 10 shares. They were the first Directors of the aforesaid Company. However, Mr. V.N. Dhoot resigned from M/s SEPL and subsequently transferred the control of the said company to Mr. Deepak Kochhar by selling/transferring his shares to M/s Pinnacle Energy (PE) managed by Mr. Deepak Kochhar. The amount of Rs.64 Crores came to M/s NRPL was used for the benefit of Mr. Deepak Kochhar but ignored by the Adjudicating Authority. The amount of Rs.64 Crores was utilized towards purchase of Wind Farm projects of 33.15 MW capacity while Mr. Deepak Kochhar was the Managing Director of the Company. The Adjudicating Authority conveniently ignored the aforesaid facts mainly on the

ground that the respondent Chanda Kochhar was not knowing the affairs of her husband Deepak Kochhar, if he was involved in any of the Companies where the funds were diverted by the Videocon Group of Companies in ignorance of the fact that Chanda Kochhar and her family was residing in Flat No. 45, CCI Chambers, Churchgate, Mumbai since 1996 while the Flat was belonging to M/s Videocon Group of Companies in different capacities from time to time before being transferred to family trust of Chanda Kochhar in the year 2016. It is also that M/s NRPL was incorporated by V.N. Dhoot and Deepak Kochhar on 24.12.2008 i.e. much before sanction of loan.

47. The material brought on record was sufficient to show that Ms. Chanda Kochhar and Mr. Deepak Kochhar were associated with Mr. V.N. Dhoot/Videocon Group since 1994-95. Mr. Deepak Kochhar floated M/s Vikvin Finance Private Ltd. (M/s VFPL) with his mother on 18.03.1992. The respondent Chanda Kochhar was allotted 1890 equity shares out of 11000 shares of M/s CFL in 1993. Later, M/s CFL issued 945 bonus shares and 472 CCPS to respondent Chanda Kochhar. This company was later on renamed as M/s Credential Finance Ltd (M/s CFL) on 27.09.1994. The respondent Chanda Kochhar was knowing about her association with M/s CFL and otherwise amount was transferred from her bank account with ICICI Bank. In 1994-95, Mr. V.N. Dhoot of M/s Videocon International Limited had invested approx. Rs.10 Crores in M/s CFL and thereby M/s CFL was the company in which

Videocon Group/Mr. V.N. Dhoot, Mr. Deepak Kochhar Ms. Chanda Kochhar and their family members were having substantial interest/shareholding. The relation of Ms. Chanda Kochhar and Mr. Deepak Kochhar with the Videocon Group of Companies was thus from the year 1994-95 but conveniently ignored by the Adjudicating Authority.

48. It was further submitted that in the year 1996, M/s CFL (pre-merger) amalgamated with M/s Bloom Field Builders & Construction Company Ltd. where Mr. V.N. Dhoot of Videocon Group was holding majority shareholding and the name of the merged entity (Bloom Field) was changed to M/s Credential Finance Ltd. In the merged entity, Chanda Kochhar and Deepak Kochhar apart from Videocon Group were having sufficient/biggest shareholding and Mr. Deepak Kochhar was the Managing Director of M/s CFL (post-merger) but resigned from the post in the year 2009.

49. It was further submitted that apart from the fact narrated above to show the relation of Chanda Kochhar and Deepak Kochhar with the Videocon Group of Companies, the Adjudicating Authority even ignored that on 07.09.1995, Deepak Kochhar and Rajiv Kochhar on behalf of M/s CFL entered into agreement for purchase of Flat No. 45, CCI Chambers, Churchgate, Mumbai for a sum of Rs.5.25 Crores with Ms. Bilquis Jehan Begum. A Deed of Conveyance was executed on 19.02.1996 for a total consideration of Rs.5.25 Crores. The respondents Chanda Kochhar and Deepak

Kochhar apart from family members were residing in the said Flat from the year 1996-97. Prior to the year 2009, the said Flat was owned by M/s CFL where Videocon Group was having substantial interest. During the period of 2009 to 2016, the said Flat was owned by M/s QTAPL (a Videocon Group Company since incorporation) and thereupon the said Flat was transferred to the family trust of Chanda Kochhar for a consideration of Rs.11 lakhs only. The document regarding transfer of Flat to the trust has been ignored by the Adjudicating Authority coupled with the fact that the value of the said Flat was Rs.5.25 Crores which came to M/s QTAPL for a consideration of Rs.3.25 Crores vide Transfer Deed dated 04.08.2009. The transfer of the said Flat to the family trust was only for a consideration of Rs.11 lakhs. It was nothing but the proceeds of crime.

50. The Adjudicating Authority ignored the Deed of Conveyance dated 19.02.1996 when the Flat was acquired by M/s CFL (pre-merger) and thereupon in 2009, the value of the Flat was mentioned at Rs.3.25 Crores in the Deed of Transfer dated 04.08.2009 entered between M/s QTAPL and M/s CFL (post-merger). Mr. Deepak Kochhar purchased 1% interest/share in the Flat for Rs.4.53 Lakh vide Deed of Transfer dated 05.11.2012. It was entered between M/s QTAPL and Mr. Deepak Kochhar valuing 1% share of the Flat at a sum of Rs.4.53 lakhs. The purpose of taking 1% interest in the Flat was to comply with the Society norms because as per the rules of the Society in which the Flat was

existing, the Corporate Member cannot be a Member but can be the individual. All these relevant facts have been ignored by the Adjudicating Authority to extend favour to the non-appellants and erroneously held that there is no proceed of crime involved in the case and for that the finding has been recorded by twisting or ignoring the relevant facts which established a case of money laundering. The Adjudicating Authority accordingly recorded the finding going contrary to the material on record and otherwise beyond its jurisdiction. It even made a comment on the statements under Section 50 of the Act of 2002 which are admissible in the eyes of law in the light of the judgement of the Apex Court in the case of **Vijay Madanlal Choudhary Vs. Union of India** reported in 2022 SCC Online SC 929. The Adjudicating Authority committed jurisdictional error not only while considering the statements recorded under Section 50 of the Act of 2002 but the FIR and investigation as if it is to act as a Trial Court and for that to record finding or comment going contrary to the record.

51. It is further submitted that finding in reference to Section 5(1) of the Act of 2002 is also erroneous. Despite apprehension of transfer of the property, rather after transfer of Rs.64 Crores, it was laundered to purchase properties of Wind Farm mortgaged to the financial institution and, therefore, to avoid frustration of the proceeds for confiscation, the attachment of the property was made.

52. The Adjudicating Authority even failed to take into account the reasoning given in the Provisional Attachment Order for each of the property.

53. The counsel for the appellant reiterated the fact regarding the Flat No. 45, CCI Chambers, Churchgate, Mumbai and submitted that,

- (a) Ms. Chanda Kochhar and her family is residing in Flat No. 45, CCI Chambers, Churchgate, Mumbai since 1996-97.
- (b) In 1994-1995, Mr. V.N. Dhoot/M/s Videocon International Limited had invested approximately Rs. 10 Crores in CFL. On 07.09.1995. Mr. Deepak Kochhar and Mr. Rajiv Kochhar on behalf of CFL (a company in which Videocon Group / Mr. V.N. Dhoot, Mr. Deepak Kochhar, Chanda Kochhar and their family were having substantial interest/shareholding) purchased the said flat.
- (c) Thereafter, in 1996, CFL had availed Corporate Loan from SBI Home Loan Finance Limited against the above said flat. CFL defaulted in payment of the said loan. Thereafter, Videocon Group paid off the dues of SBI Home Loan Finance Limited and the said flat was transferred to Quality Appliances Private Limited (now known as QTAPL), a company of Videocon Group in 2009.

- (d) Before entering into the above said transfer deed dated 04.08.2009 Shri Deepak Kochhar was appointed as Director of QTAPL and was appointed to hold the shares of the society in regard to the said flat (No. 45, CCI Chambers, Churchgate, Mumbai), in the guise of the restrictions of the society for corporate bodies to be its members.
- (e) Thereafter, a Deed of Transfer dated 05.11.2012 was entered into between QTAPL and Deepak Kochhar (who has also signed this Deed), clearly stating that QTAPL is the owner of the said flat and Shri Deepak Kochhar has purchased 1% interest in the said flat from QTAPL.
- (f) Finally, in October 2016, total shareholding of QTAPL (having 99% ownership of the flat) was acquired by Quality Advisors [a family trust of Ms. Chanda Kochhar set up by her mother for the benefit of her (Chanda Kochhar's) children and Deepak Kochhar as is its Managing Trustee] for a nominal consideration i.e. Rs. 11 Lakh (1,10,000 shares of Rs. 10 face value) only.

54. As has been detailed above, there have been constant efforts on the part of Sh. Deepak Kochhar, Chanda Kochhar and Videocon Group to change the ownership of flat at

different times and to pass on the flat to Kochhar family and trying to show it as a genuine transaction.

55. The learned counsel for the appellant further submitted that a cash of Rs.10.5 lakhs has not been attached as a proceed of crime but the value thereof as detailed in the PAO in OC. The counsel referred to Section 8(2) of the Act of 2002 to disclose the jurisdiction and powers of the Adjudicating Authority. In the case in hand, the Adjudicating Authority transgressed his jurisdiction while passing the impugned order. Apart from the FIR, statements of accused persons and others were also part of relied upon documents and placed before the Adjudicating Authority. However, it was not taken into consideration or were not relied upon after making comment going beyond the jurisdiction.

56. The learned counsel for the appellant further referred to ignorance of the Adjudicating Authority about the plan and design even of M/s Pacific Capital Services Pvt. Ltd. (M/s PCSPL). It was urged that,

- (a) As part of plan and design, Pacific Capital Services Private limited (PCSPL) transferred 45% shareholding of NRPL held by it to Supreme Energy Private Limited (SEPL was incorporated on 03.07.2008 where Mr. V.N. Dhoot (9990 shares) and his associate, Mr. Vasant Kakade (10 shares) were the 1st

Directors) before proceeds of crime amounting to Rs. 64 crores were transferred by SEPL in NRPL. The remaining 5% shareholding of NRPL was transferred by PCSPL to Mr. Deepak Kochhar.

- (b) PCSPL was having an account in DBS Bank in which Ms. Chanda Kochhar was authorized signatory since 2003. But, as part of plan and design, within a week of receipt of funds by PCSPL from SEPL towards sale of shares of NRPL, Board of Directors of PCSPL vide resolution dated 08.06.2009 decided to delete the name of Ms. Chanda Kochhar from the list of authorized signatories to operate the Current Account No. 811210000958 held with DBS Bank.
- (c) This all was to project the receipt of proceeds of crime (Rs. 64 crore) in NRPL as untainted property and to alienate the same from Ms. Chanda Kochhar.

57. The learned counsel for the appellant lastly referred to the inquiry report of Justice Srikrishna on the conflict of interest and disclosure requirement in regard to the affairs of ICICI Bank while respondent Chanda Kochhar was the CMD. It was after the inquiry report by the Committee headed by

Justice Srikrishna that respondent Chanda Kochhar was removed from her position of Chairman and head of the Committee of ICICI Bank. The report is sufficient to show conflict of interest and conduct of the respondents. The said inquiry report and its evidentiary value is the subject matter before the Trial Court. It is further submitted that Pinnacle Energy is a trust set up by the father of Deepak Kochhar where Deepak Kochhar had contributed 19,97,500 warrant of M/s NRPL to the trust and the trust has also purchased 10,000 shares of M/s SEPL, one of the companies through which the proceeds of crime of Rs.64 Crores was ultimately transferred to M/s NRPL.

58. The learned counsel for the appellant referred to various judgments of the High Court and Supreme Court to support the arguments which would be referred while dealing with rival submissions of the parties. The prayer was accordingly made to set aside the impugned order and confirm the Provisional Attachment Order.

Arguments of the respondents:

59. The learned counsel for the respondents contested the appeal on merits subject to the outcome of the preliminary objection about the maintainability of the appeal. It was submitted that one of the respondents had approached Delhi High Court in Writ Petition No.1769/2021 seeking various reliefs and raising issues of public importance. The High

Court passed an order on 09.02.2021 making proceeding before the Appellate Tribunal subject to outcome of the Writ Petition and thereby the order of the Tribunal would be governed by the final outcome of the judgment of the High Court.

60. Coming to the facts of the case, it was submitted that the Adjudicating Authority did not exceed its jurisdiction, as alleged. The authority found that investment of Rs.64 Crores by Videocon Group was in its own company M/s NRL and the flat was owned by Respondent No.2 Deepak Kochhar since 1996 till date and Rs.10.5 lakhs seized was not illegal gratification for sanction of loan by the ICICI Bank. The Adjudicating Authority had marshaled the facts raised by both the parties and came to the conclusion that the allegations made by the appellant are not made out. The entire material formed the basis of attachment was founded primarily on the FIR which was part of the RUDs and accordingly the finding was recorded by the Adjudicating Authority in reference to the allegation made in the FIR. In fact, a final report or charge sheet has not been filed by the CBI or by the appellant so as to enlarge the scope of consideration beyond FIR.

61. The learned counsel for the respondents made reference to the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra) to highlight interplay between

the Scheduled Offence and the offence of money laundering. The proceeds of crime have been defined under Section 2(1)(u) of the Act of 2002 and is a core ingredient constituting the act of money laundering and thereby that expression needs to be construed strictly. All the properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency cannot be wholly or partly regarded as proceeds of crime. In view of the above, property must be derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. The reference of other paras of the judgment in the case of **Vijay Madanlal Choudhary** (supra) was given to submit that a property unconnected with the crime and acquired by legal means cannot be regarded as proceeds of crime and, therefore, the proceeds of crime would involve only those properties associated with the scheduled offence obtained as a result of criminal activity and not any other property. The reference of Section 3 of the Act of 2002 was also given to indicate that as to when the offence of money laundering would be made out under the Act of 2002. It is with a further statement that if a person is acquitted in the criminal activity relating to a scheduled offence or it is established in the court

of law that the crime property has been rightfully owned and possessed by the person, such a property cannot be termed as crime property within the legal frame of the definition of proceeds of crime in Section 3 of the Act of 2002.

62. The counsel for the respondents made further arguments and submitted that the attachment order does not satisfy the requirement of second proviso to Section 5 of the Act of 2002. The ED has attached wind power assets without appreciating that second proviso could not have been invoked because it is a huge asset having large sized turbines/windmills spread over several acres of land and mortgaged to the bank. Thus, the wind power assets cannot be concealed or transferred, as alleged. Therefore, the apprehension to frustrate the proceeding of confiscation is without any basis.

63. The learned counsel for the respondents raised the same argument even in regard to the Flat No. 45 where the respondents are residing along with the family members since 1996. No material was produced to point out that the said site is being dealt with or being disposed of. Therefore, the apprehension that the proceedings would be frustrated without a provisional attachment. The argument was raised even for attachment of cash of Rs.10.5 Lakhs seized on 01.03.2019. The cash amount is now held in FD by the

Enforcement Directorate. For the reasons given above, Provisional Attachment Order is not legally sustainable.

64. The counsel for the respondents further submitted that the reasons to believe have been given without there being any material to suggest and attempt to sell the properties and thereby attached merely based on the assumptions without any intelligence input. The reference of the order passed by the Adjudicating Authority was given where it has been mentioned that even though a period of one year has passed, CBI has so far not filed any charge sheet against the named respondent. Consequently, the satisfaction recorded by the Deputy Director to the effect that if the property involved in money laundering is not attached, non-attachment of the property is likely to frustrate any proceeding under the Act, gets vitiated. The order of the Adjudicating Authority thus calls for no interference having been passed after considering the facts and provisions of law applicable to the case.

65. The expression “reasons to believe” is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith and cannot merely be a pretence. It is always open to examine the question that the “reasons to believe” have a rational connection bearing to the formation of the believe and are not extraneous or irrelevant to the purpose of the provision. Applying the ratio propounded by the High Court and Supreme Court in various judgments, it

is evident that “reasons to believe” for the issuance of the attachment order was absolutely non-est and does not fulfil the parameters recognized by the cannons of law. The reference of the judgment of the Punjab and Haryana High Court in the case of **Seema Garg Vs. Deputy Director, DoE** reported in 2020 SCC Online P&H 738 has been given to support the arguments. Special Leave to Appeal against the said judgment was dismissed by the Apex Court.

66. The learned counsel for the respondents further submitted that there is no link or connection whatsoever between the loans sanctioned by ICICI Bank to Videocon Group of Companies and the alleged gratification for sanction of the loans. The ED utterly failed to show that sanction of loan to the Videocon Group of Companies was out of the gratification. The investment by Videocon Group of Companies was in its own company M/s NRL by transferring Rs.64 Crores out of the loan amount received from ICICI. The Videocon Group of Companies still owns M/s NRL and is from its inception. The ED failed to show the contrary. Hence, neither the wind power assets nor transfer of Rs.64 Crores deployed by the Videocon Group can amount to illegal gratification for sanction of loan. The Flat owned by the Respondent No.2 has been attached alleging it to be proceeds of crime having no connection with the sanction of loan. The Respondent No. 1 Chanda Kochhar has no concern

whatsoever with wind power assets and the Flat which sought to be attached as illegal gratification/proceeds of crime received by Respondent No.1 for sanction of loan. In fact, attachment of Flat and wind mills is illegal. The Adjudicating Authority thus rightly refused to confirm the provisional attachment of the property thus it calls for no interference by the Tribunal.

67. The appellant failed to show any evidence of favoritism or scope in the sanction of loan to the Videocon Group of Companies. The ICICI Bank was sanctioning the loan to Videocon Group of Companies since 1985 even without the presence of Chanda Kochhar. Thus, it was not that for the first time loan was sanctioned to the Videocon Group of Companies. The loan was otherwise sanctioned by applying the procedure by analyzing it. In fact, the loan was sanctioned strictly going by rules and policy of the ICICI Bank and thereby no loss was caused on account of sanction of the loan to Videocon Group of Companies. The loan amount was duly repaid to the bank in the year 2012 well before registration of the FIR by CBI in January, 2019. A letter was sent by the bank to the CBI to inform the aforesaid to refute the allegations of wrongful loss to the bank.

68. The Respondent No.1 was aware about the policy of the bank and thus made full disclosure regarding the directorships of her relatives to the extent she was aware, as

stipulated in Bank's policies. The reference of the letter dated 02.05.2018 to SEBI and thereupon further correspondence was given. It was submitted that the Respondent No.1 Chanda Kochhar categorically submitted that the specific information was not within her knowledge. The information was regarding the business dealing of Respondent No.2 Deepak Kochhar. Respondent No.1 submitted that it was not in her knowledge and disclosure made by Deepak Kochhar to the MD & CEO of the ICICI Bank and filed with the SEBI was not part of the standard disclosures to be made by the Directors under the law and thereupon it becomes clear that the Respondent No. 1 was not having knowledge of the business dealing of the husband at the time of sanction of loan or till the year 2018. The process of approval of the loan involves satisfaction of the members of the Committee and thereby the allegation levied against the Respondent No.1 and other respondents regarding receipt of illegal gratification are wholly erroneous and thus rightly dealt with by the Adjudicating Authority. The loan was sanctioned after due diligence of the concerned officers of the bank which includes the Risk Management department.

69. The counsel for the respondents repeated his arguments and submitted that the investment of Rs.64 Crores by Videocon Group was in its own company and thus could not have amounted to illegal gratification to the Respondent No.1

Chanda Kochhar. The ED failed to show any link or connection between the loan sanctioned by the ICICI Bank to the Videocon Group and the investment of Rs.64 Crores by it in M/s NRL. It could not have been considered to be a bribe where Respondent No.2 Deepak Kochhar only managed the day-to-day affairs of M/s NRL in the capacity of a director and was never the beneficial owner of M/s NRL, as alleged. The reference of certain paras of the order of the Adjudicating Authority was given where findings have been recorded in reference to the FIR to show no evidence indicating the link between the disbursement of the loan of Rs.300 Crores to Videocon Group of Companies and transfer of a sum of Rs.64 Crores to M/s NRL managed by Deepak Kochhar. In absence of any connectivity established by any evidence in the FIR, he should not have been made responsible for diversion or obtaining of any property out of the criminal activity relating to a scheduled offence. The counsel for the respondents reiterated various paras of the order of the Adjudicating Authority where the conclusions have been drawn favourable to the respondents after making analysis of the FIR because in the FIR there was no definite material emerging with regard to the existence of windmills in relation to subject loan. In fact, Videocon was owning 95% shares of M/s NRL as on 08.09.2009 when the investment of Rs.64 Crores was made. M/s SEPL owned 99% by V.N. Dhoot and, therefore,

investment of Rs.64 Crores by Videocon Group of Companies was in their own company and not in a company owned by Deepak Kochhar, as alleged.

70. The learned counsel submitted that the Adjudicating Authority has taken into consideration that for the investment of amount of Rs.64 Crores, a decision for it was taken in early March, 2009 to acquire 33.15 MW operating wind power assets from Shriram Group. It was not subsequent to the sanction of the loan but was considered in the month of March, 2009 itself with a detailed financial, technical and legal due diligence. The sequence of events from February, 2009 to September, 2009 leading to the equity investment of Rs.64 Crores by M/s SEPL in M/s NRL was also given to show that the transfer of a sum of Rs.64 Crores is a well-considered decision taken for the wind power mills of Shriram Group and as Deepak Kochhar was not having substantial interest in M/s NRL, the allegations of illegal gratification could not stand.

71. The submission was further made that M/s Real Cleantech Pvt. Ltd. was also struck off in the records of ROC, was not in consequence of any event to the sanction of loan but due to non-filing of the annual report. The revival procedure was initiated before the NCLT and it was revived prior to the due date of OCDs in November, 2021. It was further submitted that while the investment of Rs.64 Crores

was by Videocon Group of Companies, 73.5 Crores was received from other sources and not from ICICI Bank. All those relevant facts were taken into consideration by the Adjudicating Authority and in that regard, undisputed documents relied upon by the Adjudicating Authority were sufficient to show the status of shareholding of M/s NRL before inception till date as presented by the ED, FIR of the CBI and all relevant material and has been referred by the Adjudicating Authority to draw its final conclusions favourable to the respondents.

72. Coming to the issue of Flat No. 45, it was submitted that Respondent No.2 Deepak Kochhar became the title holder and the owner of the said Flat since 1996 till date. The title was never removed from his name which can be seen from the Conveyance Deed dated 19.02.1996 read with the share certificates of the said Flat and Income Tax Certificate. The bills raised by the Bombay Municipal Corporation have also been taken as a clinching evidence apart from the bills raised by the Society towards maintenance. The Flat was never transferred to any one since 1996. The Adjudicating Authority thus rightly drew conclusion to hold that even in the FIR, there is no allegation that the Flat is the proceeds of crime. The Flat was, in fact, was transferred in the name of Deepak Kochhar and Rajiv Kochhar after execution of the Transfer Deed. The transfer of the property was made by

Bilquis Jehan Begum but the appellant/ED has erroneously taken it to be the proceeds of crime or made a reference of the property said to be owned by Videocon Group of Companies which, in fact, has no right, title or authority of the Flat. It is submitted that M/s CFL and M/s QTAPL were not holding the title of the said Flat and the allegations of purchase of Flat for a sum of Rs.11 lakhs in the Financial Year 2016-17 were not found correct. The appellants have referred aforesaid property in the hands of Videocon Group of Companies and more specifically V.N. Dhoot without any basis. In fact, M/s CFL was never holding the title in respect of Flat No.45, CCI Chambers irrespective of the accounting entries, which could have been made as per the understanding between Deepak Kochhar and M/s CFL/V.N. Dhoot. The purchase of the share of M/s QTAPL for a sum of Rs.11 lakhs can in no way influence the ownership of the Flat. It always remained in the name of Deepak Kochhar and, therefore, counsel for the respondents supported the finding recorded by the Adjudicating Authority to hold that Flat No. 45 already remained in the name of Deepak Kochhar after its purchase in the year 1996 and for that Videocon Group of Companies has no connection with the Flat.

73. To clarify the facts, counsel for the respondents referred to the consent terms dated 15.04.2009 for disposal of Suit No. 4614 of 1999 filed by SBI Home Finance against M/s

Videocon Group of Companies and its company M/s CFL on a default in a Corporate Loan of Rs.4.7 Crores availed by M/s CFL. For the aforesaid loan from SBI Home Finance under the Corporate Guarantee, Respondent No.2 Deepak Kochhar as a professional MD of M/s CFL had mortgaged the Flat as security. The Videocon Group of Companies paid off the corporate loan and thereby title document of the said Flat was handed back to the title holder i.e. Deepak Kochhar and thereby the suit was disposed of.

74. It is further submitted that Transfer Deed dated 04.08.2009 did not influence that the said Flat always stood in the name of Deepak Kochhar from February, 1996 till date. The said transfer deed was between M/s CFL and M/s QTAPL without the title holder of the Flat i.e. Deepak Kochhar being a party to the Transfer Deed. M/s CFL did not hold the title of the Flat and hence could not have transferred the Flat to M/s QTAPL. Thus, Transfer Deed dated 04.08.2009 in no way affects the title of Respondent No. 2 Deepak Kochhar. The reference of certain paras of the order of the Adjudicating Authority was given to substantiate the arguments coupled with the argument that even the Transfer Deed dated 05.11.2012 did not influence the ownership of the Flat in the name of Respondent No.2. Transfer Deed dated 05.11.2012 was executed in view of the disputed and wrongful Conveyance Deed dated 04.08.2009 executed between M/s

CFL & QTAPL without the title holder being the party and, therefore, Transfer Deed dated 05.11.2012 did not impact the original title conferred on Respondent No.2 Deepak Kochhar. The reference of the CCI Chambers and other documents was given to strengthen the arguments. The Share Certificate of Flat No. 45 in the name of Respondent No. 2 Deepak Kochhar was submitted along with all the documents to show and prove that the property aforesaid stood in the name of Deepak Kochhar since its purchase from Bilquis Jehan Begum. In the light of the aforesaid, prayer was made to maintain the order passed by the Adjudicating Authority.

75. The submission was made even for the cash of Rs.10.5 lakhs seized by the ED which was not the proceeds of crime. The order of the Adjudicating Authority deals with the amount. It came to the conclusion that the cash of Rs.10.5 lakhs is not involved in money laundering thus finding recorded by the Adjudicating Authority deserves to be maintained.

76. The counsel for the respondents made reference of the following additional documents:

- (i) Respondent No.1 was never aware of the business dealings of her husband and there is nothing to show otherwise. She complied with all disclosure requirements of the Bank and as per Law. In this regard,

the contents of ICICI Bank's letter to SEBI dated 02.05.2018 is extremely pertinent.

(ii) The said Enquiry Report of Justice Srikrishna (Retd.) on conflict of interest and disclosure requirements was only an opinion and was a Private & Confidential Report. It has no evidentiary or probative value.

(iii) It is denied that Pinnacle Energy owned 92.67% of NRPL on conversion of warrants as alleged as the investments in FCDs and CCPS issued by NRPL were not yet converted into equity.

(iv) It is further denied that when the said warrants were issued to Respondent No. 2. he had chaired the Board meeting for issuance of the same when in reality he had abstained from the meeting. The said warrants could be converted into equity shares only on achieving substantial prescribed milestones or else they were subject to cancellation if the milestones were not achieved. The said warrants were converted into equity shares only on the said milestones being achieved by Respondent No. 2.

(v) Deletion of Rajiv Kochhar's name from the Share certificate of the Flat was as per a family understanding and had nothing to do with Rajiv Kochhar's directorship in CFL.

Finding of the Tribunal:

77. We have heard the rival submissions made by the learned counsel for the parties and scanned the record carefully.

78. The case involves chequered history thus it would be appropriate to deal with the facts which goes to the root of the case. The allegation against Chanda Kochhar is for participation in the meeting for sanction of the loan in violation of the rules and credit policy of the bank. While sanctioning loan to Videocon Group of Industries, she did not disclose conflict of interest. The appellants have made serious allegations against Chanda Kochhar for a Flat occupied by her family members at Flat No. 45, CCI Chambers, Churchgate, Mumbai alleged to be belonging to Videocon Group of Industries while it is seriously disputed by the respondents. The counsel appearing for the respondents referred to the deeds executed for the Flat which, according to him, endorses purchase of Flat by Deepak Kochhar and his brother Rajiv Kochhar in the year 1995-96. The issue in reference to the ownership of the Flat is required to be discussed after referring the material on record and thereupon other factual issues will be taken up.

79. We would be taking up the first issue in respect of the ownership of the Flat because much emphasis has been made on the relationship between the respondent Chanda Kochhar

and the Videocon Group of Industries and still conflict of interest was not disclosed by her and, therefore, she conducted herself in violation of rules and policy of the bank.

Allegation in reference to Flat No. 45, CCI Chambers, Churchgate, Mumbai.

80. We would first refer the facts in reference to Flat No. 45 CCI Chambers, Churchgate, Mumbai. According to the respondents, Flat in question was purchased in the name of Deepak Kochhar and Rajiv Kochhar on 7th day of September, 1995 from Bilquis Jehan Begum and for that a sale deed was executed on 19.02.1996. The allegation has been made by the appellant for possession of Flat by the respondents though it was belonging to V.N. Dhoot of Videocon Group of Industries in different capacity thus relations of Deepak Kochhar and Videocon Group of Industries get established from the year 1996 itself. It is strongly refuted by the respondents. It is with the statement of fact that Flat was purchased by Deepak Kochhar and brother and exist in the name of Deepak Kochhar till date.

81. We find different history given by the parties in reference to Flat in question and is not matching thus to resolve the different history given by the parties, it would be gainful to refer certain documents which would be sufficient to crystalize the history of Flat No.45. The critical document for the aforesaid purpose would be a Consent Terms filed by M/s

CFL (M/s Credential Finance Ltd.) and Deepak Kochhar being defendants in a Suit before Bombay High Court and Videocon Group of Industries being the plaintiff. The Consent Terms shows that the Flat in question was mortgaged to the Videocon Group of Industries on 31.08.1996 by Deepak Kochhar for M/s CFL. Copy of the Consent Terms submitted before Bombay High Court is quoted hereunder:

*“IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION*

SUIT NO. 4614 of 1999

*Coram: D.G. KARNIK
Date: 15/4/2009*

*M/s Videocon Industries Ltd.
(Pursuant to amalgamation of
Videocon International Ltd. with
Videocon Industries Ltd.*

... Plaintiff

Verse

*1. M/s Credential France Ltd.
2. Deepak Kochhar
3. Rajiv Kochhar*

... Defendants

CONSENT TERMS

1. Defendants Nos. 1 and 2 herein above submit to a decree on admission of the Plaintiffs claim as more particularly mentioned in the statement of claim being Exh. Z to the plaint.

2. The Defendant No.3 herein above, who has ceased to be the Director of Defendant No.1 company pursuant to his resignation dated 17th March 2009 as communicated to the Plaintiff by the Defendants Nos. 1 and 2, is hereby dropped as Defendant by the Plaintiffs and the Plaintiffs may be allowed to withdraw the suit against Defendant No.3

3. By an order passed by this Hon'ble Court on 25th November 2005 in Company Petition No. 641 of 2005, the Plaintiff Company, namely Videocon International Limited has

amalgamated with Videocon Industries Ltd along with all its assets and liabilities. The name of Plaintiff be substituted as Videocon Industries Ltd.

4. The Plaintiffs however state that their claim in this suit against the Defendants Nos. 1 and 2 be marked as fully satisfied upon-

(a) Defendants agreeing to convey by way of a Sale Deed to the Plaintiffs and/or its nominees the flat being flat No.45 on the 5th floor of the building known CCI Chambers, Dinshaw Vachha Road, Churchgate, Mumbai 400 020 which is mortgaged by Defendant No.1 to the Plaintiffs on 31st August 1996 by way of a security towards the amounts advanced by the Plaintiffs to Defendant No.1 which is the subject matter of the present suit.

5. The Court Receiver, High Court, Bombay appointed by this Hon'ble Court pursuant to the order dated 8th October 1999 passed in Notice of Motion No.2695 of 1999 is hereby discharged and the parties agree that the Court Receiver should hand over the formal possession of the said flat to the Defendants to enable the Defendants to execute a Sale Deed/Conveyance in respect of the said flat in favour of the Plaintiffs and or its nominees as mentioned in clause 4 (a) above.

6. The agency which is granted in favour of Defendant No.2 by the Court Receiver pursuant to an agreement dated 1st December 1999 stands terminated.

7. The royalty amount which is deposited by Defendant No.2 with the Court Receiver against his being appointed as the Agent of the Court Receiver in respect of the said flat be directed to be paid by the Court Receiver to the Plaintiffs after deducting his costs, charges and expenses.

8. It is further agreed between the parties that in the event Defendants not executing the conveyance and/or sale deed in respect of the said flat in favour of the Plaintiffs and/or its nominee within a period of sixteen weeks from today, the Plaintiffs shall be entitled to execute the entire decree as passed and recover the entire decretal amount on the basis of the decree on admission agreed to be passed by the parties in accordance with clause (1) of this consent terms and in such an event the Court Receiver, High Court, Bombay shall automatically stand appointed in respect of the said flat with

all powers under the provisions of Order 40 of the Code of Civil Procedure, 1908.

9. Suit disposed off in the above terms with no order as to costs.

For VIDEOCON INDUSTRIES LIMITED

*Sd/-
Director/ Authorised Signatory
Plaintiffs*

Credential Finance Ltd.

*Sd/-
Director/ Authorised Signatory
Defendant No.1*

*Sd/-
Defendant No.2*

*Sd/-
Advocate for Defendant Nos. 1 & 2.*

*Sd/-
Advocate for the Plaintiffs”*

82. Para 4 of the Consent Terms quoted above reveals that the Flat in question was mortgaged to Videocon Group of Industries on 31.08.1996 and respondent Deepak Kochhar had agreed to convey deed of sale in favour of the plaintiff or its nominee to settle the dues towards M/s CFL. Shri Deepak Kochhar was defendant No. 2 in the Suit.

83. At this stage, it would be gainful to refer that M/s CFL was a company floated by Deepak Kochhar where Chanda Kochhar was also holding 2835 shares. M/s CFL had taken loan of Rs.4.7 Crores from SBI Home Finance which remained unpaid and, therefore, litigation was initiated by SBI Home Finance. The facts on record shows that V.N. Dhoot of Videocon Group of Industries came to the rescue of Deepak Kochhar and paid Rs.5.5 Crores of SBI Home Finance for M/s

CFL and in turn the Flat in question was mortgaged to Videocon Group of Industries. The amount remained unpaid to the Videocon Group of Industries which also initiated litigation by maintaining a civil suit before Bombay High Court in the year 1999 which was settled in terms quoted above.

84. In terms of the settlement, it became necessary for M/s CFL and Deepak Kochhar to transfer Flat in question to Videocon Group of Industries or its nominee and, in fact, the two parties executed a deed of transfer i.e. M/s CFL and on behalf of the Videocon Group of Industries M/s QTAPL. The deed of transfer executed between the two companies disclosed the complete history of the flat and ultimately it was transferred to M/s QTAPL by deed of transfer executed on 04.08.2009. The deed of transfer is quite relevant document and would again crystalize the history of the flat thus entire deed of transfer is quoted hereunder:

"THIS DEED OF TRANSFER made at Mumbai, this 4th day of August 2009, BETWEEN M/s. CREDENTIAL FINANCE LIMITED, a public limited company duly registered under the provisions of the Indian Companies Act, 1956 having its registered office at 14/ 15, Ashoka Shopping Centre, L. T. Marg, Mumbai 400 001 hereinafter referred to as "THE TRANSFEROR" (which expression shall unless it be repugnant to the context or meaning thereof deemed to mean include its Directors, Executors and Assigns) of the One Part AND M/s. QUALITY APPLIANCES PRIVATE LIMITED a private limited company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at Fort Floor, 221, Dr. D. N. Road, Fort, Mumbai 400 001 referred to as "THE TRANSFEREE" (which expression shall unless it be repugnant

to the context or meaning thereof deemed to mean and include its Directors, Executors and Assigns) of the Other Part.

WHEREAS one BILQUIS JEHAN BEGUM was the member of the CCI Chambers Co-operative Housing Society Ltd. (hereinafter referred to as "the said society") situated at CCI Chambers, Dinshaw Vachha Road, Churchgate, Mumbai 400 020, and as such she held 5 (five) fully paid-up shares, bearing Distinctive Nos. 222 to 226 of Rs.50/- each under Share Certificate No. 45 of the said Society (hereinafter referred to as "the Shares") and incidental to her holding the Shares was entitled to use, occupy and possess the residential premises bearing No.45 on the 5th floor of the building known as CCI Chambers admeasuring 2330 sq. ft. (built up) together with the benefit of all deposits, sinking funds and loan stock bonds with the said society;

AND WHEREAS in accordance with the terms and conditions as provided in the Agreement/Deed between the Cricket Club of India and the said society and in accordance to the certificate dated 25th July 1996 issued by the said society, only individuals and members of the Cricket Club of India can be made members of the said society. Attached as "Annexure-I" is the said certificate dated 25th July 1996.

AND WHEREAS an agreement dated 7th September, 1995 made between the said Bilquis Jehan Begum and the Transferor through its Directors Mr. Deepak Virendra Kochhar and Mr. Rajiv Virendra Kochhar the said Bilquis Jehan Begum agreed to sell to the Transferor the said shares together with the right, title and interest as also right to use, occupy and possess the residential premises bearing No.45 situated at CCI Chambers (admeasuring 2330 sq.ft. built up), Dinshaw Vachha Road, Churchgate, Mumbai 400 020, hereinafter referred to as "the said property";

AND WHEREAS in view of the aforesaid restrictions, the Transferor Company in its meeting of the Board of Directors held on 6th September, 1995 passed a Resolution whereby two of its Directors, viz. one Shri Deepak Kochhar and Shri Rajiv Kochhar were authorised by the Transferor Company to hold the aforesaid shares of the said society on behalf of the Transferor Company and incidental entitlement to use, occupy and possess the said residential premises (admeasuring 2330 square feet, built up), bearing No.45, CCI Chambers situated at Dinshaw Vachha Road, Churchgate, Mumbai 400 020;

AND WHEREAS by a Deed of Conveyance dated 19th February, 1996, the said Bilquis Jehan Begum sold, conveyed and transferred the said property to the Transferor Company through its Directors Deepak Virendra Kochhar and Rajiv Virendra Kochhar and they in accordance with the said resolution dated 6th September, 1995 were acting for and on behalf of the Transferor Company who in fact was the purchaser of the said property and the entire beneficial interest in the said property belonging to the Transferor Company;

AND WHEREAS the names of the said Directors viz. Deepak Virendra Kochhar and Rajiv Virendra Kochhar were recorded as members of the said society and entered into the membership register and as such accordingly the names of the said Directors are appearing on the share certificate which was transferred by the said Bilquis Jehan Begum to the Transferor Company;

AND WHEREAS the Transferor Company owed certain amounts to one M/s. Videocon Industries Ltd (ie. VIL in short) in Suit No. 4614 of 1999 in the High Court of Judicature at Bombay filed against the Transferor Company wherein the Transferor Company (owner of the said property) had mortgaged the said property to the Plaintiff in the said suit on 31st August, 1996 and registered the same on 13th November, 1996.

AND WHEREAS in terms of Deed of Compromise which was recorded by way of consent terms executed between VIL and the Transferor Company in the said suit, a consent decree in terms of the consent terms was passed by the Hon'ble High Court in the said suit on of the amounts due and payable by the Transferor Company to VIL in disposal of the said High Court on 15th April, 2009.

AND WHEREAS on the date on which the Consent Terms were executed by the parties, the value of the said property was Rs.3,25,00,000/- and was agreed to be transferred, conveyed and sold to VIL and/or its nominee company towards full and final settlement of the amounts due and payable by the Transferor Company to VIL, in disposal of the said High Court suit No. 4614 of 1999.

AND WHEREAS in accordance with the decree passed in the said suit, the Transferor Company agreed to transfer, convey and sell its right, title and interest in the said property on an 'as is where is basis' (along with flooring, furniture & fixtures, kitchen cabinets, electrical fittings, air conditioners, windows etc.) to the said VIL or its nominee company towards full and

final settlement of the dues payable by the Transferor Company to the said VIL in the said High Court suit No.4614 of 1999;

AND WHEREAS in accordance with the said consent decree passed on 15th April, 2009 by the Hon'ble Bombay High Court in suit No. 4614 of 1999, the Transferor Company is to stand discharged from its entire liability towards VIL (which was the subject matter of the said suit) upon execution of this Deed of Transfer whereby the said property is sold, transferred and conveyed to the nominee company of the said VIL (i.e. the Transferee herein) in accordance with VIL's letter dated 29th May 2009 (Annexed as Annexure to VIL letter dated 29th May, 2009.

AND WHEREAS in view of the restrictions mentioned in the said Certificate dated 25th July, 1996 issued by the said Society as regards the restrictions for membership by the society for Corporate Bodies to become members of the said society, the nominee Company of VIL (ie. the Transferee) in their Board meeting dated 1st July, 2009 passed a resolution whereby it's Director Shri Deepak Virendra Kochhar who is a member of the Cricket Club Of India is authorised and nominated by the said nominee company (i.e. the Transferee) to acquire on behalf of and for the benefit of "the Transferee" "the shares of the said Society and incidental thereto to use, occupy and possess the said property together with the benefit of all deposits, sinking funds, and loans/ bond with the society being in compliance with the requirements of the said Society;.

AND WHEREAS this Deed of Transfer is now being executed by the Transferor Company in favour of the Transferee (who is the Nominee company of VIL) in accordance with the instructions of VIL in the said High Court Suit No. 4614 of 1999;

NOW THIS INDENTURE WITNESSETH that in pursuance to the Consent Terms dated 15th April 2009 passed in High Court suit No. 4614 of 1999 and a decree passed in consequence thereof by the Hon'ble Court on 15th April 2009, the Transferor do hereby assign and transfer unto the Transferee the said property together with all rights, privileges, easements and appurtenances whatsoever to and in the property or any part thereof belonging or in anywise (appertaining to) or usually held or occupied therewith or reputed to or be appurtenant thereof AND all the estate, right, title, interest, property, claim and demand whatsoever at law or in equity of the Transferor in and to the said property and every part thereof TO HAVE AND TO HOLD the said property hereby assigned and transferred or expressed so to be with their appurtenances

unto and to the use of the Transferee forever absolutely subject to payment of all rents, rates, taxes, cesses, assessments, dues and duties and outgoings now or hereafter to become payable to the Government of Maharashtra or to the said Society or to the Municipality or to any other public body in respect thereof AND the Transferor do hereby covenant with the Transferee that notwithstanding any act, deed, matter or thing whatsoever by the Transferee or by any person or persons lawfully or equitably claiming by, from, under or in trust for the acts done, omitted or committed or knowingly suffered to the contrary, the Transferor now has in itself good right, full power and absolute authority to assign and transfer the said property hereby granted, released, conveyed or assured or intended so to be unto and to the use of the Transferee in the manner aforesaid AND that it shall be lawful for the Transferee from time to time and at all times hereafter peaceably and quietly to hold enter upon, have, occupy, possess and enjoy the said property hereby granted together with their appurtenances and receive the rents, issues and profits thereof and of every part thereof to and for its own use and benefits without any suit, lawful eviction, interruption, claim or demand whatsoever from or by the Transferor or its executors, administrators or assigns lawfully or equitably claiming or to claim by, from, under or in trust for the Transferee AND free, and clear and freely and clearly and absolutely acquitted, exonerated, released and forever discharged or otherwise by the Transferor well and sufficiently saved, defended, kept harmless and indemnified of from and against all former and other estates, titles, charges and/or encumbrances whatsoever either already or to be hereafter had, made, executed, occasioned or suffered by the Transferor or by any person or persons lawfully or equitably claiming or to claim by from under or in trust for the Transferor or any of them AND FURTHER that the Transferor and all person having or lawfully claiming any estate right, title or interest at law or in equity in the said property hereby granted or any part thereof by, from, under or in trust for the Transferor its executors, administrators and assigns or any of them shall and will from time to time at all times hereafter at the request and cost of the Transferee do and execute or cause to be done and executed all such further and other lawful and reasonable acts, deeds, things, matters, conveyances and assurances in law whatsoever, for the better, further and more perfectly and absolutely granting and assuring the said property and every part thereof hereby granted unto and to the use of the Transferee in the manner aforesaid as shall or may be reasonably required by the Transferee its executors, administrators, assigns or their counsel in law.

THE SCHEDULE OF THE PROPERTY

Flat No5 admeasuring 2330 Square feet (built up) on the 5th floor of building known as CCI Chambers, situated at Plot No.210 & 211, Dinshaw Vachha Road Churchgate, Mumbai 400 020, bearing C.S. No. 1645-1646 of Fort Division, Building constructed in the year 1959 being Ground + 6 floors”.

85. The deed of transfer of the Flat No. 45 discloses an agreement dated 17.09.1995 made between Bilquis Jehan Begum and M/s CFL through its Directors Deepak Kochhar and Rajiv Kochhar. In any case, the Flat was transferred to the nominee of Videocon Group of Industries i.e. QTAPL in terms of the settlement in the civil suit No.4614/1999 dated 15.04.2009.

86. Since the Flat in question was transferred to QTAPL, a nominee company of Videocon Group of Industries. A further deed of transfer was executed on 15.11.2012 between QAPL, now QTAPL and Deepak Kochhar to transfer 1% share undivided right, title and interest in Flat and all the benefits and privilege and membership incidental thereto.

87. The deed of transfer was executed on 15.11.2012 and accordingly consideration of Rs.4,53,000/- towards 1% of share was paid by respondent Deepak Kochhar. The Flat was finally transferred in the name of family trust on a consideration of Rs.11 lakhs in October, 2016. The trust was setup by the appellant's mother where Deepak Kochhar was the Managing Trustee. The value of the property was far excess of Rs.5 Crores rather it was in the year 1996.

Therefore, appreciated value in the year 2016 was much more than settled at a sum of Rs.11 lakhs in favour of the respondents' family trust and, therefore, it is considered to be nothing but the proceeds of crime.

88. The history of the flat has been given at the first instance for the reason that the appellant has alleged conflict of interest of Chanda Kochhar for sanction of loan to Videocon Group of Industries. According to the respondents, the Flat was never owned by Videocon Group of Industries, rather it was purchased by Deepak Kochhar in the year 1995 and it remained in his ownership throughout. The facts on record gives a different picture, rather deed of transfer between CFL and QTAPL, discloses the history of the Flat. It was purchased by Deepak Kochhar and Rajiv Kochhar being the Directors of CFL where the respondent Chanda Kochhar was holding substantial shares. CFL borrowed the loan from Videocon Group of Industries way back in the year 1996 and mortgaged the Flat which was subsequently conveyed to Videocon Group of Industries through its nominee company QTAPL. The deed of transfer was executed on 4.8.2009 pending civil suit for recovery initiated by Videocon Group of Industries in the year 1999. The Consent terms were filed on 08.04.2009. The Flat in question was otherwise mortgaged to Videocon Group of Industries in the year 1996 for settlement

of the loan of CFL in which the respondent Chanda Kochhar was also holding shares.

89. The issue for our consideration is as to whether the respondent Chanda Kochhar was under an obligation to disclose conflict of interest for sanction of loan to Videocon Group of Industries and if it is not disclosed, the consequence thereof. It is nothing but violation of the rules and the credit policy of the bank.

90. The appellants have made further allegations for transfer of Flat to a family trust of Deepak Kochhar in the year 2016 for a consideration of Rs.11 lakhs. The value of the Flat was much more. According to the respondents, it was purchased for a consideration of Rs.5.25 Crores in the year 1996 though subsequently it was conveyed in favour of QTAPL on a different consideration and, in fact, when 1% of share in the Flat was transferred by QTAPL in favour of Deepak Kochhar, he paid consideration of Rs.4,53,000/- thus the respondents could not justify transfer of the Flat from the associate company of Videocon Group of Industries to the Family Trust of Deepak Kochhar at a meagre amount of Rs.11 lakhs. It is nothing but extension of proceeds of crime and accordingly appellant attached the Flat. The respondents had taken the stand that the Flat was belonging to Deepak Kochhar from the beginning thus have not accepted the theory of transfer of the Flat to Videocon Group of Industries

after its purchase by Deepak Kochhar in the year 1995 though, according to the appellant, it was purchased by Deepak Kochhar as the Director of CFL. When the value of the Flat was Rs.5.25 Crores in the year 1995, the appreciated value must be many times in the year 2016. The Videocon Group of Industries alleged to have passed on benefit to the respondents and since the respondents have failed to justify the transaction at the meagre amount, the appellants have rightly taken it to be nothing but the proceeds of crime and accordingly attached the property.

91. The issue has been dealt with by the Adjudicating Authority but we find that the Adjudicating Authority has recorded perverse finding in ignorance of the record and even non-consideration of vital facts thus cannot be endorsed.

92. Taking all the relevant facts into consideration, an adverse report was submitted by Justice Srikrishna in regard to the affairs of Chanda Kochhar. She conducted herself in violation of the rules and the policy of the bank despite conflict of interest for advancement of loan. It is relevant that on the previous occasions also the ICICI Bank had advanced the loan to the Videocon Group of Industries but relevant fact is to see conduct of the CMD and for that serious allegations exist against respondent Chanda Kochhar which were found to be correct and have been totally ignored by the Adjudicating Authority who conducted the proceedings in

ignorance of the material on record and recorded the perverse finding to deny the confirmation which cannot be accepted.

93. It would be further relevant to discuss evidence referred by the appellants to substantiate their case and for the aforesaid we would first refer to the summary of evidence in regard to the NRL said to have been managed by Deepak Kochhar. The relevant facts are as under:

- (a) M/s Nupower Renewables Limited (NRL) was incorporated on 24.12.2008.
- (b) Mr. Deepak Kochhar is Director of NRL since incorporation (24.12.2008). He was Managing Director of NRL from 01.04.2012 to 01.04.2016. Mr. Deepak Kochhar is authorised signatory in the bank accounts of NRL and its subsidiaries since incorporation.
- (c) At the time of incorporation of NRL i.e. on 24.12.2008, the shareholding pattern and share capital was as under:

S.No.	Name of Shareholder	No. of Shares	Share Capital (in Rs.)
1.	Mr. V.N. Dhoot	24,996	2,49,960
2.	Mr. Deepak Kochhar	1	10
3.	Mr. Rajkumar N. Dhoot	1	10
4.	Mr. Saurabh Dhoot	1	10
5.	Mr. Suresh Hegde	1	10
6.	Mr. Mahesh Chandra Punglia	1	10
7.	M/s Pacific Capital Services Private Limited (PCSPL) *	24,999	2,49,990
	Total	50,000	5,00,000

:-

* The shareholders of M/s Pacific Capital Services Private Limited were the family members of Mr.

Deepak Kochhar namely Mr. Virendra Kumar Kochhar (father of Mr. Deepak Kochhar and father-in-law of Ms. Chanda Kochhar) and Ms. Neelam Mahesh Advani (Ms. Chanda Kochhar's brother's wife).

- (d) The shareholding pattern of NRL was changed, i.e. 24,996 shares held by Mr. V.N.Dhoot and 24,999 shares held by M/s Pacific Capital Services Private Limited were transferred to M/s Supreme Energy Private Limited (a company of Mr. V.N.Dhoot incorporated on 03.07.2008 with share capital of Rs. 1 lakh and Mr. V.N.Dhoot holding 99.9% shareholding). Mr. Deepak Kochhar, as on 05.06.2009 held only 2499 shares in NRL (as 2498 shares of NRL were transferred by PCSPL to Mr. Deepak Kochhar). By this arrangement, Mr. V.N.Dhoot became owner of the company by holding 95% shares of NRL.
- (e) Although it appears from the shareholding pattern that Mr. V.N.Dhoot held the major shareholding of NRL, however the evidences collected during the investigation under PMLA has established that NRL was controlled and managed by Mr. Deepak Kochhar which is proved from following evidences:
 - i) Mr. V.N.Dhoot, Promoter of Videocon Group and MD & Chairman of VIL in his statements dated 02.12.2019 and 03.12.2019 recorded under Section 50 of PMLA has, inter- alia, revealed the following facts about NRL :-
 1. All the affairs/operations of NRL were handled, controlled & managed by Mr. Deepak Kochhar and he (V.N.Dhoot) was holding the shares of NRL on paper only.
 2. Real ownership in terms of decision making for NRL and control of NRL was with Mr. Deepak Kochhar only.
 3. On paper NRL was his company as he was holding 95% shares of NRL through SEPL, but this company was owned, controlled and managed by Mr. Deepak Kochhar.

4. He (V.N.Dhoot) was not exercising any control or decision making in NRL.
 5. His initial 50% shareholding in NRL and its transfer to SEPL was done at the insistence of Mr. Deepak Kochhar. Later, Mr. Deepak Kochhar asked him to purchase around 21,500 (45%) more shares of NRL in name of SEPL. These all transactions were carried out at insistence of Mr. Deepak Kochhar.
 6. There was no share application form/ agreement executed by SEPL with NRL for transaction of Rs. 64 crore among them.
 7. Only oral agreement was made with Mr. Deepak Kochhar for investment of Rs. 64 crore in NRL.
- ii) Mr. Sunil Bhuta, Chief Financial Officer (CFO) of NRL (from January, 2009 to March, 2015) and its subsidiary (from March, 2015 to till date) in his statement dated 27.11.2019 recorded under Section 50 of PMLA has, inter-alia, revealed the following facts about NRL/ NRPL :-
1. Mr. V.N.Dhoot transferred his shareholding in SEPL to Mr. Mahesh Chandra Pungalia (representative of Mr. V.N.Dhoot) and thereafter, Mr. Mahesh Chandra Pungalia became Director and shareholder of NRL. Therefore, Mr. V.N.Dhoot was holding 95% shareholding of NRPL through SEPL during the period 05.06.2009 to 11.03.2012.
 2. Mr. V.N.Dhoot or Mr. Mahesh Pungalia on behalf of Mr. V.N.Dhoot did not participate in decision making or other aspects of NRPL, all of this was taken care of by Mr. Deepak Kochhar. Mr. Deepak Kochhar was/is managing NRPL and its subsidiaries since incorporation.
- iii) Mr. Aniruddha Shreekant Godbole, Engagement Director for audit of NRL (from 24.12.2008 to 31.03.2011) and Auditor of NRL (from 01.04.2012 to 31.03.2014) in his statement dated 29.11.2019 recorded under

Section 50 of PMLA has, inter-alia, revealed the following facts about NRL :-

1. Mr. Deepak Kochhar was the person charged with governance of NRL and controlling/ managing the affairs and operations of NRL.
 2. As part of their audit procedures, he held meetings with Mr. Deepak Kochhar, Director of NRL to discuss the key matters arising out of the audit as per the requirements of the relevant auditing standards.
 3. Though Mr. V.N.Dhoot or Mr. Mahesh Chandra Punglia were holding 95% shareholding of NRL through SEPL during 05.06.2009 to 11.03.2012, but decision making or other aspects of NRL was taken care of by Mr. Deepak Virendra Kochhar though holding only 5% shares of NRL.
 4. Mr. Deepak Virendra Kochhar was controlling /managing NRL incorporation. and its subsidiaries since
- iv) Ms. Neelam Mahesh Advani (Ms. Chanda Kochhar's brother's wife), shareholder (since 15.02.2000) and former Director of M/s Pacific Capital Services Private Limited in her statement recorded under Section 50 (on 21.06.2019) of PMLA before this Directorate has, inter-alia, confirmed/revealed the following facts :-
1. She was/is shareholder and director in various companies (including M/s Pacific Capital Services Private Limited) of Mr. Deepak Kochhar.
 2. Mr. Deepak Kochhar made her a Director & shareholder in these companies and she acted as per the directions of Mr. Deepak Kochhar.
 3. She was dummy director and benami person holding shares of these companies on behalf of Mr. Deepak Kochhar.

4. Mr. Deepak Kochhar was / is the real beneficiary /owner of these companies (including M/s Pacific Capital Services Private Limited).
- v) Mr. Deepak Kochhar is Director of NRL since incorporation (24.12.2008) and was Managing Director of NRL from 01.04.2012 to 01.04.2016. He is Director of M/s Nupower Wind Farms Limited (NWFL, subsidiary of NRL) since incorporation (24.07.2013) and Managing Director of NWFL from 01.04.2016 to 01.05.2019. He was also Director of M/s Echanda Urja Private Limited (EUPL, subsidiary of NRL) since incorporation (12.11.2014) till 19.11.2015 and presently Managing Director of EUPL since 01.04.2016. Mr. Deepak Kochhar is authorised signatory in the bank accounts of NRL/NRPL and its subsidiaries since incorporation of these entities to till date, thereby wielding the financial control over them.
- f) Since PCSPL was a company of Mr. Deepak Kochhar, so he held 50% shareholding in NRL through PCSPL. PCSPL held 24,999 (50%) shares of NRL as on 21.12.2008 (date of incorporation of NRL) and on 05.06.2009 transferred 22,500 shares of NRL to SEPL and 2,498 shares of NRL to Mr. Deepak Virendra Kochhar.
- g) On the basis of investigation conducted under PMLA (till the time of issuance of PAO), the proceeds of crime with NRPL (or its subsidiaries) was quantified at Rs. 64 Crore plus further benefits derived from it, as the amount was invested in acquisition of Wind Power Project. The investigation regarding benefits drawn from the property acquired by NRPL from proceeds of crime (post 31.03.2010) and other aspects (loans given by ICICI Bank, funds received in NRPL etc.) was still in progress.

A brief chronology of events in regard to transfer of tainted funds of Rs. 64 Crore:

S.No.	Date	Events
1.	03.07.2008	SEPL was incorporated with Mr. V.N. Dhoot and Mr. Vasant Kakade as shareholders.
2.	24.12.2008	M/s Nupower Renewables Limited (NRL, later name changed to NRPL) was incorporated with Mr. V.N. Dhoot, PCSPL, Mr. Deepak Kochhar and others as shareholders. Mr. Deepak Kochhar, Mr. V.N. Dhoot and Mr. Saurabh Dhoot were the directors of NRPL
3.	29.12.2008	Board of Directors of NRPL decided to allot 19,97,500 warrants to Mr. Deepak Kochhar of Rs.10/- per warrant. This board meeting was chaired by Mr. Deepak Kochhar himself.
4.	07.01.2009	NRPL allotted 19,97,500 warrants to Mr. Deepak Kochhar of Rs. 10/- per warrant. However, Mr. Deepak Kochhar partly paid only Rs. 1 per warrant initially.
5.	15.01.2009	Mr. V N Dhoot and Mr. Saurabh Dhoot resigned from directorship of NRPL Mr. V.N. Dhoot also resigned from directorship of SEPL.
6.	01.05.2009	Ms. Chanda Kochhar appointed as MD & CEO of ICICI Bank.
7.	04.06.2009	SEPL paid Rs. 2,25,000 to PCSPL, for acquiring 45% (22,500) shares of NRPL from PCSPL.
8.	05.06.2009	Mr. V.N. Dhoot transferred his 24,996 shares of NRPL to SEPL on the insistence of Mr. Deepak Kochhar. PCSPL transferred 2,498 shares of NRPL to Mr. Deepak Kochhar.
9.	08.06.2009	Board of Directors of PCSPL vide resolution dated 08.06.2009 decided to delete the name of Ms. Chande Kochhar from the list of authorised signatories to operate the Current Account No. 811210000958 held with DBS Bank.
10.	12.06.2009	Within a week of receipt of funds by PCSPL from SEPL, Ms. Chanda Kochhar's name was deleted as authorised signatory in the A/c no. 811210000958 held with DBS Bank.
11.	26.08.2009	Urgent Rupee Term Loan proposal of VIEL of Rs. 300 Crore sanctioned by the sanctioning committee of ICICI Bank, headed by Ms. Chanda Kochhar.
12.	07.09.2009	Rs. 300 crore loan disbursed to VIEL by ICICI Bank.
13.	08.09.2009	VIL transferred proceeds of crime amounting to Rs. 64 crore (out of the loan funds disbursed by ICICI Bank) to NRPL through SEPL. The money was routed through a web of Bank accounts to layer and conceal the transfer of proceeds of crime to NRPL.
14.	03.05.2010	NRPL issued Fully Convertible Debenture (FCD) certificate to SEPL for Rs. 64 crore.
15.	05.06.2011	VIL purportedly assigned receivables of Rs. 64 crore, to be received from SEPL to IRCL. Though, neither the same was mentioned in the financials of VIL or IRCL nor brought to the notice of the auditors of VIL or IRCL.
16.	05.08.2011	IRCL purportedly assigned receivables of Rs. 64 crore, to RCPL (earlier known as RAPL). Though, neither the same was mentioned in the financials of IRCL or RCPL nor brought to the notice of the auditors of IRCL or RCPL.
17.	05.10.2011	SEPL purportedly issued Optionally Convertible Debentures Certificate for Rs. 64 Crore to RCPL.
18.	12.03.2012	18,97,500 warrants (initially allotted to Mr. Deepak Kochhar and transferred by him to Pinnacle Energy) converted into equity shares of NRPL resulting into 92.67% shareholding of NRPL.
19.	29.09.2012	SEPL was acquired by Mr. Deepak Kochhar (through his family trust, Pinnacle Energy) from Mr. Mahesh Chandra

		Punglia (erstwhile employee of Videocon Group and dummy for Mr. V.N. Dhoot) at the face value of shares only.
20.	18.08.2016	Appointment of Cyril Amarchand Mangaldas (CAM) by the then Chairman of ICICI Bank for conducting a detailed internal investigation in regard to allegations against Ms. Chanda Kochhar. However, CAM withdrew its report subsequently on June 1, 2018.
21.	31.03.2017	In the balance sheet of SEPL as on 31.03.2017, provisioning of Rs. 32 lakhs was created in its books / accounts by SEPL to project the receipt of proceeds of crime as untainted property.
22.	28.03.2018	ICICI forwarded Press Release to BSE vide letter dated 28.03.2018 mentioning that ICICI Bank reposits its full faith in its MD & CEO, Ms. Chanda Kochhar. However, later violations by Ms. Chanda Kochhar were noted by ICICI Bank as well as the enquiry committee headed by Justice (Retd.) B.N. Srikrishna, and ICICI Bank treated separation of Ms. Chanda Kochhar from ICICI Bank as 'Termination for Cause' & decided for claw back of all bonuses etc.
23.	31.03.2018	Being assured that ICICI has closed the matter and no enquiry or action is pending with ICICI Bank, the provisioning of Rs. 32 lakhs created by SEPL in its books /accounts in the previous financial year was reversed.
24.	19.07.2018	RoC, Mumbai vide Public Notice No. ROC/STK-1/32 issued notice for striking off of various companies including RCPL (due to non-filing of records).
25.	22.01.2019	FIR registered by CBI, BS&FC, New Delhi on 22.01.2019 against Ms. Chanda Kochhar and others. Later, in the same month searches were also conducted by CBI at the premises of the accused persons mentioned in the FIR.
26.	31.01.2019	ECIR recorded by ED on the basis of the CBI FIR dated 22.01.2019.
27.	22.02.2019	Mr. V.N. Dhoot / Videocon Group applied for revival of RCPL by filing application before NCLT (appropriate forum), only after the case was taken up by the investigative agencies. RCPL was later revived around September, 2019.

The history given by the appellants has been narrated and supported by the evidence in the light of the reference of the statements under Section 50 of the Act of 2002 which are admissible and can be relied. The allegation made by the appellants stands because on paper ownership of M/s NRPL is shown to be of V.N. Dhoot but according to him also, the entire control of the company was of Deepak Kohhar. Thus, the allegations were made for quid pro quo to Chanda Kochhar for sanction of loan to Videocon Group of Industries.

The Adjudicating Authority has ignored the material facts while drawing the conclusions which is coming out on the face of the record and, therefore, we cannot endorse the finding of the Adjudicating Authority going against the record and ignoring the relevant facts. Thus, we find substance in the allegation of the appellants for quid pro quo to Chanda Kochhar for sanction of loan of Rs.300 Crores to Videocon Group of Industries and thereupon, a sum of Rs.64 Crores was transferred to M/s NRPL, a company managed by Deepak Kochhar and, in fact, he was the Managing Director of the said Company. The factual issues narrated above clarifies that the appellants have taken up the matter to justify the attachment of the property.

94. It is submitted on behalf of Chanda Kochhar that she was not knowing the business affairs of her husband, rather pleaded ignorance. The argument aforesaid is made contrary to the facts available on record and sufficient to demonstrate that even respondent Chanda Kochhar herself was the shareholder of CFL and was otherwise under the obligation to know the association and deeds of her husband and the family members before making a disclosure to chair meeting for advancement of loan to Videocon Group of Industries. The respondent was expected to conduct herself as per the rules and policy of the bank and could not have pleaded ignorance about the association and affairs of the husband. If that is

accepted, then conflict of interest in the hands of the officer of the bank while advancing loan would be for the sake of it and everybody would plead that they were not knowing about the affairs of the better halves or the relatives. The disclosure has to be true and correct which does not exist in the case rather respondent Chanda Kochhar conducted herself which resulted in resignation from the post of CMD of the Bank.

Allegation in reference to advancement of loan of Rs.300 Crores:

95. The facts on records shows that the respondent Chanda Kochhar while holding the post of CMD of ICICI Bank remained instrument to advance the loan to Videocon Group of Industries and in the present case, the issue relevant is for advancement of the loan of Rs.300 Crores. According to the respondents, there was no violation of the rules or policy of the ICICI Bank in sanctioning the loan. The consideration is to see the potential of the company and the past record. It is submitted by the respondents that ICICI Bank had advanced the loan to Videocon Group of Industries on many occasions in past also. It is not for the first time that loan was given to the Videocon Group of Industries. The track record of the Videocon Group of Industries for repayment of the loan amount was not such which would have affected further loan of Rs.1750 Crores.

96. The argument of the respondents is in ignorance of the fact and allegation to advance the loan to Videocon Group of Companies. It is mainly on the conduct of Chanda Kochhar who chaired the meeting to endorse the loan of Rs.300 Crores despite conflict of interest and relation with Videocon Group of Industries. The respondent Chanda Kochhar had pleaded ignorance about her interest or relation with Videocon Group of Industries and furthermore if her husband was having any interest in Videocon Group of Industries, it was not to her knowledge. The plea of the respondent is untenable in view of the facts narrated above in the first part of the order dealing with the issue in regard to Flat No. 45, CCI Chambers, Churchgate, Mumbai and other relevant facts. In fact, the appellants have referred not only the mortgage of the Flat to the Videocon Group of Industries in the year 1996 but even prior to it the relation of Videocon Group of Industries and CFL owned by Deepak Kochhar since the year 1993-94. Thus, we are unable to accept the plea raised by Chanda Kochhar to justify chair of the meeting for sanctioning the loan to an entity known to her. She could not have pleaded ignorance to it and, therefore, we find that the sanction of loan of Rs.300 Crores by ICICI Bank to the Videocon Group of Industries where Chanda Kochhar remained part of the committee was against the rules and policy of the bank.

Allegation in reference to transfer of Rs.64 Crores:

97. The issue now remains about the transfer of Rs.64 Crores by Videocon Group of Industries through its entity SEPL to NRPL day after the disbursement of loan by ICICI Bank. A serious allegation has been made by the appellant showing it to be nothing but illegal gratification to Chanda Kochhar. The counsel for the respondents vehemently contested the issue. It was submitted that NRPL was owned by Videocon Group itself thus transfer of Rs.64 Crores after disbursement of loan by Videocon Group of Industries was to its own entity thus could not have been considered to be illegal gratification. The facts on record shows that NRPL was incorporated on 24.12.2008 where Mr. Deepak Kochhar, Mr. V.N. Dhoot and Mr. Saurabh Dhoot were the Directors of the company. Mr. V.N. Dhoot & Mr. Saurabh Dhoot resigned from the directorship of the company w.e.f. 15.01.2009. However, before resigning from the directorship, Mr. V.N. Dhoot allotted 19,97,500 warrants to Mr. Deepak Kochhar at the rate of Rs. 10/- per warrant, on an initial payment of Re. 1/- per warrant. On 05.06.2009, the shares of M/s NRPL held by Mr. V.N. Dhoot (24996) and Deepak Kochhar group (Pacific Capital Services Pvt. Ltd. - 24999) were transferred to M/s SEPL, which became 95% shareholder of M/s NRPL.

98. M/s SEPL was incorporated on 03.07.2008 where Mr. V.N. Dhoot was holding 9990 shares and his associate, Mr. Vasant Kakade only 10 shares. Mr. V.N. Dhoot resigned from

directorship of M/s SEPL on 15.01.2009 and subsequently transferred the control of the said company to Mr. Deepak Kochhar by selling / transferring his shares to Pinnacle Energy (PE) managed by Mr. Deepak Kochhar.

99. The counsel for the respondents submitted that 95% of the shareholding of NRPL was with Videocon Group of Industries which is through M/s SEPL but the facts on record shows that V.N. Dhoot resigned from the directorship of the company on 15.01.2009 by transfer of control to Mr. Deepak Kochhar. It is coming out from the statement of Shri V.N. Dhoot recorded under Section 50 of the Act of 2002. The respondent Deepak Kochhar remained the Managing Director of the Company which purchased the wind powers farms from Shriram Group. Deepak Kochhar remained Managing Director of the wind powers project taken over by NRPL utilizing the funds transferred by Videocon Group to NRPL. Thus, the transfer of Rs.64 Crores was quid pro quo to Chanda Kochhar through her husband Deepak Kochhar for approving various loans to Videocon Group which is alleged to have remained unpaid while respondents have stated about repayment of the loan by Videocon Group. It is also that for acquiring wind powers project, NRPL had developed the revenue from other sources also and according to the respondents the programme to purchase wind powers project was not conceived at the time of disbursement of the loan but

initiated in the month of January, 2009 itself. The argument was raised by the respondents that transfer of Rs.64 Crores to NRPL was not to advance the purchase of wind powers project. In fact, programme for it was initiated in the month of January, 2009 itself. The factual issues given by the respondents may be true but the fact remains that an amount of Rs.64 Crores out of Rs.300 Crores was transferred to NRPL day after the disbursement of loan and was used for purchase of wind power project. The fact has other limb because disbursement of loan of Rs.300 Crores to Videocon Group of Industries was under urgent proposal for which no basis has been given by the respondents. The said proposal is co-related to the maturity for the purchase of the wind power project otherwise Videocon Group of Industries obtained the loan for capital expenditure i.e. to acquire the machinery and use it for capital work but loan amount was diverted contrary to the proposal and sanction of the loan by ICICI Bank. The fact further remains that immediately after disbursement of the loan of Rs.300 Crores, Rs.64 Crores were diverted to NRPL where respondent Deepak Kochhar was managing the affairs with 95% stakes of SEPL but from that V.N. Dhoot resigned on 15.01.2009 and transferred the control of the Company to Deepak Kochhar.

100. In view of the discussion made above, we find that Adjudicating Authority has recorded its finding ignoring the

material on record and by taking irrelevant facts into consideration. The main emphasis remains about the major shareholding of NRPL in ignorance of the fact as to who was the Managing Director and, therefore, command of affairs of the company coupled with the statement of V.N. Dhoot recorded under Section 50 of the Act of 2002 who categorically stated that affairs of the company is run by Deepak Kochhar and accordingly even subsequent investment in the Wing Power Farms also remain to the benefit of Deepak Kochhar being in command of the company. It may be true that on papers the transfer of Rs.64 Crores from Videocon Group of Industries to NRPL shown to be from one Videocon Group of Company to another but if the veil is lifted, the affairs were under control of Deepak Kochhar and thereupon the allegation was made to clear the loan amount under urgent proposal so that project of Wind Power Farms conceived in January, 2009 may be supported with the transfer of funds thus in the light of the material on record and moreover the statement of Shri V.N. Dhoot, we are unable to subscribe the view taken by the Adjudicating Authority.

101. The appellant has challenged the non-confirmation of attachment by the Adjudicating authority of Rs. 10.5 Lakhs seized during the course of search from the premises of PCSPL (a company of Deepak Kochhar), the retention of the seized cash was ordered by the Adjudicating Authority vide its order

dated 13.08.2019. The said amount was kept in the FD and has been attached. The Adjudicating Authority denied the confirmation of the attachment of Rs.10.5 lakhs mainly on the ground that they have not confirmed the attachment of the property in the light of the finding recorded in favour of the respondents for transfer of Rs.64 Crores and not being taken to be the proceeds of crime. The finding aforesaid has been interfered by us. However, we find that the Respondent No.2 has claimed ownership of the cash and disclosed the source to possess the cash of Rs.10.5 lakhs. It was submitted that he had cash in hand of Rs. 5,12,500/- on 01.04.2018 and made withdrawal of cash from HDFC Bank account which was a total sum of Rs.15,49,000/- between May 2018 till February, 2019. Thus, total cash in hand came to be Rs. 20,61,500/- and expense therefrom was made of Rs.10,11,500/-, resulting in balance cash-in-hand of Rs. 10,50,000/-. Accordingly, for the reason aforesaid, we would not cause interference in the order to confirm the attachment of the FD for Rs.10.5 lakhs, rather to that extent the impugned order is maintained with the reasoning given above.

Legal Issues:

102. We may now refer to certain legal issues raised by the respondents to support the order of the Adjudicating Authority. It was submitted that the order against the Provisional Attachment Order can be passed only when the

property is derived out of criminal activity and Section 3 is dependent on the illegal gain as a result of commission of the scheduled offence.

103. To answer the issue, it would be relevant to refer to the fact of this case to demonstrate that Provisional Attachment Order has been issued in respect to the properties obtained out of criminal act. We may first refer to Flat No. 45, CCI Chambers, Churchgate, Mumbai. The detailed history of the said Flat has been given to demonstrate that it remains with Videocon Group of Industries for a sufficient period and it was with the intervention of the Bombay High Court that deed for transfer of the property aforesaid was executed in the name of the entity belonging to the Videocon Group of Industries, namely, M/s QTAPL. The initial consideration for purchase of the property in the year 2009 by CFL was Rs. 3.25 Crores while in the year 2016 the said Flat was transferred by QTAPL to a family trust, namely, Quality Advisor's Trust, for a consideration of Rs.11 lakhs only. The value of the Flat was much more than the amount of consideration and it has rightly been taken to be nothing but the proceeds of crime because the property was obtained based on the predicate offence committed at the advancement of loan by ICICI Bank on the advice of the Sanctioning Committee presided over by Chanda Kochhar while she remained the Member of the Sanctioning Committee for sanctioning the loan of Rs. 750

Crores and Rs. 1730 Crores. As per the rules, she should have distanced from the meeting having conflict of interest but not only she participated in the meeting but sanctioned the loan under urgent category. This is taken to be nothing but commission of crime which includes even the offence under Section 420 IPC.

104. The matter has another limb also inasmuch as sanction of the loan to Videocon Group of Industries was under urgent proposal though it does not specify the reason of putting the proposal in the said category. In any case, the respondent Chanda Kochhar did not disclose her conflict of interest while sanctioning the loan and immediately on disbursement of the loan of Rs.300 Crores to an entity of the Videocon Group of Industries, an amount of Rs.64 Crores was transferred to NRPL through SEPL. This was going against the purpose for which loan was sanctioned and no action was taken by the ICICI Bank and furthermore transfer of Rs.64 Crores was to the benefit of the company headed by Deepak Kochhar who remained involved even for purchase of Power Wind Farms Project. The chain of circumstances disclosed it to be a case where Videocon Group of Industries had passed on the benefit to an entity run by Deepak Kochhar for his gain and accordingly to secure the amount asset belonging to NRPL has been attached which is nothing but to secure the proceeds of crime. If Deepak Kochhar would not have any

connection or any control of the said Company, there was no reason to contest the appeal filed by the Directorate/ED for the attachment of the property of the said company but a serious contest of it was made which makes it clear that he was the person aggrieved by the attachment having deep interest in NRPL which otherwise justifies the Provisional Attachment Order. Thus, we do not find any substance in the first legal issue raised by the respondents.

105. The counsel for the respondents further referred to Section 5(1) of the Act of 2002 to indicate that there was no exceptional reason to attach the property when it was already under mortgage. Again, the argument is in reference to the property belonging to NRPL in which Deepak Kochhar was having deep interest being the Managing Director of the Company. The attachment of the property is by invoking second proviso to Section 5(1) of the Act of 2002. In absence of the attachment, the possibility of its transfer or alienation always remained and, therefore, we do not find attachment of the property in violation of Section 5(1) of the Act of 2002, rather for that we find that if the respondents do not intent to alienate the property, there was no reason for them to contest the matter because attachment of the property does not change the title of the property, rather it protects the property till conclusion of the trial. In the instant case, the respondents have always serious concern about the

attachment of the property which itself exposes them to their intention to alienate the property to frustrate the proceedings under the Act of 2002. Thus, to frustrate the proceedings for confiscation of the property, the attachment has rightly been caused by the appellants.

106. The counsel for the respondents further submitted that decision to sanction the loan to Videocon Group of Industries was not by the respondent Chanda Kochhar but it was by a committee and, therefore, there remained no link between the sanction of loan and transfer of Rs.64 Crores by the Videocon Group of Industries to its own entity. It is also that mere management of the affairs of the company in the capacity of the Director or Managing Director does not change the ownership more so when Deepak Kochhar was not having shareholding of the said company. The argument aforesaid was contested and we find that appellants have given complete chain of events to show how case of money laundering is made out and before that a predicate offence. It may be true that the issue will be determined by the Trial Court but we find a *prima facie* case against the respondents for commission of the offence of money laundering and, therefore, the Provisional Attachment Order is justified. It is further submitted that the management of the company can be given to anyone which may be the case in hand. The argument has been raised in ignorance of the statement of

V.N. Dhoot recorded under Section 50 of the Act of 2002 where he categorically stated that he has no concern with NRPL rather it was under the entire control of Deepak Kochhar. The statement was made by none else but said to be having the shareholding of NRPL and demonstrates that Deepak Kochhar was not given control as a professional person but due to the *inter se* arrangement between Deepak Kochhar and Videocon Group of Industries having long drawn association with each other. If we reiterate the entire history of relation between the two, it would show that many companies were incorporated by V.N. Dhoot and Deepak Kochhar with subsequent change in the capital involvement. However, it proves that there was total inter fixing of the work of the industries floated by Deepak Kochhar and even by the Videocon Group of Industries. At times, there was transfer of shareholding by one company to another either by V.N. Dhoot and vice versa Deepak Kochhar. In view of the aforesaid reason only, Rs.64 Crores were diverted for the purpose other than for which the loan was sanctioned by the ICICI Bank. Therefore, the property purchased out of the diverted fund of Rs.64 Crores has been attached by the appellants. We do not find any illegality in that order, rather find perverse finding in the hands of the Adjudicating Authority on all the issues relevant to the case.

107. The counsel for the respondents has referred to various paras of the order of the Adjudicating Authority where finding has been recorded in favour of them. We find that at times, the order of the Adjudicating Authority reproduces and by enlarge makes a reference of the statement of facts of either of the parties though in this case the Adjudicating Authority has recorded the finding in ignorance of the evidence available on record. The Adjudicating Authority has conveniently ignored the Consent Terms and Deed of Conveyance of Flat No. 45, CCI Chambers, Churchgate, Mumbai to draw its conclusion contrary to the documents on record. Such a casual finding cannot be trusted and accepted, rather we have reproduced the contents of the Consent Terms between Videocon Group of Industries and CFL along with Deepak Kochhar to settle the loan advanced by Videocon Group of Industries to a company of Deepak Kochhar. The Deed of Conveyance executed in favour of QTAPL, an entity of Videocon Group of Industries, reflects the entire history of the Flat but ignored by the Adjudicating Authority and, therefore, finding recorded by the said authority cannot be allowed to stand. It is even for the transfer of Rs.64 Crores to NRPL and its subsequent dues for purchase of Wind Power Farms from Shriram Group which company was also managed by Deepak Kochhar.

108. In the light of the discussion made above, we cause interference in the impugned order passed by the Adjudicating Authority other than for attachment of Rs.10.50 Lakhs not confirmed by the Adjudicating Authority. It is accordingly set aside other than for a sum of Rs.10.5 lakhs attached by the appellant. The Provisional Attachment Order dated 10.01.2020 for the properties other than for Rs.10.5 Lakhs is confirmed. The appeal is disposed of with the aforesaid.

(Justice Munishwar Nath Bhandari)
Chairman

(Balesh Kumar)
Member

New Delhi,
3rd July, 2025
'SRD'