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

WRIT PETITION (L) NO.32216 OF 2024

V Hotels Limited .. Petitioner

Versus

1. Directorate of Enforcement
Through the Deputy Director, Mumbai
Zonal Office-I, Mumbai.

2. The Adjudicating Authority

3. Macrotech Developers Limited .. Respondents

Mr. Janak Dwarkadas, Senior Advocate *a/w. Ms. Gauri Joshi i/b. Ganesh & Co., Advocates for Petitioner.*

Mr. Aayush Kedia *a/w. Mr. Shantanu Thorat and Mr. Pratik Desale i/b. Hiten Venegavkar, Advocates for Respondent No.1-E.D.*

Mr. Cyrus Ardeshir, Senior Advocate *a/w. Ms. Shilpa Nair, Ms. Bhavi Vora, Mr. Aditya Dhatrak i/b. Mr. Jeet Gandhi, Advocates for Respondent No.3.*

Mr. Shrey Vats, Deputy Director of ED, *Zone-1 is present in Court.*

CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

Date : November 28, 2024

ORAL JUDGMENT : (*Per , B.P. Colabawalla, J.*).

1. Rule. Rule is made returnable forthwith. Respondents waive service. By consent, heard finally.

2. The above Writ Petition is filed *inter alia* challenging the Provisional Attachment Order 18/2024 dated 25th April, 2024 issued by Respondent No.1; the original Complaint No.2316 of 2024 dated 22nd May, 2024 filed by Respondent No.1 before the Adjudicating Authority under Section 5(5) of The Prevention of Money-Laundering Act, 2002 ("***PMLA, 2002***")*;* the show-cause notice dated 27th May, 2024 issued by Respondent No.2 pursuant to the aforesaid complaint filed by Respondent No.1; and the Order dated 16th October, 2024 passed by Respondent No.2 confirming the Provisional Attachment Order dated 25th April, 2024. The Provisional Attachment Order was levied on the following properties:-

Sr. No.	*Name of the owner/Company*	*Property Address*
1	*M/s. V-Hotels Ltd. (formerly known as M/s. Tulip Hospitality Services Ltd.)*	*1. Parcel of land together with building and structure including hotel structures made thereon situated at CTS-561/5 fore-shore S.No.69/112-T.S.No.859/1 to 21 at V Hotel Juhu Beach, Juhu Tara Road, Vile Parle (West), Mumbai.*
		2. Unit Bearing no.J-203 admeasuring 570 sq.ft. Carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		3. Unit Bearing no.J-506 admeasuring 570 sq.ft. Carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		4. Unit Bearing no.J-603 admeasuring 570 sq.ft. Carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		5. Unit Bearing no.J-503 admeasuring

Sr. No.	*Name of the owner/Company*	*Property Address*
		570 sq.ft. Carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		6. Unit Bearing no.J-602 admeasuring 570 sq.ft. Carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		7. Unit Bearing no.L4-6 admeasuring 491 sq.ft. at Abhanga Samata CHS Ltd. 'L' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		8. Unit Bearing no.L4-13 admeasuring 491 sq.ft. at Abhanga Samata CHS Ltd. 'L' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		9.Unit Bearing no.L4-14 admeasuring 491 sq.ft. at Abhanga Samata CHS Ltd. 'L' Sunder Nagar, S.V. Road, Malad (W), Mumbai.
		10.Unit Bearing no.35 admeasuring 434 sq.ft. at Goa Bhavan, JVPD Scheme, Andheri (W), Mumbai.
		11. Unit Bearing no.36 admeasuring 434 sq.ft. at Goa Bhavan, JVPD Scheme, Andheri (W), Mumbai.
		12. Unit Bearing no.37 admeasuring 434 sq.ft. at Goa Bhavan, JVPD Scheme, Andheri (W), Mumbai.

3. The short point on which the Order of Adjudicating Authority as well as the Provisional Attachment Order are challenged in the present Petition is that the Petitioner has undergone a successful Corporate Insolvency Resolution Process (***"CIRP"***) under the provisions of the Insolvency and Bankruptcy Code, 2016 (***"IBC, 2016")*** and a resolution plan has been approved by the NCLT [under Section 31] vide its Order dated 26th April, 2024. This order of the NCLT was challenged all the

way to the Hon'ble Supreme Court without any success and has attained finality. It appears that one day prior to the resolution plan being approved by the NCLT, Respondent No.1, by its Order dated 25th April 2024, sought to attach the properties of the Petitioner, the details of which have been set out in the table above.

4. Mr. Dwarkadas, the Learned Senior Counsel appearing on behalf of the Petitioner, as well as Mr. Ardeshir, the Learned Senior Counsel appearing on behalf of the successful resolution applicant, relying upon Section 32A of the IBC, 2016, submitted that once a resolution plan has been approved by the NCLT under Section 31, the corporate debtor (i.e. the Petitioner in the present case) cannot be prosecuted any further for any offense from the date of approval of the resolution plan. Further, no action can be taken against the property of the corporate debtor in relation to an offense committed prior to the commencement of the CIRP, where such property is covered under the approved resolution plan, and which results in a change in control of the corporate debtor to a third party who is not disqualified under the parameters of Section 32A. The Learned Senior Counsels thereafter brought to our attention the explanation under sub-section (2) of Section 32A and submitted that the said explanation clarifies that an action against the property of the corporate debtor in relation to an offense shall include attachment,

seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor. It is on the basis of these provisions that Mr. Dwarkadas as well as Mr. Ardeshir contend that even assuming for the sake of argument that the attachment was levied prior to the approval of the resolution plan, the attachment has to be lifted. It was of course also the argument of the Petitioner that the date of the Provisional Attachment Order is actually back-dated and has been passed only once the successful resolution plan was widely publicized on 28th April 2024. Mr. Dwarkadas was at pains to point out that this is a contention specifically raised in the Writ Petition in Paragraphs 4(b) and 5 of the Petition and there is no specific denial of this fact in the affidavit in reply filed on behalf of Respondent No.1.

5. Mr. Dwarkadas and Mr. Ardeshir submitted that the purpose of enacting Section 32-A is that the successful resolution applicant and the corporate debtor get a chance to start with a clean slate. They both submitted that this has been specifically held by the Hon'ble Supreme Court in the case of *Manish Kumar V/s. Union of India & Anr.*[1] As far as the interpretation of Section 32A is concerned, Mr. Dwarkadas and Mr. Ardeshir submitted that the issue is no longer *res integra* and is squarely covered by a decision of a Division Bench of this Court in the case of *Shiv Charan & Ors. V/s. Adjudicating Authority under the*

[1] *(2021) 5 SCC 1*

Prevention of Money Laundering Act, 2002, Department of Revenue and Another[2]. Relying upon this decision, Mr. Dwarkadas as well as Mr. Ardeshir submitted that this Court has held that once a resolution plan is approved under Section 31 of the IBC, 2016, the corporate debtor would stand discharged from the offences alleged to have been committed prior to commencement of the CIRP, and the attached properties identified in the impugned order became free of attachment from the time of the approval of the resolution plan. Once this is the case, it was the submission of Mr. Dwarkadas as well as Mr. Ardeshir that the Provisional Attachment Order dated 25th April 2024 or its confirmation by the Adjudicating Authority *vide* its Order dated 16th October 2024 are wholly unsustainable and have to be quashed and set aside.

6. On the other hand, the Learned Advocate appearing on behalf of Respondent No.1 submitted that there is an alternate remedy available to the Petitioner under Section 26 of PMLA, 2002 under which the Petitioner or the successful resolution applicant can file an appeal from the order passed by the Adjudicating Authority confirming the provisional order of attachment. He further submitted that in any event a *bonafide* claimant can also seek remedy under Section 8(8) of the PMLA, 2002 and seek raising of the attachment levied by the

[2] *2024 SCC OnLine Bom 701*

Adjudicating Authority. On the question of entertaining the Writ Petition when an alternate remedy is available, the Learned Counsel appearing on behalf of Respondent No.1 relied upon the decision of the Hon'ble Supreme Court in the *State Bank of Travancore & Anr. Vs. Mathew K.C.*[3]

7. Apart from the above preliminary objection, the argument canvassed on behalf of Respondent No.1 is that the attachment levied on the properties mentioned in the provisional attachment order does not in any way hinder the Petitioner's restructuring efforts. The resolution plan approved by the NCLT and upheld all the way up to the Supreme Court can proceed without transferring ownership of the attached properties until the allegations of money laundering are adjudicated. It was further submitted that the actions of the Directorate of Enforcement (Respondent No.1) aim at ensuring financial accountability and preventing misuse of the insolvency process to evade scrutiny for financial misconduct. Allowing the Petitioner to retain the proceeds of crime under the guise of a *'clean slate'* would set a dangerous precedent and compromise public interest. For all these reasons, the Learned Counsel appearing on behalf of Respondent No.1 submitted that there was no merit in the above Writ Petition and the same ought to be dismissed.

[3] 2018 (3) SCC) 85

8. We have heard the Learned Counsel for the parties at length. We have also perused the papers and proceedings in the above Writ Petition. There are certain facts which are really undisputed. It is not in dispute that there is a successful resolution plan approved by the NCLT on 26th April 2024. That resolution plan was challenged all the way upto the Supreme Court without any success. The Provisional Attachment Order appears to have been passed one day prior to the approval of the resolution plan by the NCLT. On this aspect, what is interesting to note is that on 12th April 2024, Respondent No.1 addressed a letter to the resolution professional of the corporate debtor (the Petitioner) seeking information with regard to certain financial dealings of the corporate debtor under ten different heads. For the sake of convenience, the said letter is reproduced hereunder :

F. NO. ECIR/MBZO-I/38/2020 *Date: 12.04.2024*

To,
Mr. Anish Niranjan Nanavaty
R.P. of V Hotels Ltd,
(1). 2A/208, Raheja Classique,
New Link Road, Andheri (W),
Mumbai-400053

&

(2), One International Centre Tower 3,
26th Floor, Senapati Bapat Marg,
Elphinstone Road (W),
Mumbai-400014

Sub:- Requisition of certain documents/information in the matter of M/s V Hotels Limited-reg.

Sir,

In this connection it is submitted that this office is investigating the case of M/s Cox & Kings Limited and M/s V Hotels Limited under PMLA, 2002.

2. In view of the above you are requested provide the following documents/information w.r.t V Hotels Ltd;

(i) List of sister/associate companies of M/s V Hotels Ltd.

(ii) Copies of ledger accounts of (i) M/s Liz Traders & Agents Pvt Ltd (ii) M/s Sneh Sadan Traders & Agents Limited, (iii) M/s Tulip Hotels Pvt Limited, (iv) M/s Tulip Star Hotels Ltd, (v) M/s Cox & Kings Ltd,(vi) M/s Ezeego One Travel & Tours Ltd, (vii) M/s Abeba Traders Pvt Limited, (viii) M/s Rosean Trading Company Limited, (ix) M/s Sunshine Awasan Pvt Limited, (x) M/s Beckham Trading Pvt Limited, (xi) Lucas Commotrade Pvt Ltd and (xii) any other group entity of Cox & Kings Group in the books of V Hotel Ltd.

(iii) List of creditors/debtors accompanied with the outstanding balances of M/s V Hotels Ltd till FY 2022-23.

(iv) Details of party-wise unsecured and secured interest expenses claimed by M/s V-Hotels Ltd in Income Tax Returns since AY 2004-05 to till date.

(vi) The certified copy of statutory Audit Reports of V-Hotels Ltd for the year from 2003-04 to 2022-23.

(vii) details of investments made by V Hotels Limited and its ultimate beneficial owners.

(viii) Shareholding pattern of V Hotels Ltd.

(ix) Copy of forensic audit report of Cox & Kings Group companies which was prepared by Mr. Paras Agarwal.

(x) Details of bank accounts including A/c no., bank statements (ledger) for the period from FY 2003-04 to 2022-23 of V Hotels Ltd.

Yours sincerely,

(Pawan Kumar)

Encl:- As above *Assistant Director*

9. This letter was replied to by the resolution professional by three separate e-mails. These emails can be found at Page No.181 of the paper-book. The first email is dated 25th April 2024 and sent at 4.21 p.m. This email apparently bounced because the attachments to the said email were too voluminous. Accordingly, the fact that the said email had bounced was informed to the Enforcement Directorate by another email of 25th April 2024 sent at 5.59 p.m. Thereafter, another email was sent on 25th April 2024 at 6.17 p.m. wherein all the documents were enclosed. It is rather surprising that after receiving the documents at around 6:17 pm on 25th April 2024, and which ran into over a thousand pages, the Enforcement Directorate was able to pass a detailed order running into approximately 100 pages out of which 75 pages have been dedicated to the documents sent by the resolution professional to the Directorate of Enforcement. This timeline certainly casts a serious doubt on whether the Provisional Attachment Order was in fact passed on 25th April 2024, or whether it was passed after the resolution plan was widely publicized and the same then came to the notice of the Directorate of Enforcement. In fact, even in the affidavit-in-reply filed by the Directorate of Enforcement, there is no specific denial to the serious allegations made in this regard [in paragraphs 4B, 4C and 4D of the Petition]. For the

sake of convenience, paragraphs 4B to 4D of the Petition are reproduced hereunder:

> *"4B. It is evident from the record that the Original PAO was issued on 1st May 2024 and the date of 25th April 2024 has been wrongly inserted only with a view to contend that the Original PAO was issued prior to the NCLT Plan Approval Order. There is no evidence or record of any communication of the Original PAO to the Resolution Professional on 25th April 2024;*
>
> *4C. While the Original PAO was dated 25th April 2024, it was served on parties by email on 1st May 2024 (i.e. on a national holiday) as demonstrated through the service proof enclosed as Annexure B to the Original Complaint;*
>
> *4D. It is inconceivable that the Original PAO could have been issued on 25th April 2024, the same day that the Resolution Professional shared voluminous details and documentation running into 1133 pages with Respondent No.1. The compilation of these materials was a complex and time-consuming task, and the final transmission of the documents via email took place late in the evening on 25th April 2024;"*

10. In the affidavit-in-reply filed by Respondent No. 1, Directorate of Enforcement, all that is stated is that the resolution plan was approved on 26th April 2024 and the attachment under the provisions of the PMLA, 2002 was issued on 25th April, 2024 when there was no resolution plan approved by the NCLT. For the sake of convenience the relevant portion of Para 6.2 of the affidavit in reply reads as under:-

> *"6.2. With regards to Para B-E it is submitted that in the instant matter, the resolution plan was approved on 26.04.2024 and the attachment under the provisions of PMLA was issued on 25.04.2024 when there was no resolution plan approved by the NCLT. Hence there is no doubt that the Enforcement Directorate was empowered by the law to attach the properties of the defendant……."*

11. To get over this problem, the Learned Counsel appearing on behalf of Respondent No.1 brought to our attention, Paragraph 4 of the affidavit, which states that what has not been specifically admitted in the affidavit may kindly be deemed to have been traversed and denied. We are afraid that when such serious allegations are made in the Petition, they have to be specifically dealt with, and a party cannot be allowed to rely upon such vague statements for the purposes of denial. Be that as it may, we have only set out all these facts to merely opine that there is a serious doubt whether the Provisional Attachment Order dated 25th April 2024 was in fact passed on the said date or was passed subsequently and was ante-dated. We say nothing more on this.

12. As far as whether the Provisional Attachment Order dated 25th April 2024 can continue after a successful resolution plan has been approved by the NCLT, we find that the reliance placed by Mr. Dwarkadas as well as Mr. Ardeshir on the provisions of Section 32A is well founded. For the sake of convenience, Section 32A of the IBC, 2016 is reproduced hereunder:-

> *"32A. Liability for prior offences, etc.--(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the*

management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not--

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to

believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.
Explanation.--For the purposes of this sub-section, it is hereby clarified that,--

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

13. A plain reading of the aforesaid provision would show that Section 32A is a *non-obstante* provision. Its jurisdiction is attracted only when a resolution plan gets approved under Section 31 of the IBC, 2016. Besides, the immunity conferred by Section 32A is available if and only if the approved resolution plan results in a complete change in the character of ownership and control of the corporate debtor. In fact, Section 32A(1) clearly lays down that the liability of the corporate debtor for an offense committed prior to the commencement of the CIRP shall cease. The corporate debtor is explicitly protected from

being prosecuted any further for such offence, with effect from the approval of the resolution plan. Section 32A disentitles the corporate debtor for such immunity, if the promoters or those in the management and/or control of the corporate debtor prior to the CIRP, or any related party or such persons, continue in management or control of the corporate debtor under the approved resolution plan. Likewise, the corporate debtor would be disentitled from immunity, even if third parties who are not promoters or persons in management or control of the corporate debtor, come into management or control of the said corporate debtor under the resolution plan but are persons who the investigating authority has reason to believe, based on material, had abetted or conspired for commission of the offense in question. Should the ingredients of Section 32A be met, an automatic discharge from prosecutions of the corporate debtor alone, follow. The provisions take care to ensure that the immunity is available only to the corporate debtor and not to any other person who was in management or control, or was in any manner, in charge of, or responsible to, the corporate debtor for conduct of its business, or was associated with the corporate debtor in any manner, and directly or indirectly involved in the commission of the offense being prosecuted. Such other persons who were charged for the offence, would continue to remain liable for prosecution. In other words, other than the corporate debtor who has undergone a successful CIRP, all other accused remain on the hook and it is the corporate debtor alone who gets the statutory stipulated immunity.

14. Additionally, once a resolution plan is approved under Section 31 of the IBC, 2016, keeping in line with the aforesaid immunity from prosecution, Section 32A(2) goes a step further and also protects the property of the corporate debtor from any attachment and restraint in proceedings connected to the offence committed prior to the commencement of the CIRP. Once a resolution plan is approved under Section 31 and a change in control and management is effective under the resolution plan, the property of the corporate debtor would also get immunity from further prosecution of proceedings. This is made explicitly clear in clause (i) to the Explanation appended to Section 32A(2). Once this is the case, we find that the Enforcement Directorate's attachment either provisionally or otherwise cannot continue even for a day longer after the approval of the resolution plan which meets the parameters of section 32A.

15. In the view that we have taken, we are supported by a Division Bench decision of this Court to which both of us were a party, in the case of *Shiv Charan & Ors. (supra).* In this decision, the Court has gone into in great detail about the scope and ambit of section 32A as well as

the purpose of bringing the said provision on the statute book which was in fact dealt with in great detail by the Hon'ble Supreme Court in the case of *Manish Kumar (supra).* Since we have already set out above what we have already held in *Shiv Charan (supra),* we are not burdening this decision by reproducing the relevant portions of our judgement in *Shiv Charan (supra).* Suffice it to state that the facts of the present case would squarely fall within the ratio laid down by this Court in *Shiv Charan & Ors. (supra).*

16. This, therefore, now only leaves us to deal with the alternate remedy argument. As far as the alternate remedy argument is concerned, it is now well settled that merely because an alternate remedy is available, it would not prevent the filing of a Writ Petition seeking a prerogative writ. In fact, Constitutional Courts often relegate the parties to avail of the alternate remedies and not rush to the Court seeking prerogative writs as a matter of prudence and self-restraint. It is well settled that there are several exceptions when the Court can exercise its writ jurisdiction even though an alternate remedy is available. In the facts of the present case, we find that this is a just case where this Court ought to interfere with the actions taken by the Directorate of Enforcement. This is for the simple reason that these authorities, despite the clear mandate of the law laid down in Section 32A of the IBC, 2016 as well as our decision in *Shiv Charan & Ors.*

(Surpa) have till date not lifted the attachment. We, therefore, find that the argument of alternate remedy is stated only to be rejected.

17. In the peculiar facts of this case, there is one more facet which makes the order of the Adjudicating Authority dated 16th October 2024 confirming the Provisional Attachment Order of 25th April, 2024 unsustainable. As mentioned earlier, the Provisional Attachment Order was dated 25th April 2024. By that attachment Order, the immovable properties mentioned in the said Attachment Order (as reproduced by us hereinabove) were attached by Respondent No.1 under the provisions of Section 5 of the PMLA, 2002. Such a provisional order thereafter has to be confirmed by the Adjudicating Authority and for which purpose the Directorate of Enforcement has to file a complaint under Section 5(5) of the PMLA, 2002. In the facts of the present case, the Directorate of Enforcement in fact filed that complaint on 22nd May 2024. However, what is interesting is that the Directorate of Enforcement, in its complaint [in Paragraphs 10.5 and 10.6] has stated that the proceeds of crime in question have changed form, since V Hotels Ltd. (the corporate debtor-Petitioner) was taken over by Respondent No.3 herein (MDL). Keeping this in mind, the proceeds of crime which were attached as value thereof in the form of land, structures built upon the said land, and unit/flats of the Petitioner,

have transformed into the “sale proceeds” of the Petitioner to the extent of approximately Rs. 520 Crore. In fact, in Paragraph 10.5, it is stated that therefore the Provisional Attachment Order dated 25th April 2024 stands modified to the extent that the provisional attachment on the land and property of the Petitioner is lifted, and the amount of Rs.520 Crores is ordered to be treated as provisionally attached. For the sake of convenience, Paragraphs 10.4, 10.5 and 10.6 are reproduced hereunder:-

> *10.4. The POC in question has changed form since V Hotels Ltd was taken over by MDL. Keeping this in mind, the POC which was attached as value thereof in the form of the land, structures built upon the said land and units/flats of V Hotels Ltd has transformed into the sale proceeds of V Hotel Ltd, to the extent of Rs. 520,80,26,943/-, generated by virtue of the approval of MDL's Resolution Plan by the Hon'ble NCLT vide an order dated 26.04.2024. Thus, the amount of Rs. 520,80,26,943/- out of the proceeds under MDL's Resolution Plan is the new form of PoC which is required to be attached for the purposes of confiscation.*
>
> *10.5. V Hotels Ltd. is directed to keep aside and not distribute the proceeds to the creditors to the extent of the aforesaid sum of Rs. 520,80,26,943/- as and when received from MDL in terms of the Resolution Plan approved by the Hon'ble NCLT vide its order dated 26.04.2024. The Provisional Attachment Order dated 25.04.2024 in F.No. ECIR/MB/ZO-1/38/2020 is, therefore, modified to the extent that the provisional attachment on the land and property of V Hotels Ltd. is lifted and aforesaid amount of Rs.520.80,26,943/- is ordered to be treated as provisionally attached. Compliance shall be ensured by new management of V Hotels Ltd.*
>
> *10.6. That, from the investigation made under provisions of PMLA, 2002 so far, it is evident that proceeds amounting Rs 520.80 Crore were in possession of V Hotels Pvt Ltd. The said proceeds of crime were generated by Cox & Kings Group by committing scheduled offences. The said proceeds constitute proceeds of crime in terms of section 2(1)(u) of the Prevention of Money Laundering Act, 2002.*

That, from the above-stated investigation made under PMLA, 2002 it is evident that V Hotels Ltd is in possession proceeds of crime generated by committing scheduled offences in form movable/immovable properties. The details of properties that have been identified are tabulated as under:

Sr. No.	***Name of the owner/Company***	***Property Address***	***Current value***	***Remarks***
1	*M/s. V-Hotels Ltd. (formerly known as M/s. Tulip Hospitality Services Ltd.)*	*1. Parcel of land together with building and structure including hotel structures made thereon situated at CTS-561/5 fore-shore S.No.69/112-T.S.No.859/1 to 21 at V Hotel Juhu Beach, Juhu Tara Road, Vile Parle (West), Mumbai.*	*As per the balance sheet of M/s. V. Hotes Ltd. As at 31st March, 2023, the value of Property, Plant and Equipment of the company as on 31st March, 2023 were Rs.281.95 Cr.*	*Value of assets is Rs.281.95 Cr. (attached as Equivalent Value). The POC in question has changed form to the sale proceeds of M/s. V Hotels Pvt. Ltd. since V. Hotels Pvt. Ltd. was taken over by M/s. Macrotech Developers Limited [“MDL”] vide order of Hon’ble NCLT dated 26.04.2024 approving the Resolution Plan submitted by MDL.*
		2. Unit Bearing no.J-203 admeasuring 570 sq.ft. carpet at Sunder Jamnotri CHS Ltd. ‘J’ Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		3. Unit Bearing no. J-506 admeasuring 570 sq.ft. carpet at		

Sr. No.	***Name of the owner/Company***	***Property Address***	***Current value***	***Remarks***
		Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		4. Unit Bearing no. J-603 admeasuring 570 sq.ft. carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		5. Unit Bearing no. J-503 admeasuring 570 sq.ft. carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		6. Unit Bearing no. J-602 admeasuring 570 sq.ft. carpet at Sunder Jamnotri CHS Ltd. 'J' Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		7. Unit Bearing no.L4-6 admeasuring 491 sq.ft. at Abhanga Samata CHS Ltd. 'L' Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		8. Unit Bearing no.L4-13 admeasuring 491		

Sr. No.	*Name of the owner/Company*	*Property Address*	*Current value*	*Remarks*
		sq.ft. at Abhanga Samata CHS Ltd. 'L' Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		9.Unit Bearing no.L4-14 admeasuring 491 sq.ft. at Abhanga Samata CHS Ltd. 'L' Sunder Nagar, S.V. Road, Malad (W), Mumbai.		
		10.Unit Bearing no.35 admeasuring 434 sq.ft. at Goa Bhavan, JVPD Scheme, Andheri (W), Mumbai.		
		11. Unit Bearing no.36 admeasuring 434 sq.ft. at Goa Bhavan, JVPD Scheme, Andheri (W), Mumbai.		
		12. Unit Bearing no.37 admeasuring 434 sq.ft. at Goa Bhavan, JVPD Scheme, Andheri (W), Mumbai.		

18. Despite this stand of the Directorate of Enforcement, we find that the Adjudicating Authority in its order dated 16th October 2024 has confirmed the order of attachment dated 25th April, 2024 in its original

form. This is yet another factor why the Order passed by the Adjudicating Authority is rendered unsustainable.

19. In view of the foregoing discussion, we find that the above Writ Petition deserves to be allowed. We accordingly allow the above Writ Petition in terms of prayer clause (a) which reads thus:-

> *"(a) That this Hon'ble Court be pleased to call for the records, papers and proceedings connected to and related with the Provisional Attachment Order: 18/2024 bearing reference: F. No. ECIR/MBZO-1/38/2020 dated 25th April 2024 issued by Respondent No. 1 (Exhibit - "I" hereto), the Original Complaint No. 2316 of 2024 dated 22nd May 2024 filed by Respondent No. 1 (Exhibit - "K" hereto), the Show Cause Notice dated 27th May 2024 issued by the Respondent No. 2 (Exhibit - "L" hereto), and the Order dated 16th October 2024 passed by Respondent No. 2 (Exhibit "A" hereto) and after examining the legality, propriety and correctness of the same, issue a writ of Certiorari or any other writ in the nature of Certiorari or such other writ, order or direction in the nature of a Certiorari thereby setting aside and quashing the following insofar as they pertain to the Petitioner and its assets:*
>
> > *(i) The Enforcement Case Information Report bearing F. No. ECIR/MBZO-I/38/2020;*
> >
> > *(ii) The Provisional Attachment Order: 18/2024 bearing reference: F. No. ECIR/MBZO-I/38/2020 dated 25th April 2024 issued by Respondent No. 1 (Exhibit - "I" hereto) as modified on 22nd May 2024;*
> >
> > *(iii) The Show Cause Notice dated 27th May 2024 issued by Respondent No. 2 (Exhibit - "L" hereto);*
> >
> > *(iv) The Original Complaint No. 2316 of 2024 dated 22nd May 2024 filed by Respondent No. 1 (Exhibit - "K" hereto); and*
> >
> > *(v) The Order dated 16th October 2024 passed by Respondent No. 2 (Exhibit - "A" hereto)."*

20. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms of the above. However, there shall be no order as to costs.

21. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] **[B. P. COLABAWALLA, J.]**