

NEUTRAL CITATION NO: 2022/DHC/005093

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P.775/2022 and Crl.M.A. No. 23452/2022

Order reserved on :15.11.2022

Date of decision:24.11.2022

TAHIR HUSSAIN

..... Petitioner

Through: Mr.Naveen Malhotra, Mr.Ritvik
Malhotra and Mr.Nilansh
Malhotra, Advocates.

Versus

THE ASSISTANT DIRECTOR ENFORCEMENT DIRECTORATE.

..... Respondent

Through: Mr.Zoheb Hossain, Mr.Vivek
Gurnani and Mr.Pankaj Kumar
Khatri, Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

ANU MALHOTRA, J.

1. The petitioner, Tahir Hussain, arrayed as accused No.1 in ECIR/05-STF/2020 submitted by the Directorate of Enforcement as a complaint under Sections 44 and 45 of the Prevention of Money Laundering Act, 2002 (herein after referred to as the PMLA, 2002 for the alleged commission of the offence of Money Laundering as defined under Section 3 read with Section 70 punishable under Section 4 of the PMLA, 2002, seeks the setting aside of the order dated 3.11.2022 of the Court of the learned Additional Sessions Judge-03, Shahdara, Karkardooma, in SC No. 181/2020; CNR No.-DLSH-01-

00-6179-2020 Case No. ECIR/-05-STF/2020 titled ***Directorate of Enforcement Vs. Tahir Hussain***, whereby the orders were passed for framing of charges against the petitioner under Section 3 of the PMLA, 2002 punishable under Section 4 of the said enactment.

2. The respondent, the Directorate of Enforcement, was present on advance notice of the petition and exhaustive oral submissions were made on behalf of either side. Pursuant to the directions dated 15.11.2022 the written submissions have also been submitted on behalf of either side. A catena of verdicts has been relied upon on behalf of either side in support of their rival contentions.

3. The brief facts of the case sought to be asserted by the Directorate of Enforcement against the petitioner are to the effect that:

FIR No. 88/2020 Police Station Dayalpur, under Sections 307/120B/34 of the Indian Penal Code, 1860, qua an occurrence on the date 25.2.2020 at around 3:50 P.M. was registered wherein the complainant Ajay Goswami stated that on 25.2.2020 he had come to the house of his uncle Rakesh Sharma and it was around 3:50 P.M. when he was going to his house at Khajuri and when he reached the corner of the gali he saw a crowd of persons throwing stones and firing bullets on the main road, Karawal Nagar and these persons were committing riots and on seeing them he (Ajay Goswami) started running towards the house of his uncle and then a bullet like thing forcibly hit his right buttock and the persons who were standing there informed that between Gali No. 5 and 6 persons named Gulfam and Tanveer were firing bullets continuously and people standing there asked him to go. Inter alia, the complainant of this FIR stated that the

person who picked him up had informed that many persons were firing bullets and throwing petrol bombs from the house of Tahir Hussain (the petitioner herein) and were throwing stones.

FIR No. 59/2020 Police Station Crime Branch under Sections 147/148/149/120B of the Indian Penal Code, 1860 was registered on a complaint of SI Arvind Kumar No. D-5708 who stated that a secret informer had informed him that the riots which took place in Delhi on the dates 23rd, 24th and 25th February, 2020, were a well-planned conspiracy hatched by a student Umar Khalid of the JNU and his companions who were connected with various organizations together and that Umar Khalid had given inciting speeches and made appeals to the people to block the public roads during the proposed visit of the President of America on 24.2.2020 and 25.2.2020 so that a propaganda could be spread at the International level during the travel of the President of America that atrocities were being committed on the minorities in India.

Inter alia, it had been stated in this FIR that under this conspiracy at many houses at Mauzpur, Kardampuri, Jafrabad, Chandbagh, Gokalpuri and Shiv Vihar and the areas around the same, fire arms, petrol bombs, acid bombs, stones catapults to throw the same and other deadly weapons were collected and at different places, the ladies and children gathered below the Jafrabad Metro Station as a part of the conspiracy on 23.2.2020 so that people living around were harassed and there was an increased tension and riots could take place.

FIR No. 65/2020 Police Station DayalPur was registered on 26.2.2020 qua an incident of the date 25.2.2020 that occurred between

16:45 hrs to 18:45 hrs on the basis of a complaint made by one Mr. Ravinder Kumar s/o Man Singh r/o E-140A, Gali No.6, Khajuri Khas, Dayalpur, who stated that on the main road from Bhajanpura to Karawal Nagar on Chand Bagh Pulia, an agitation against the CAA had been going on for several days in which both parties had been indulging in stone throwing and putting fire and firing with weapons. It was further stated through this FIR that the office of the then Municipal Councillor Tahir Hussain (the petitioner herein) was near the Chand Bagh Pulia and in this office he, i.e., Tahir Hussain (the petitioner herein), had gathered gunda elements and who were firing from the top of the office throwing petrol bombs and stones due to which there has been much tension and a fearful environment in the public at large.

It was further stated in the said FIR that on the date 25.2.2020 Ankit Gupta, the son of the complainant, who had gone out in the evening at 5 P.M. to get some household articles did not return for much time and after making enquiries and waiting for the entire night, the missing report was lodged whereafter it was learnt that a boy had been killed and thrown in the Chand Bagh drain from the top whereafter with the assistance of the police the dead body of the complainant's son was found wearing only underwear with sharp edged weapon injuries on his head, face, chest back side, midriff with the face and other body parts having been burnt with some acid like substance in order to conceal the identification. Through this FIR it was stated by the complainant thereof that he had complete belief that Tahir Hussain (the petitioner herein) and the persons gathered in his

office had committed the murder of his son and thrown him in the drain from the Masjid.

The offence punishable under Section 302 of the Indian Penal Code, 1860 qua which inter alia FIR 65/2020 Police Station DayalPur and the offences punishable under Section 120B of the Indian Penal Code, 1860 in relation to which FIR No. 59/2020 Police Station Crime Branch and qua the offences punishable under Section 120B and 307 of the Indian Penal Code, 1860 in relation to which FIR bearing No. 88/2020 Police Station DayalPur had been registered, are all scheduled offences in terms of paragraph 1 to the Schedule read with Section 2(y) to the PMLA, 2002 2(y) of the PMLA, 2002 which defines scheduled offences as under:

“2 Definitions. —

(1) In this Act, unless the context otherwise requires,—

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f)*
- (g)*
- (h)*
- (i)*
- (j)*
- (k)*
- (l)*
- (m)*
- (n)*
- (o)*
- (p)*
- (q)*

- (r)
- (s)
- (t)
- (u)
- (v)
- (w)
- (x)
- (y) “*scheduled offence*” means—
 - (i) the offences specified under Part A of the Schedule; or
 - [(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or]
 - [(iii) the offences specified under Part C of the Schedule;]

4. As per the averments made in the ECIR enquiries were initiated under the of the PMLA, 2002 after recording the brief facts of the scheduled offences in the ECIR/05-STF/2020 dated 9.3.2020 (RUD-6) by the Special Task Force of the Directorate of Enforcement (HQs), New Delhi in as much as the offences punishable under Section 120B/302/307/385 of the Indian Penal Code, 1860 are scheduled offences in para 1 of part A of the Scheduled Offences under Section 2(1)(y) of the PML Act, 2002. The ECIR/05-STF/2020 submitted by the Directorate of Enforcement states inter alia to the effect:

“4. Brief facts of the offence/allegation/ charge/ amount involved under PMLA:

4.1. After recording the aforementioned ECIR, investigation in the matter was taken up. The following documents and evidences were collected/obtained:

(1) Bank statements of bank accounts maintained in the name of M/s Show Effect Advertisement Pvt. Ltd. (hereinafter referred to as SEAPL), Show Effect Worldwide Pvt. Ltd. (hereinafter referred to as SEWPL), Essence Cellcom Pvt. Ltd.(hereinafter referred to as ECPL) Essence Global Services Pvt. Ltd. (hereinafter referred to as EGSPL), Saifi Wooden Works, Sh.Tahir Hussain and Smt. Shama Anjum (wife of Tahir Hussain) were called for from HDFC Bank and Bank of Baroda.

(ii) Copies of FIR. No. 59/2020 dated 06.03.2020 registered by Crime Branch, Delhi Police and FIR No. 65/2020 dated 26.02.2020 and 88/2020 dated 01.03.2020 recorded by P.S. Dayalpur, New Delhi

(iii) Documents/digital devices recovered and seized from various premises during searches conducted on 23.06.2020, 25.06.2020 and 26.06.2020.

(iv) Statements of the suspects & witnesses, recorded under Section 50(2) & (3) of the PMLA, 2002.

4.2. Examination of the bank accounts of M/s SEAPL. ECPL and EGSPL for the period October 2019 till March 2020 and correlation of transactions with counterparty details obtained from Banks revealed that fraudulent RTGS transactions to the tune of Rs. 1.5943 Crore were done by these companies with dubious entities by giving false narration in the RTGS transactions. Investigation revealed that Tahir Hussain was involved in the acts of cheating and falsification/forgery of documents which resulted in fraudulent removal of money from the accounts of the said three companies (M/s SEAPL, ECPL and EGSPL). On the directions and. instructions of Tahir Hussain, huge amounts of money was withdrawn from the accounts of the said three companies by way of transfer of funds to entry operators and bogus companies. Tahir Hussain was the ultimate beneficiary of the laundered

money which he used for fulfillment of ulterior motives. Fake and bogus invoices were created to cover the money trail.

4.3.1. The amounts withdrawn from the accounts of the said three companies through fraudulent transactions are mentioned below:

- i. M/s SEAPL [Directors: Sh. Tahir Hussain and Smt. Shama Anjum (wife of Sh. Tahir Hussain)]: Rs. 47.43 lakh
- ii. ECPL [Directors: Sh. Tahir Hussain, Sh. Nitesh Kumar Gupta and Mohammad Akram]: Rs. 92 lakh
- iii. EGSPL [Directors: Sh. Nitesh Kumar Gupta and Mohammad Akram]: Rs. 20 lakh

4.3.2. Investigation revealed that funds were transferred through RTGS mode by the aforesaid three companies to the accounts of fictitious/bogus entities created by entry operators. The details of the bogus companies and entry operators through whom the above mentioned fraud was carried out are given below:

- RTGS transactions amounting to Rs. 60 lakh were made by M/s Essence Cellcom Pvt. Ltd. to one 'Meenu Fabrications' as reflected in the banking narration for the RTGS transfers. However, investigation revealed that the said amount was in fact credited in the account of one 'Shri Sai Traders'.
- Similar modus operandi was adopted in respect of other bogus companies as tabulated below:

Sr.No.	Amount transferred from Company	Name of bogus company to whom amount was shown to be transferred to in RTGS narration	Entry Operator in whose account amount was actually credited
1	Rs. 60 lakh from ECPL	Meenu Fabrication	Shri Sai Traders
2	Rs. 32 lakh from ECPL	S P Financial Services	Sanjay Traders

3	Rs. 20 lakh. from EGSP	Meenu Fabrication	Shri Sai Traders
4	IRs. 25.65lakh from SEAPL	Yudhvee Impex	Vikram Tradors
5	Rs. 15.28 lakh from SEAPL	Kanhaiya Enterprises	Shri Ram Wood Products
6	Rs. 6.5lakh from SEAPL	Vasundhara	Sanyam Traders

5. Searches conducted during the course of investigation:

5.1 Based on the above facts and findings and in order to collect further evidences, search and seizure action under section 17 of PMLA was carried out on 23.06.2020, 25.06.2020 and 26.06.2020 at the following premises:

- i. A-1/112, Gali No.3, Nehru Vihar, Delhi-94: Premises of Kallan Saifi, father of Tahir Hussain, where Shama Anjum, wife of Tahir Hussain was residing.
- ii. D-211, Site V, Surajpur.Industrial Area, Kasna, Greater Noida, Gautam Budh Nagar, Uttar Pradesh (UP): Production facility of M/s SEAPL.
- iii. 2C-302, AWHO Society, Greater Noida, UP: Residential premises of Sh. Nitesh Kumar Gupta, Director M/s EGSP and M/s ECPL.
- iv. 3L-304, AWHO Society, Greater Noida, UP: Residential premises of Md. Akram, Director M/s EGSP and M/s ECPL.
- v. G-75-A & G-72/3, First Floor, Shaheen Bagh, Jamia Nagar, New Delhi: Office premises of M/s EGSP and M/s ECPL.
- vi. E-7, Main Karawal Nagar Road, Khajoori Khas, New Delhi: Residential premises of Tahir Hussain and office premises of M/s SEAPL.

viii13, Chobaga, Near 42A Bus Stand, Gali
No. 10, Kolkata: Production facility cum
office premises of M/s SEAPL at Kolkata .

5.2 During the course of search at the above mentioned premises, several incriminating documents and digital devices were recovered and seized under panchnama(RUD-7). Subsequently, voluntary statements of several persons were recorded under Section 50 of the PML, 2002 during which some of the persons also tendered their 'Whatsapp chats'. Forensic examination of mobile phones digital devices was also conducted under panchnama. (RUD-8). Bogus invoices and other t incriminating documents recovered during search operations, Whatsapp chats and statements of involved persons have established the fraudulent transfer of money from the accounts of the aforesaid companies to other accounts and the reciprocal transfer of cash to Tahir Hussain through his associates and employees.

5.3 The individuals, whose statements were recorded in relation to the transfer of funds through the aforesaid fraudulent means, have been broadly categorized as (A) persons associated with the companies of Tahir Hussain (B) the entry operators who facilitated the accommodation entries from the bank accounts of companies related to Tahir Hussain.”

5. As per the said ECIR/05-STF/2020 statements of persons associated with the companies of the petitioner herein, were recorded under Section 50 of the PML Act, 2002 which provides as under:

“50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;*
 - (b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;*
 - (c) compelling the production of records;*
 - (d) receiving evidence on affidavits;*
 - (e) issuing commissions for examination of witnesses and documents; and*
 - (f) any other matter which may be prescribed.*
- (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.*
- (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.***
- (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).***
- (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not—*
- (a) impound any records without recording his reasons for so doing; or*

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

(emphasis supplied)

and it was submitted to the effect in the ECIR that the said statements of Nitish Kumar Gupta, Mohd. Akram, Roshan Pathak, Usman Ahmad, Shama Anjum, Rahul Kasana and Girish Pal were to the effect:

“6.Statements recorded under PMLA

A. Statements of persons associated with the companies of Tahir Hussain

6.1 Statements of Sh. Nitesh Kumar Gupta were recorded under Section 50 of the PML, 2002 ~n 23.06.2020, .24.06.2020, 25.06.2020. 26.06.2020and 22.09.2020 (RUD-9) wherein he, inter alia, stated that:

i. Tahir Hussain, one of the directors of ECPL and its 33% stake holder, contacted him in the first week of January 2020 and said that he needed cash money for some purpose. During the said conversation, Tahir Hussain also told that his accountant, Roshan Pathak, would take care of the mechanism through which money would be transferred from the accounts of M/s ECPL and would reach him in cash. In this connection, Tahir. Hussain also told that Roshan Pathak would arrange bills for 'supply of manpower' as they (ECPL/EGSPL) require manpower for their operational work and this wouldserve to be a good alibi for raising bills without actual transfer of any goodsor services. It was also suggested by Tahir Hussain that fake contracts wouldbe prepared for supply of manpower services.

ii. Thereafter transfer of money from M/s ECPL and EGSPL started from · 07.01.2020. He (Nitesh Kumar Gupta) transferred Rs. 9 Lakhs, Rs.6 Lakhs and Rs. 5 Lakhs i.e. total

Rs. 20 Lakhs from M/s EG SPL through NEFT to one 'Meenu Fabrications' whose name and account details were sent to him by Roshan Pathak through Whatsapp message. Further, from M/s ECPL, cheques worth Rs. 62 Lakhs were signed by Tahir Hussain and cheques worth Rs. 30 Lakhs were signed by him (Nitesh Kumar Gupta) for transfer of money through RTGS/NEFT to 'Meenu Fabrications' and 'SP Financial Services Pvt. Ltd'. He signed cheques worth Rs. 30 Lakhs and RTGS forms near Kalindi Kunj Metro Station and handed it over to Rahul Kasana, driver of Tahir Hussain, who had come on his motorbike. Rahul Kasana had come there with the cheques and RTGS forms and he simply signed the same and gave it to him.

iii. In this way, total transactions worth Rs.1.12 Crore from M/s ECPL and EG SPL were done on the instructions of Tahir Hussain.

iv. Tahir Hussain assured him that the money would be returned to the bank accounts of M/s ECPL and EG SPL to do further business and to meet expenses. However, since he stated running short of money to meet daily expenses, he requested his father in law Sh.Madan Lal Gupta for some help and he transferred Rs.4 Lakhs. Thereafter, Mohammad Akram ((Director in both ECPL and EG SPL) and he (Nitesh Gupta) paid several visits to the residence cum office of Tahir Hussain at E-7, Main Karawal Nagar Road, Khajoori Khas, New Delhi regarding return of the. money. However, till 20.02.2020, they could collect only about Rs. 10 Lakhs from Tahir Hussain.

v. in the meantime, he (Nitesh Gupta) contacted Rosban Pathak for bills of 'supply of manpower' which was earlier decided as the alibi for transfer of money. In this regard, he provided the Service Accounting Code (SAC) of manpower services to Roshan Pathak for generating the invoices for supply of manpower services from Meenu Fabrications and SP financial

Services Pvt. Ltd. The said invoices worth Rs. 1.12 Crore were sent by Roshan Pathak to his office through Rahul Kasana and the same invoices had been recovered from his office at G-75A & 72/3, Shaheen Bagh, Abul Fazal Enclave-II, New Delhi during the search operations conducted by the Enforcement Directorate and were seized by the Enforcement Directorate.

vi. In February, in order to file monthly GST return, purchase bills and invoices including these invoices worth Rs. 1.12 Crore were sent to their Chartered Accountant, Mukesh Rao. Kamlesh, an employee of Mukesh Rao, later informed him over phone that the said invoices worth Rs. 1.12 Crore were all fake and bogus invoices as the GSTIN numbers mentioned on them were bogus.

vii. Thereafter, Tahir Hussain was accused in North-East Delhi riots case and was arrested and sent to custody.

viii. Since the said invoices worth Rs. 1.12 Crore were fake and bogus and there was also no manpower supply against the transfer of money, he got scared and contacted Roshan Pathak and demanded contract which was earlier agreed upon to be signed as a cover up for transfer of money in the garb of supply of manpower. Roshan Pathak informed him that the said transfer of money was done by one Amit Aggarwal (it was later on found during the course of PMLA investigation that the actual name of the said person was Amit Gupta and that he was also known as Amit Aggarwal) and provided him the contact number of Amit Aggarwal. Thereafter, he contacted Amit Aggarwal for the signing of contract and they decided to meet at Nangloi Metro Station for the same for this purpose, he and Mohd. Akram prepared back-dated contract and he met Amit Aggarwal at Nangloi Metro Station in the evening. During the said meeting, Amit Aggarwal informed him that he knew Tahir Hussain for the past 15 years.

ix. Amit Aggarwal left with the contract and said that he (Nitesh Gupta) could collect the signed copy from Amit Aggarwal the next week. However, Amit Aggarwal later did not respond to his calls and he also could not meet Amit Aggarwal due to lockdown restrictions.

x. He further admitted that the said transfer of Rs. 1.12 Crore from the accounts of ECPL and EG SPL in the garb of payment for supply of manpower was done on the instructions of Tahir Hussain. Rosban Pathak, the accountant of Tahir Hussain, assisted Tahir Hussain and facilitated these transactions along with Amit Aggarwal on the instructions of Tahir Hussain.

6.2 Statement of Mohammad Akram was recorded under Section 50 of the PML, 2002 on 29.06.2020 (RUD-10) wherein he, inter alia, stated that:

i. He worked as a Project Manager in both the companies viz. ECPL and EG SPL. He did not know anything about Meenu Fabrications and S. P. Financial Services Pvt Ltd.

ii. He knew that in the month of January 2020, Tahir Hussain called him and told that he needed funds from ECPL and EG SPL accounts. He told Tahir Hussain that he could have the funds but it should not affect the field operation of the company and that Tahir Hussain promised the same.

iii. He did not know any details about the transfers made to Meenu Fabrications and S. P. Financial Services Pvt. Ltd. as finance of the company was handled by Nitesh Kumar Gupta.

iv. He revealed that no goods or services have been provided by Meenu Fabrications and S. P. Financial Services Pvt. Ltd. to ECPL and EG SPL.

6.3 Statements of Roshan Pathak were recorded under Section 50 of the PML, 2002 on 26.06.2020, 27.06.2020, 01.07.2020 and 09.09.2020 (RUD-11) wherein he, inter alia, stated that:

i. On being asked about certain high valued transactions in the bank accounts of SEAPL, ECPL and EG SPL to Meenu Fabrication, S. P. Financial Services Pvt. Ltd., Kanhiya Enterprises and Yudhvee Impex stated that in the end of month of December 2019, Mr. Tahir Hussain instructed that he (Tahir Hussain) required cash of approx. 1.50 Crores.

ii. Tahir Hussain asked him to make possible the rotation of bills/invoices and talk to Sh. Amit Gupta for this purpose; Sh. Amit Gupta, Phone No. 9212248625, was introduced to him by Tahir Hussain for this purpose in December 2019.

iii. Initially he knew Amit Gupta as a timber trader. He contacted Sh. Amit Gupta on instructions of Tahir Hussain and discussed the requirements for providing entries like SAC/HSN code of the services/goods and the payment of cash against fake bills.

iv. He obtained .the SAC code for supply of manpower services for invoices to ECPL and EGSPPL from Sh. Nitesh Kumar Gupta and forwarded the same to Sh. Amit Gupta. He did not remember who told the HSN code of 'furniture & fittings' for SEAPL invoices to Sh. Amit Gupta.

v. Thereafter, RTGS of amounts mentioned below were issued from SEAPL, ECPL and EGSPPL to the following firms:

a) Meenu Fabrications: 80 Lakhs

b) SP Financial Services Pvt. Ltd.: Rs.2 Lakhs

c) Yudhvee Impex : 20 Lakhs

d) Kanhiya Enterprises : 15.28 Lakhs

e) Vasundhra : 6.50 Lakhs

f) Another firm (Name he didn'tremember): Approx. 5 Lakhs

vi. He further told that majority of the cheques for ECPL were signed by Tahir Hussain. Some of them were signed by Nitesh Kumar Gupta as well. For RTGS from EGSPPL all the cheques were signed by Nitesh Kumar Gupta.

vii. For SEAPL, payments were made online- they were initiated by Dilshad/Shadab / Taniya and the same were approved by Shama Anjum as she was the online authoriser for such online transactions.

viii. He revealed that in this manner, cash of approximately ~s. 1.58 Crore was collected through these transactions. The manner and place for collection of cash was informed by Amit Gupta who also deducted his commission for the same. The cash was handed over to/ collected by the office boy of SEAPL namely Shadab and Dilshad who further handed over the cash to Tahir Hussain or Shama Anjum. The instruction regarding handing of cash was passed on by Tahir Hussain directly to the office boys namely Dilshad, Shadab.

ix Amit Gupta provided him the back-dated bills for the RTGS payments made to companies/firms arranged by him. The fake

bills were sent to him on the same day the transactions were conducted.

x. On being asked further, he stated that he could remember that there were a few other such kind of transactions that were in the books of account of the previous years. He came to know that these were similar transactions from the fact that these parties were related to Amit Gupta; the names of some of such parties were (a) Shree Laxmi Overseas, (b) Rahu1 Sales Corporation and (c) Singhal Corporation.

xi. Apart from the above, due to handling of finances for a long time, he came to know over a period of time that there were some firms/companies which he suspected of indulging in the business of providing accommodation entries and appeared in the books of account of M's SEAPL; the names of such entities were - (a) Gajgamani Sales Pvt. Ltd., (b) Durga Commodal Pvt. Ltd. or Durga Trading Co. and (c) Eversafe Enterprises.

xii. During the course of recording of his statement, Sh. Roshan Pathak tendered his mobile phone as an evidence to his statement and printouts of his whatsapp chats with Amit Gupta, 'Shadab Office' and Dilshad were taken.

xiii On being confronted with the printout of his 'whatsapp chat' with 'Tirumeks' alias Sh. Amit Gupta of Tirumala Timbers, he confirmed that all the pages were the printouts of his chat with Mr. Amit Gupta of Tirumala Timbers taken from his phone tendered by him in his statement.

xiv He further stated that this chat included discussion about the accommodation entries of approx. Rs. 1.58 Crore arranged by Amit Gupta. It also included the fake invoices raised by the accommodation entries providing entities and "ledger of some parties in their books of account.

xv. On being confronted with the printout of his 'whatsapp chat' with Shadab Office, he confirmed that all the pages were the printouts of his chat with . Mr. Shadab (an office boy who reported to him) for the period 01.01.2020 to 10.01.2020. He stated that at page no. 4 of the said whatsapp chat printout, he had conveyed Shadab about the accommodation entries in the name of Kanhiya Enterprises and Yudhvee Impex amounting to Rs.20 Lakhs each; at page no.6, he had conveyed Shadab about

the accommodation entries in the name of Vasundhra amounting to Rs. 6.5 Lakhs; and at page No. _ he had conveyed Shadab about the accommodation entries in the name of SP Financial Services Pvt. Ltd. amounting to Rs. 32 Lakhs. He further stated that all the above instructions were conveyed to him by Tahir Hussain.

xvi. On being confronted with the copy of 'whatsapp chat' with Dilshad, he confirmed that all the pages were the printouts of his chat with Mr. Dilshad (an office boy who reported to him) for the period 01.01.2020 to 28.01.2020. He stated that at page no. 1 of the said whatsapp chat printout, he had conveyed Dilshad about the details of bank account of Meenu Fabrications; in the chat on page no. 6 he instructed Dilshad .to pick Rs. 25 lakhs (coded as 25Kg) from 183- Parshant Vihar, D Block, New Delhi i.e. from the house of Amit Gupta. He stated that he passed on the instructions to Dilshad as per the instructions provided to him by Tahir Hussain.

xvii. He was confronted with a diary seized from the office of M/s SEAPL at E-7 Main Karawal Nagar Road, Khajuri Khas, New Delhi during the course of search under Section 17 of PMLA, 2002. In response to the same he stated that the diary belonged to him and all the pages had been written by him; that the handwriting appearing on all the pages were his; that he had seen all the pages of the diary and the page-wise description of his notes were as under:

<i>Pg No.</i>	<i>Description</i>
<i>1</i>	<i>It was the first page of diary with his personal details</i>
<i>2</i>	<i>There was rough scribbling on this page</i>

3	<i>On 7/01/2020: Point no 1 was about the loan against purchase orders of client like One RX India P. Ltd., Chell and ITC etc. Point No. 2 was about the work done by him on that day.</i> <i>On 08/01/2020: Point No. 1: Personal discussion and personal verification at Kasna with Shrana Anjum for the purpose of loan at Rattan Bank.</i> <i>Point No.2: Contact with credit manager, Mr.Abhishek of HDFC for ECPL Over Draft.</i> <i>Point No.3: for finding out the status of Purchase order outstanding and call to Gunjan Dhall for funding of Rs.40 Lakhs.</i> <i>Point no.4: RTGA done to Amit. Cash Rs.35 Lakhs to be received out of which Rs.20 Lakhs received and Rs.15 Lakhs pending.</i>
4	<i>On 9/01/2020: Point no 1: Contact with credit manager, Mr.Abhishek of HDFC for ECPL Over Draft.</i> <i>Point No. 2 & 3: RTGS done to Amit i.e. Amit Gupta of Tirumala Timbers for Rs. 55.28 Lakhs done out of which cash ofRs. 6 Lakhs was received. Transactions of Rs. 32 Lakhs and 6.5 Lakhs from ECPL and SEAPL respectively.</i> <i>Entries on the rest of the page were regarding the stock statement and GST calculation.</i>
5	<i>On 10/01/2020: Point no 1: Purchase of Bike for one of the employees and payment of bill for the same.</i> <i>Point No. 2: GST status update.</i> <i>Point No.3: Pending cash to be received from Amit</i>

	was 53.28 lakhs and the cash received was Rs. 35 lakhs (29+6) and the balance of Rs.18.28lakhs was to be collected.
6	Transaction of Rs. 10 lakhs and 5 lakhs to be done from ECPL and EG SPL respectively. On 11/01/2020: Point no 1 & 2: GST status to be updated. On 13/01/2020: Point no 1 & 2: GST and TDS status to be updated. Point No. 3: Balance cash to be paid by Amit was Rs. 33.28 lakhs (18.28+10+15). Cash to be received for ECPL from Amit was Rs. 5 lakhs and 0.41 lakhs for SEAPL.
7	On 14/01/2020, 15/01/2020 and 16/01/2020, no transactions or discussion about payment from Amit. GST and TDS matter and other pending banking works were looked into.
8	18/01/2020: No work 20/01/2020: GST status update. 22/01/2020: Point No. 1: Pending cash of Rs. 23 lakhs to be collected from Amit. Rest of the entries in the page pertained to GST, TDS and other banking related office works.
9	23/01/2020: Point No. 1; it was written that pending cash of Rs.23.17 lakhs was coming. But the same was not received as this entry was reflected on the subsequent pages. 25/01/2020: Point No. 1: Pending cash of Rs. 23 to

	<i>be collected from Amit.</i> <i>Rest of the entries were regarding the filing of GST return and IDS return. Entry at Point No. 9 was regarding the pending payment of HUDA plot in Faridabad.</i>
10	<i>127/01/2020: Point No.1: GST return of Saifi Wooden Works</i> <i>Point No. 2: Pending cash of Rs. 23.17 lakhs to be collected from Amit.</i> <i>Rest of the entries were regarding the GST and TDS returns of the companies.</i>
11	<i>28/01/2020: Point No. 1 & 3: Update for GST and TDS returns of the companies.</i> <i>Point No.2: Pending cash to be collected from Amit.</i> <i>31/01/2020: Point No. 1 & 3: Update for GST return of the companies</i>
12	<i>01/02/2020: No work mentioned.</i> <i>04/02/2020: Point No. 1: Pending cash to be collected from Amit.</i> <i>Rest of the entries were regarding the update of accounts for GST return, Kolkata expenses and banking documentation regarding the banking operations.</i>
13	<i>Empty page</i>
14	<i>117/02/2020: Point No. 1: Documentation required for opening new office at Tronica City instead of the</i>

	one at Kasna. Point No. 2, 3 & 4: Regarding the company sales matter, PF matter and legal matters. Point No.5: Pending cash to be collected from Amit Tiruma1a for Rs. 23.5lakhs.
15	18/02/2020: Point No. 1 to 3 and 5: Regarding. The company sales matter. PF matter and legal matters. New mask manufacturing by Kamlesh. Point No.4: pending cash to be collected from Amit Tirumala for Rs.23.5 Lakhs. 19/02/2020: All the points were regarding the updating of books for filing GST returns, sales matters, Tronica land and e-net problem.
16	20/02/2020: All the points were regarding the updating of books for filing GST returns and e-net problem.
17	Details regarding job opening for his wife were mentioned. 23/02/2020: Phone No. Tarun G.-7011279250 of HDFC mentioned
18	Details regarding job opening for his wife were mentioned.
19	Address and password mentioned for MSTC site

Note: If there was a check mark on any point or word it meant that the job had been completed and if no marking then it meant that the job was still pending.

xviii. He stated that he would like to point out that the payment of Rs. 23.5 lakhs was pending from Amit Tirwnala as on 18.02.2020. The payment, if made, would be in the knowledge of Amit Gupta and Tahir Hussain or Shama Anjum.

xix. On being confronted with a white coloured file containing pages 1 to 30 seized from the premises of E-7, Main Karawal Nagar Road, New Delhi- 94, he stated that this file contained various invoices and e-way bills. Some of the bills in this file were genuine while others were fake; that the invoices and e-way bills at page nos. 1 to 28 of this file had been sent to office by Amit Gupta; that these documents pertained to M/s Yudhvee Impex, Kanhiya Enterprises and Shri Sai Traders; that he did not know who prepared these documents.

xx. He further stated that the bills of Yudhvee Impex (Pg. No. 11-26), Kanhiya Enterprises (Pg. No. 10-3) and Shri Sai Traders (Pg. No. 1-2) were fake as these bills were raised for availing the Input Tax Credit (ITC) further.

xxi. On being asked he stated that he knew about the accommodation entries that were taken by Tahir Hussain in his companies but he did not know about the fact that accommodation entries provided in the company's accounts were having different actual name than name mentioned in the RTGS forms.

6.4 Statement of Sh. Usman Ahmed was recorded under Section 50 of the PML, 2002 on 29.06.2020 (RUD-12) wherein he, inter alia, stated that he supervised all the logistics support required for the production works carried out at the Kasna, Greater Noida Office; that it included supervision of transportation and manpower related issues. He also stated that he did not know about Kanhiya Enterprises, Yudhvee Impex, and Vasundhra; and that no production had been carried out for these companies under his supervision in SEAPL.

6.5 Statements of Smt. Shama Anjum were recorded under Section 50 of the PML, 2002 on 24.06.2020, 22.07.2020, 01.09.2020, 3.09.2020, 05.09.2020, 24.09.2020 and 07.10.2020 (RUD-13) wherein she, inter alia, stated that:

i. She was a house wife and did not involve actively in any business activity but since the place of residence and business

were the same she had functional knowledge of the furniture business.

ii. She tendered the documents related to movable and immovable properties registered in the name of Tahir Hussain, his family members as well as his companies.

iii. On being asked, she also tendered purchase bills of the following 10 firms/companies with which SEAPL appeared to have indulged in suspicious transaction during March 2017 to October 2019-M/s Ambika Traders, Rahul Sales Corporation, Pankaj enterprises. Vansh Trading Co., Vanshika Enterprises, Priya Enterprises, Saubhagya Tradecom Pvt. Ltd. R.S. Trading Co., V.K.Enterprises Durga Trading Co.

iv She also tendered the purchase bills of another firm- M/s Bansal Sales Corporation during the recording of her statement on 7.10.2020 and clarified that the same were for purchase of materials such as adhesives, corion sheets and dispensers made from Bansal Sales Corporation.

v she, however, stated that she could not submit the purchase bills of M/s Sheel Enterprises despite her best efforts.

6.6 Statement of Sh. Rahul Kasana was recorded under Section 50 of the PML. 2002 on 01.09.2020 and 02.09.2020 (RUD-14) wherein be, inter alia, stated that:

i. He was the driver of Tahir Hussain, Councillor; that the last day of his duty was 24.02.2020. On that day he reached office at 10:00 AM. and .at 11:00AM., Smt. Shama Anjum, wife of Tahir Hussain sent him to bring back her children from the school to her residence cum office at E-7, Main Karawal Nagar. Road, Khajuri Khas, New Delhi-94. On his way, his friends and family .members called him and asked him to come back home stating that it was in the media that there was a possibility of riots and tension in Karawal Nagar area where his office was located.

ii. He left the vehicle and the children at residence cum office at E-7, Main Karawal Nagar Road, Khajuri Khas, New Delhi-9~ of Tahir Hussain at 01:00P.M. and saw large gathering of crowd and police in the area of his office and feared that riots may take place m the area at any time and any untoward incident may take place with him. Therefore, he immediately

took Girish Pal, an employee in the billing department in the company of Tahir ' Hussain, on. his motor cycle and went to his house in Roshan Vihar and never met any of the family members of Tahir Hussain.

iii. He knew Roshan Pathak as well as Amit Gupta. On the instructions of Tahir Hussain, Sh. Roshan Pathak had sent him to the shop of Sh. Amit Gupta in Chandani Chowk 2-3 times between Oct-Nov,. 2019 to Jan-Feb, 2020 .to collect cash from him. He did not remember the exact dates.

iv. The cash provided by Amit Gupta was wrapped in a cloth/newspaper or placed in a bag. The same was handed over to Tahir Hussain or Roshan Pathak and he never opened the packed. So, he never knew the amount of cash carried by him.

v. He knew Nitesh Kumar Gupta and went to the Kalindi Kunj metro station once in January 2020 on his motor cycle to get the cheques and RTGS forms signed from Sh. Nitesh Kumar Gunta on the instruction of Shri Roshan Pathak. The same were handed over back to Sh. Roshan Pathak once they were signed.

vi. On being asked he stated that in the month of January, 2020, on being told by Tahir Hussain he drove him to Shaheen Bagh. On reaching in front of an officer Tahir Hussain asked him to park the vehicle. Tahir Hussain got down from the vehicle and went inside. After sometime. he also saw the entry of Sh. Umar Khalid and Sh. Khalid Saifi in the same office. He further stated that he knew Khalid Saifi for a long time as he used to frequently visit the office of Tahir Hussain and he had seen Umar Khalid in the news and media.

vii. He revealed that he saw Tahir Hussain giving money to two persons who were related to the anti-CAA protests/Delhi riots because he drove Tahir Hussain in Chand Bagh area where the protest was going on. That once when he drove Tahir Hussain to Chand Bagh area where anti-CAA protest was going on, Tahir Hussain shouted to somebody to call one Suleiman Siddiqui; that after some time, a person came and Tahir Hussain handed him over a bundle of money. From their

conversation it was revealed that he was Suleiman Siddiqui. Suleiman siddiqui had covered his face with a cloth.

viii. Tahir Hussain asked Suleiman Siddiqui to keep the money with him as it could be used in anti-CAA protests/ gathering people any kind of nuisance or uproar. Tahir Hussain asked him to make complete arrangements.

ix. After this, he drove Tahir Hussain towards Jafrabad where another protest was going on. There, Tahir Hussain, asked to pull over the vehicle. and asked a person to send one Gul. After sometime, a woman came and Tahir Hussain gave her a bundle of money and told her similar things told by him to Suleiman Siddiqui. After this they left from there.

x It was further revealed by him that there was a sudden surge in the known and unknown persons in the office of Tahir Hussain a few days before the riots. He saw him conducting meetings with these people many a times. Sometimes some boys came on motorcycles to take Tahir Hussain with them. After riots when he saw videos related to riots on social media, he saw some people. involved in rioting who were known persons of Tahir Hussain and who used to visit Tahir Hussain before the riot. The names of some of such people were Arshad Pradhan, Irshad Ahmed, Aabid Khan etc. that these persons were later on arrested by the Delhi Police /Crime Branch for instigating riots.

6.7. Statement of Sh. Girish Pal was record under Section 50 of the PMLA, 2002 on 24.09.2020 (RUD-15) wherein he inter alia stated that:

He used to work as back office staff in the accounts department of SEAPL since 2010. He looked after the billing part of sales for ITC and Samsung in SEAPL since the starting of his job there. He also dealt with the new clients and answered to their queries regarding costing etc. He stated that there was never any irregularity in the sales by SEAPL.

ii. On being asked about the events on 23.02.2020 and 24.02.2020 he stated that 23.02.2020 was a Sunday and the office was closed and so he was at his home. On 24th February, 2020 when he reached the office, he saw some burnt cars & bikes and stones lying on the road; that there was a mob gathered around Sherpur Chowk and the mosque at Chand Bagh Pulia. Police deployment was also there. He came to know from the office staff that there was stone-pelting in the area on the evening of 23rd February, 2020. At around 11:00 AM on 24.02.2020, people started gathering around in the area. So, they asked the ladies in the staff namely Suman, Nidhi and Kavita to leave early fearing any untoward incident might happen. Gradually all the office staff left for their home. He and Rahul Kasana were the last ones to leave the office premises on Rahul Kasana's bike between 1- 1:30 p.m. He had not gone to the office of SEAPL since then.

6.8 Tahir Hussain was arrested by Special Cell, Delhi Police on 6.4.2020 in offences related to FIR 59/2020 dated 06.03.2020 and was lodged in Judicial Custody at Tihar Jail, New Delhi. Accordingly, an application seeking permission to interrogate Tahir Hussain was filed before the Hon'ble Court of Sh. Amitabh Rawat, Special Court (PML), Ld. Additional Sessions Judge-03, Shahdara District, Karkardooma Court, New Delhi (hereinafter referred to as the Hon'ble Trial court) on 09.03.2020. The Hon'ble Trial Court granted permission for interrogation of Tahir Hussain at the jail premises. Accordingly, statements of Tahir Hussain were recorded under Section 50 of the PMLA, 2002 in Judicial Custody with the permission of the Hon'ble Trial Court on 16.08.2020, 17.08.2020 and 18.08.2020 (RUD-16) wherein he, inter alia stated that:

i. He came to Delhi along with his father in 1992 and started the work of Carpentry along with his father. In 2003 he started a proprietorship firm in the name of Saifi Wooden Works. In year 2007 he started a Private Limited Company in the name of

Show Effect Advertisement Pvt. Ltd. (SEAPL) in which he and his wife were the Directors. The basic work of both these companies was to manufacture and maintain Advertisement Display Furniture, Sign, Boards and Show Rooms. Their major clients included Cheel India Pvt. Ltd. One Rx India Pvt. Ltd., ITC and other small companies.

ii. In 2009, he started a partnership firm named Adobe Cellcom Networks with Md.Akram (his brother-in-law), Sh. Nitesh Gupta (a friend of Md.Akaram) and Sh. Sachin Jain (his acquaintance) each having 25% partnership, that later on Sh. Sachin Jain parted ways, thus leaving only three partners with equal partnership (33.33% each)

iii. In around 2012, another partnership firm was started in the name of M/s Essence Cellcom Networks in which he, Md.Akram and Sh. Nitesh Gupta were partners with equal share.

iv In year 2017 M/s Essence Cellcom Networks was converted into a Private Limited Company named M/s Essence Cellcom Pvt. Ltd. (ECPL) with equal shareholder of the three Directors (erstwhile partners)

v ECPL provided manpower for the installation and maintenance of equipment used in mobile towers. Major clients of ECPL included ECI – Essence used in mobile towers. Major clients of ECPL included ECI - Essence

vi His role in ECPL was to arrange finances. Operational responsibility was looked after by the other two directors.

vii He had invested about 15-20 lakh rupees in Adobe Cellcom Networks in initial 6 months, that in 2019 he pledged his property i.e. E-7, Main Karawal Nagar Road, Khajuri Khas, New Delhi-94 in lieu of Cash Credit (CC) limit of Rs.1 Crore for ECPL; that on the same property, he had also taken CC limit of Rs.5 Crore for SEAPL.

Viii On being asked he revealed that he used to operate the bank accounts of ECPL.

ix On being asked he also revealed that he had told Sh. Nitesh Gupta to transfer money in two bank accounts which had been provided by Sh. Amit Gupta (proprietor of Tirumala Timbers). He also revealed that he had business relations with Sh. Amit Gupta for the last 10-12 years; that Sh. Amit Gupta had

provided him the name and account number of two firms in which had to transfer the amount; that in lieu of this amount, he (Sh. Tahir Hussain) was going to get cash after reducing the GST(Goods and Services Tax) amount from the bills; that the bills for the above transfer were arranged by Sh. Amit Gupta.

x He did not know anything about the above mentioned two companies in which he had transferred the amount because all the work was handled by Sh. Amit Gupta and he trusted him.

xi He further stated that according to the discussion with Sh. Amit Gupta in Dec-2019 or Jan-2020, in January 2020, Rs. 92 lakh from ECPL and Rs. 20 lakh from EGSPL respectively were transferred in the bank accounts which were provided by Sh. Amit Gupta.

xii The directors of EGSPL were Sh. Nitesh Gupta and Mohammad Akram; that on his instruction they had transferred Rs. 20 lakh in the bank accounts which were provided by Sh. Amit Gupta.

xiii He and his wife were the directors of SEAPL. His wife was a housewife and he looked after all the works of the company; that though both had the powers to' operate the bank accounts of SEAPL, the same were mainly Operated by him; that sometimes when he was outside, it was only then that his wife would operate the bank accounts of SEAPL as per his instructions.

xiv He was confronted with the documents/records received from the bank wherein in the bank statements of SEAPL there was a debit entry of Rs. 20 lakh to M/s Yudhvee Impex and there was no other .entry of Rs. 20 lakh on 08.01.2020 and the bank statement of M/s Vikram -Traders reflected credit entry of Rs. 20 lakhs on 08.01.2020 from SEAPL. In response to the same he stated that he did not know any of the above two firms and the bills for the same were provided by Sh. Amit Gupta.

Xv He further stated that Sh. Amit Gupta used to collect 11% out of the total 18% GST of the bills provided by Sh. Amit Gupta. Thus he gained 7% of the GST amount.

xvi On being asked about the nature of work/job conducted with seven firms/companies to whose accounts substantial amount of

funds were transferred in short span of time, he stated that he did not remember it.”

6. Inter alia, through the said ECIR, it has been submitted that the petitioner was arrested by the Special Cell, Delhi Police on 6.4.2020 in relation to offences qua FIR No. 59/2020 Police Station Crime Branch and was lodged in judicial custody at the Tihar Jail, New Delhi, and an application seeking permission to interrogate the petitioner was filed before the Court whereafter on grant of such permission the applicant, i.e., the petitioner herein was interrogated and his statement was recorded under Section 50 of the PML Act, 2002 in judicial custody on 16.8.2020, 17.8.2020 and 18.8.2020 wherein he inter alia stated :

“i. He came to Delhi along with his father in 1992 and started the work of Carpentry along with his father. In 2003 he started a proprietorship firm in the name of Saifi Wooden Works. In year 2007 he started a Private Limited Company in the name of Show Effect Advertisement Pvt. Ltd. (SEAPL) in which he and his wife were the Directors. The basic work of both these companies was to manufacture and maintain Advertisement Display Furniture, Sign, Boards and Show Rooms. Their major clients included Cheil India Pvt. Ltd. One Rx India Pvt. Ltd., ITC and other small companies.

ii. In 2009, he started a partnership firm named Adobe Cellcom Networks with Md.Akram (his brother-in-law), Sh. Nitesh Gupta (a friend of Md.Akaram) and Sh. Sachin Jain (his acquaintance) each having 25% partnership, that later on Sh. Sachin Jain parted ways, thus leaving only three partners with equal partnership (33.33% each)

iii. In around 2012, another partnership firm was started in the name of M/s Essence Cellcom

Networks in which he, Md.Akram and sh. Nitesh Gupta were partners with equal share.

iv In year 2017 M/s Essence Cellcom Networks was converted into a Private Limited Company named M/s Essence Cellcom Pvt. Ltd. IECPL) with equal shareholder of the three Directors (erstwhile partners)

v ECPL provided manpower for the installation and maintenance of equipment used in mobile towers. Major clients of ECPL included ECI – Essence used in mobile towers. Major clients of ECPL included ECI - Essence

vi His role in ECPL was to arrange finances. Operational responsibility was looked. after by the other two directors.

vii He had invested about 15-20 lakh rupees in Adobe Cellcom Networks in initial 6 months, that in 2019 he pledged his property i.e. E-7, Main Karawal Nagar Road, Khajuri Khas, New Delhi-94 in lieu of Cash Credit (CC) limit of Rs.1 Crore for ECPL; that on the same property, he had also taken CC limit of Rs.5 Crore for SEAPL.

Viii On being asked he revealed that he used to operate the bank accounts of ECPL.

ix On being asked he also revealed that he had told Sh. Nitesh Gupta to transfer money in two bank accounts which had been provided by Sh. Amit Gupta (proprietor of Tirumala Timbers). He also revealed that he had business relations with Sh. Amit Gupta for the last 10-12 years; that Sh. Amit Gupta had provided him the name and account number of two firms in which had to transfer the amount; that in lieu of this amount, he (Sh. Tahir Hussain) was going to get cash after reducing the GST(Goods and Services Tax) amount from the bills; that the bills for the above transfer were arranged by Sh. Amit Gupta.

x He did not know anything about the above mentioned two companies in which he had transferred the amount because all the work was handled by Sh. Amit Gupta and he trusted him.

xi He further stated that according to the discussion with Sh. Amit Gupta in Dec-2019 or Jan-2020, in January 2020, Rs. 92 lakh from ECPL and Rs. 20 lakh from EGSPL respectively were transferred in the bank accounts which were provided by Sh. Amit Gupta.

xii The directors of EGSPL were Sh. Nitesh Gupta and Mohammad Akram; that on his instruction they had transferred Rs. 20 lakh in the bank accounts which were provided by Sh. Amit Gupta.

xiii He and his wife were the directors of SEAPL. His wife was a housewife and he looked after all the works of the company; that though both had the powers to' operate the bank accounts of SEAPL, the same were mainly Operated by him; that sometimes when he was outside, it was only then that his wife would operate the bank accounts of SEAPL as per his instructions.

xiv He was confronted with the documents/records received from the bank wherein in the bank statements of SEAPL there was a debit entry of Rs. 20 lakh to M/s Yudhvee Impex and there was no other .entry of Rs. 20 lakh on 08.01.2020 and the bank statement of M/s Vikram -Traders reflected credit entry of Rs. 20 lakhs on 08.01.2020 from SEAPL. In response to the same he stated that he did not know any of the above two firms and the bills for the same were provided by Sh. Amit Gupta.

Xv He further stated that Sh.Amit Gupta used to collect 11% out of the total 18% GST of the bills provided by Sh. Amit Gupta. Thus he gained 7% of the GST amount.

xvi On being asked about the nature of work/job conducted with seven firms/companies to whose

accounts substantial amount of funds were transferred in short span of time, he stated that he did not remember it."

7. It has been submitted further through the said ECIR that thereafter the remand of the petitioner in the custody of the Directorate of Enforcement was taken with the permission of the Court and the statements of the petitioner were recorded thereafter under Section 50 of the PML Act, 2002, on 31.8.2020, 1.9.2020, 2.9.2020, 4.9.2020, 8.9.2020, 10.9.2020 wherein he stated:

i. Sh. Amit Gupta did not provide any goods or services against the bills of Meenu Fabrications and S. P. Financial Services provided by him for ECPL.

ii. Sh. Amit Gupta agreed to supply manpower for ECPL and EG SPL. However, neither had he asked for manpower from Sh. Amit Gupta in the past nor had Sh. Amit Gupta supplied manpower to him. He did not know any person who had supplied manpower from Sh. Amit Gupta.

iii. He stated that he had taken cash against GST bills from Sh. Amit Gupta once or twice before also but did not remember the details.

.iv He provided the details of property owned by him and his family members as under:

a) E-7, Main Karawal Nagar Road, Khajuri Khas, New Delhi-94. Area approx. 1050 sq. yards.

b) Kolkata Revenue Survey No. 138, Vill-Ganga Pur, PS-Bhangarh, Distt.-South 24, Paragana, Kolkata measuring 33 Kattha.

c) D-211, Kasna Greater Noida. Factory premises with area 1167 sq. mtrs.

d) Plot No. 296, Sector 56A, Huda, Faridabad measuring 332 sq. mtrs.

e) A/1-112 Gali No. 3, Nehru Vihar, Delhi-94, in the name of his father measuring 50 sq. yards.

v. Apart from the bogus GST bills; he had purchased bogus VAT bills also from "Amit Gupta."

vi. Bank statement of account number 50200023780784 held in the name of vi M/s SEAPL with HDFC bank was called for the period 01.03.2017 to 15.05.2020 and analysed. Further, purchase bills of SEAPL were tendered by Shama Anjum during her statement recorded under Section 50 of PMLA on 22.07.2020, 01.09.2020, 03.09.2020, 05.09.2020 and 07.10.2020 and were analysed. It was noticed that there were several high valued transactions with certain entities as reflected in the aforesaid bank account statement and their corresponding purchase bills were missing/not existing in the purchase bills file submitted during investigation. It was also found during investigation that payments made to these entities, in almost all the cases, were credited in the bank accounts that were not in the name of these entities. Details of such transactions are as under:

Sr.No.	Entity Name as per Bank Account Statement	Actual Name of Bank Account Holder	Account No.	Bank Name	Sum of Credits from SEAPL Account
1	Ambika Traders	R. K. Traders	10170000982632	Bandhan Bank	7130000
2	Rahul Sales Corporation	Shyam trader	10180007074001	Bandhan Bank	6060000
3	Sheet Enterprises	Balajee Enterprises	10180007074551	Bandhan Bank	5715000
4	Pankaj Enterprises	Sai traders	10180001629152	Bandhan Bank	4590000
5	Vansh Trading Co.	Krishna Enterprises	10170004114058	Bandhan Bank	2800000
6	Vanshika Enterprises	Shiv Shakti Enterprises	12620200048792	Bandhan Bank	2700000
7	Priya Enterprises	Bharat Trading Co.	10170004396706	Bandhan Bank	2700000

8	SaubhagyTradecom Pvt. Ltd.	Kiran Traders	12620200047786	Federal Bank	1751458
9	K S. Trading Co.	Navyuga Traders	38294884300	SBI	1600000
10	V. K. Enterprises	Shiv Shakti Enterprises	10180001435707	Bandhan Bank	1328000
11	Durga Trading Co	Deep Enterprises	10180001671841	Bandhan Bank	505900
12	Bansal Sales Corporation				3250000

vii. In response to the above transactions made with the 12 different entities being not in the purchase files of SEAPL was that these could be the bills against entry for GST was taken; that there could be no purchase against these bills and these bills could have been used to get cash from these entries for cash expenses; that another reason could be that the bills of these entities were lying in the office or factory premises.

viii. Purchase bills of 10 firms/companies out of the aforesaid companies were tendered by Smt. Shama Anjum during her statement recorded under Section 50 of PMLA between 01.09.2020 to 05.09.2020. However, bills of Sheel Enterprises and Bansal Sales Corporation (sl. No. 3 and 12 of the above table respectively) could not be submitted by her during the said period. On perusal of the submitted bills, it was noticed that the bills of 10 companies/firms dated back to April 2014-July 2016 whereas the corresponding transactions were made between March 2017 and February 2020. On being asked about this discrepancy, Tahir Hussain stated that the VAT to be paid on the above bills was paid by him and entries in the bank accounts for that amount were to be made within three years.

ix. It was also noticed that the submitted bills of Ambika Traders amounted to Rs. 81.6 lakhs whereas the transactions in the bank account reflected Rs. 71.3 lakhs only. On being asked to clarify, he stated that the bills for Ambika Traders were purchased in 2015-16 and the entries for the same were to be made within 3 years; that the remaining amount could be the outstanding payment.

x. During the recording of her statement on 24.09.2020, Smt. Shama Anjum was asked to provide the copies of ledgers of all the aforesaid 12 firms/companies. However, the required documents could not be submitted by her and during the recording of her statement on 07.10.2020 she stated that she would not be able to submit the same.

xi. On being asked about the bills received in respect of the transactions conducted in January 2020, Tahir Hussain stated that the bills were not received by him as he had instructed Sh. Roshan Pathak to keep information of the payments and bills from Amit Gupta and also look into the compliance related to the bills. According to him, the bills were handed over by Amit Gupta to Sh. Roshan Pathak.

xii. On being asked about the cash received in respect of the transaction with the entries availed in the accounts of his companies, he stated that all the cash, even if the cash was received by anyone else in his company, the same, ultimately reached in his hands only; that in January 2020 also, the cash was received by him only.

xiii. On being asked why the entries for the VAT bills were availed by him, he stated that the VAT in the bills was paid at the rate of 12.5%; that he used to pay 7% out of the total 12.5 % VAT amount to Sh. Amit Gupta and this resulted in profit of 5.5% to the company. Also he used to receive cash in respect of such entries which helped him to carry out personal and company's cash expenses."

8. As per the ECIR the persons/entry operators who facilitated the accommodation entries from the bank accounts of the companies related to the petitioner were recorded under Section 50 of the PML Act, 2002 with the reasons given by the ECIR for naming and including the persons as witness as mentioned in para 14 thereof

"14. Brief detail of reason for naming & including a person as a witness:

S. No.	Name of the witness	Reason for including as a witness
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1	Nitesh Kumar Gupta	Director of ECPL and EGSPL. Funds amounting to Rs.1.12 Crores transferred to firms operated by entryoperators from these two companies on the instructionof Tahir Hussain. He was not aware about the fraudulent transactions and the mechanism of cash generation. Also, he did not have any knowledge of the ultimate utilization of the funds transferred out of his companies.
2	Mohammad Akram	Director of ECPL and EGSPL. Funds amounting to Rs.1.12 Crores transferred to firms operated by entryoperators from these two companies on the instructionof Tahir Hussain. He was not aware about the fraudulenttransactions and the mechanism of cash generation.Also. he did not have any knowledge of the ultimate utilisation of the funds transferred out ofhis companies.
3	Roshan Pathak	Accountant of Tahir Hussain. Handled the cash and also the compliance part related to the bills. Worked at theinstruction of Tahir Hussain. He did not have anyknowledge of the ultimate utilisation of the cash fundsof

		the cash funds generated through entry operator firms/companies.
4	Usman Ahmad	He supervised all the logistics support required for the production work carried out at the Kasna, Greater Noida Office. He did not know about the entry operator firms/companies and did not handle the cash generated through entry operator firms/companies.
5	Shama Anjum	Director of SEAPL. She was a house wife and did not involve actively in any business activity. She tendered purchase bills of SEAPL and the documents related to movable and immovable properties registered in the name of Tahir Hussain, his family members as well as his companies.
6	Rahul Kasana	Driver of Tahir Hussain and eye witness to the transfer of funds by Tahir Hussain to anti-CAA protestors, meetings of Tahir Hussain with rioters and coconspirators. Also an eye witness to the incidents that unfolded on 23.02.2020 and 24.02.2020.
7	Girish Pal	An employee in the office of Tahir Hussain and eye witness to the incidents that unfolded on 23.02.2020 and

		24.02.2020.
8	Manoj Thakur	A GST Consultant who helped Amit Gupta in arranging cash for Tahir Hussain in lieu of the RTGS/NEFT from the companies owned/controlled by Tahir Hussain. Hedid not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generatedthrough entry operator firms/companies.
9	Roshan Thakur	An entry operator who controlled the bank account of Shri Sai Traders (Rs. 80 lakhs transferred in it) andhelped Manoj Thakur & Amit Gupta in arranging cashfor Tahir Hussain in lieu of the RTGSINEFT from thecompanies owned/controlled by Tahir Hussain. He didnot know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generated through entry operator firms/companies.
10	Jitender Kumar	Proprietor and account holder of Shri Sai Traders. Theaccount was actually used and controlled by Shri Roshan Thakur. Did not have any knowledge about the transactions carried out from this account.

11	Deepak Mishra	An entry operator who controlled the bank account of Vian Forex Tours and Travels Pvt. Ltd. (Rs. 65 lakh transferred in it from Shri Sai Traders) and helped Roshan Thakur, Manoj Thakur & Amit Gupta in arranging cash for Tahir Hussain in lieu of the RTGS/NEFT from the companies owned/controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generated through entry operator firms/companies.
12	Aayush Mittal	A commission agent who helped Roshan Thakur, Manoj Thakur & Amit Gupta in arranging cash of Rs. 15 Lakhs from Paras Enterprises (in which Rs. 15 Lakh was transferred from Shri Sai Traders) for Tahir Hussain in lieu of the RTGS/NEFT from the companies owned controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generated through entry operators firms/companies.

13	<i>Sunil Tayal</i>	<i>A commission agent who helped Roshan Thakur, ManojThakur & Amit Gupta in arranging cash of Rs. 15 Lakhs from Paras Enterprises (in which Rs. 15 Lakh was transferred from Shri Sai Traders) for Tahir Hussain in lieu of the RTGSINEFT from the companies owned/controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generated through entry operator firms/companies.</i>
14	<i>Lokesh Singhal</i>	<i>An entry operator who controlled the bank account of Paras Enterprises (in which Rs. 15 lakhs was transferred from Shri Sai Traders) and helped Aayush Mittal, SunilTayal, Roshan Thakur, Manoj Thakur & Amit Gupta in arranging cash for Tahir Hussain in lieu of the RTGSINEFT from the companies owned/controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generated through entry operator firms/companies.</i>
15	<i>Rajnish Kumar Jain</i>	<i>Proprietor and accountholder</i>

		<i>of Paras Enterprises. The account was actually used and controlled by Shri Lokesh Singhal. Did not have any knowledge about the transactions carried out from this account.</i>
16	<i>Yogesh Bansal</i>	<i>An entry operator who controlled the bank account of Sanjay traders and Sainyam Traders (R.s. 32 & 6.5Lakhs respectively transferred in them from ECPL & SEAPL) and helped Manoj Thakur& Amit Gupta inarranging cash for Tahir Hussain in lieu of the RTGS/NEFT from the companies owned/controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilization of the cash funds generated through entry operator firms/companies.</i>
17	<i>Pankaj Goswami</i>	<i>Proprietor and account holder of Sanjay Traders. Theaccount was actually used and controlled by ShriYogesh Bansal. Did not have any knowledge about thetransactions carried out from this account.</i>
18	<i>Pankaj Bansal</i>	<i>Ap. entry operator who arranged cash ofRs. 15.28 Lakhs the bank account of Vikram Traders (in which Rs. 15.28Lakhs was transferred</i>

		from SEAPL) and helped Amit Gupta in arranging cash for Tahir Hussain in lieu of the RTGS/NEFT from the companies owned/controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generated through entry operator firms/companies.
19	Rajender Kumar Bansal @ Monti	An entry operator who controlled the bank account of Vikram Traders (in which Rs. 25.65 Lakhs was @ Monti transferred from SEAPL) and helped Pankaj Bansal & Amit Gupta in arranging cash for Tahir Hussain in lieu of the RTGS/NEFT from the companies owned/controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generated through entry operator firms/companies.
20	S.K. Aggarwal @ Shanki	An entry operator who controlled/used the bank account of Shree Ram Wood Products (in which Rs. 15.28 Lakhs transferred from SEAPL) and arranged cash of Rs. 15.28 Lakhs and helped Manoj Thakur and Amit

		<i>Gupta in arranging cash for Tahir Hussain in lieu of the RTGA/NEFT from the companies owned/controlled by Tahir Hussain. He did not know Tahir Hussain nor had any knowledge of the ultimate utilization of the cash funds generated through entry operator firms/companies.</i>
21	<i>Ashish Mittal</i>	<i>A commission agent who helped S.K.Agarwal alias Shanki, Manoj Thakur and Amit Gupta in arranging cash of Rs. 15.28 Lakhs from Shree Ram WoodProducts (in which Rs. 15.28 Lakh was transferred from SEAPL) for Tahir Hussain in lieu of the RTGS/NEFT from the companies owned/ controlled by Tahir Hussain.He did not know Tahir Hussain nor had any knowledge of the ultimate utilisation of the cash funds generatedthrough entry operator firms/companies.</i>

9. Inter alia, it was submitted through the ECIR :

“7.Brief Summary of result of investigation under PMLA:

7.1 PMLA investigation revealed that 23.02..2020, being a Sunday, was a holiday in the office-cum-residence of Tahir Hussain located at E-7, Main Karawal Nagar, Khajoori Khas, New Delhi. Rahul Kasana and Girish Pal, employees of Tahir Hussain and eyewitnesses have given an account of the

incidents leading to the riots on 23.02.2020 and 24.02.2020. In the month of January, 2020, Tahir Hussain went to an office in Shaheen Bagh where he was joined by Sh.Umar Khalid and Sh. Khalid Saifi. In this meeting, the three of them purportedly hatched a plan to incite people against CAA, to organize protests and to create unrest. Khalid Saifi was known to Tahir Hussain and used to frequently visit the office of Tahir Hussain.

7.2 On 24.02.2020 there was a large gathering of crowd and police in the area of Tahir Hussain's office and it was feared that riots may take place in the area at any time and any untoward incident may take place. As a result of violence in the area on 23.02.2020, there were burnt cars and bikes lying on the road. There were stones/bricks also lying on the roads from the stone-pelting in the area on the evening of 23rd February, 2020. There was mob gathered around Sherpur Chowk and the mosque at Chand Bagh Pulia. Police deployment was also there. At around 11:00 A.M on 24.02.2020, people started gathering around in the area. So, the ladies in the staff of SEAPL were asked to leave early fearing any untoward incident. Till 3:30 PM, all the office staff left for their home.

7.3 The involvement of Tahir Hussain in anti-CAA protests and North East Delhi riots is further established by the fact that Tahir Hussain actively funded anti-CAA protests and riots and was in touch with protestors and rioters. In Chand Bagh area, where anti-CAA protest was going on, Tahir Hussain met one Suleiman Siddiqui and gave him money for use in anti-CAA protests/gathering people/any kind of nuisance or uproar and asked him to make

complete arrangements. He also met a woman named Gul at Jafrabad, where another CAA protest was going on, handed over money to her and told her to do similar things as Suleiman Siddiqui. His active role in North East Delhi riots is highlighted by the fact that there was a sudden surge of persons in his office a few days before the riots and he conducted several meetings with them, Some such people were identified as Arshad Pradhan, Irshad Ahmed, Abid Khan etc who were arrested by the Delhi Police/Crime Branch for instigating riots.

7.4 The conspiracy hatched by Tahir Hussain with his associates to fund and organise anti-CAA protests and the North East Delhi riots was the result of his conspiracy to fraudulently withdraw money through . bogus and malafide transactions. Investigation conducted so far has revealed that Tahir Hussain entered into a criminal conspiracy with Sh. Amit Gupta and other persons to fraudulently transfer money from the accounts of companies owned /controlled by him. The money so obtained by Tahir Hussain as a result of criminal activity relating to the offence of criminal conspiracy qualifies as 'proceeds of crime'. The said 'proceeds of crime' generated through the offence of criminal conspiracy under Section 120B of the IPC, which is a scheduled offence under PMLA, was used by Tahir Hussain to commit offences under Sections 302, 307 and 385 which have been invoked in the aforesaid FIRs and which are also scheduled offences under the PML. 2002. The conspiracy to fraudulently withdraw money through mala fide transactions with bogus entry operators on the strength of fake bills was thus part of the larger

conspiracy to fund and organize the riots in Delhi which led to the loss of lives of many people.

7.5 On examination of the bank accounts of Tahir Hussain and companies related to him and his associates, it is revealed that Tahir Hussain was involved in the acts of criminal conspiracy, cheating and falsification/forgery of documents which resulted in. fraudulent removal of money from the accounts of certain companies. On his directions and instructions, huge amount of money was withdrawn from. the accounts of companies by way of transfer of funds to entry operators and bogus companies. The names of these companies from which funds were withdrawn on his directions and instructions and the amounts siphoned off from their accounts are as under:

(a) M/s Essence Cellcom Pvt.Ltd. (ECPL)- Rs. 92 lakh

(b) M/s Essence Global Services Pvt. Ltd. (EGSPL)- Rs. 20 lakh

(c) M/s Show Effect Advertisement Pvt. Ltd. (SEAPL) - Rs. 4 7 lakh (approx.)

7.6 Tahir Hussain, Nitesh Kumar Gupta and Mohammad Akram were the Directors of ECPL. Tahir Hussain and his wife Shama Anjum were the directors in SEAPL. Tahir Hussain did not have any stake in EGSPL, however, he exercised control over the directors of EGSPL - Nitesh Kumar Gupta and Mohammad Akram- due to various reasons such as- he had help them set up ECPL, Md. Akram was his wife's brother, he was a politically influential person due to his positions as councillor.

7.7 PMLA investigation has revealed that under the instructions of Tahir Hussain funds were transferred through RTGS/NEFT from the

aforesaid three companies to the accounts of fictitious/bogus entities created by entry operators. The entry operators operating such entities made payments of equivalent amount in cash to him. He was the ultimate beneficiary of the money received in cash which was used for fulfilment of his ulterior motives. Fake and bogus invoices were created to cover the money trail. The details of the bogus companies and entry

Financial Services provided by him for ECPL; that all the cash received in respect of the transaction with the entries availed in the accounts of his companies ultimately reached in his hands only; that in January 2020 also, the cash was received by him only.

7.9. Sh. Amit Gupta, whom Tahir Hussain conspired with for arranging and managing the fraudulent funds transfer and fulfilling the task of arranging cash did not provide any goods or services against the bills of Meenu Fabrications and S. P. Financial Services provided by him for ECPL. Tahir Hussain had taken cash against GST bills from Sh. Amit Gupta in January, 2020. In the past also, he had purchased bogus VAT bills from Sh. Amit Gupta. Sh. Amit Gupta managed the fraudulent transactions through bogus firms and fake bills on the instructions of Tahir Hussain.

7.10 Statement of bank account number 50200023780784 held by SEAPL in HDFC bank was called for the period 01.03.2017 to 15.05.2020 and analysed. Purchase bills of SEAPL were also verified. It was noticed that there were several high valued transactions with certain entities and their purchase bills were not filed in the purchase bills file. It was

also found during investigation that payments made to these entities, in almost all the cases, reached to some bank account that was not in the name of these entities. Such transactions are as under:

Table No.2: Bogus VAT Bills/ Accommodation Entries reflecting in statement of bank account no. 50200023780784, HDFC bank of SEAPL from 2017 to 2019.

Sr.No .	Entity Name as per Bank A/cStatement	Actual Name of Bank Account Holder	Account No.	Bank Name	Sum of Credits from SEAPL Account
1	Ambika Traders	R. K. Traders	10170000982632	Bandhan Bank	7130000
2	Rahul Sales Corporation	Shyam Trader	10180007074001	Bandhan Bank	6060000
3	Sheet Enterprises	Balajee Enterprises	10180007074551	Bandhan Bank	5715000
4	Pankaj Enterprises	Sai traders	10180001629152	Bandhan Bank	4590000
5	Vansh Trading Co.	Krishna Enterprises	10170004114058	Bandhan Bank	2800000
6	Vanshika Enterprises	Shiv Shakti Enterprises	12620200048792	Bandhan Bank	2700000
7	Priya Enterprises	Bharat Trading Co.	10170004396706	Bandhan Bank	2261970
8	SaubhagyTrade com Pvt. Ltd.	Kiran Traders	12620200047786	Federal Bank	1751458
9	R S. Trading Co.	Navyuga Traders	38294884300	SBI	1600000
10	V. K. Enterprises	Shiv Shakti Enterprises	10180001435707	Bandhan Bank	1328000
11	Durga Trading	Deep	10180001671841	Bandhan	505900

	Co	Enterpri ses		Bank	
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7.11 Perusal of the bank statements and bills of the above firms/companies (except Sheel Enterprises), as well as on the basis of the statements of the persons engaged in providing/arranging the bogus bills/accommodation entries for the aforesaid transactions, revealed that Tahir Hussain had used these funds for cash expenses of the company as well as his personal use and this cash was not recorded in the books of account.

7.12 Investigation further revealed that the bills raised for covering up the aforesaid transactions were dated back to the period April 2014 to July 2016 whereas the corresponding transactions were made from 2017 to 2019. Tahir Hussain, in his statements recorded under Section 50 of the PML, 2002 clarified that the VAT to be paid on the above bills 'were paid by him when the bills were purchased and entries in the bank accounts for that amount were to be made within three years; that there was a difference in the amount of the bills and the RTGS/NEFT entries made from the accounts of SEAPL; that the bills for Ambika Traders were purchased in 2015-16 and the entries for the same were to be made within 3 years; that the remaining amount could be outstanding payment which could be reflected in the ledger of these parties. However, Tahir Hussain or his wife Shama Anjum could not produce the copies of year-wise ledger accounts of these parties."

10. Furthermore, as per the ECIR the Directorate of Enforcement has put forth the alleged money trail in respect of funds allegedly

fraudulently removed from the companies associated with the petitioner in January, 2020 to the effect that:

“8. Money Trail in respect of the funds fraudulently removed from the companies associated with Tahir Hussain in January, 2020:

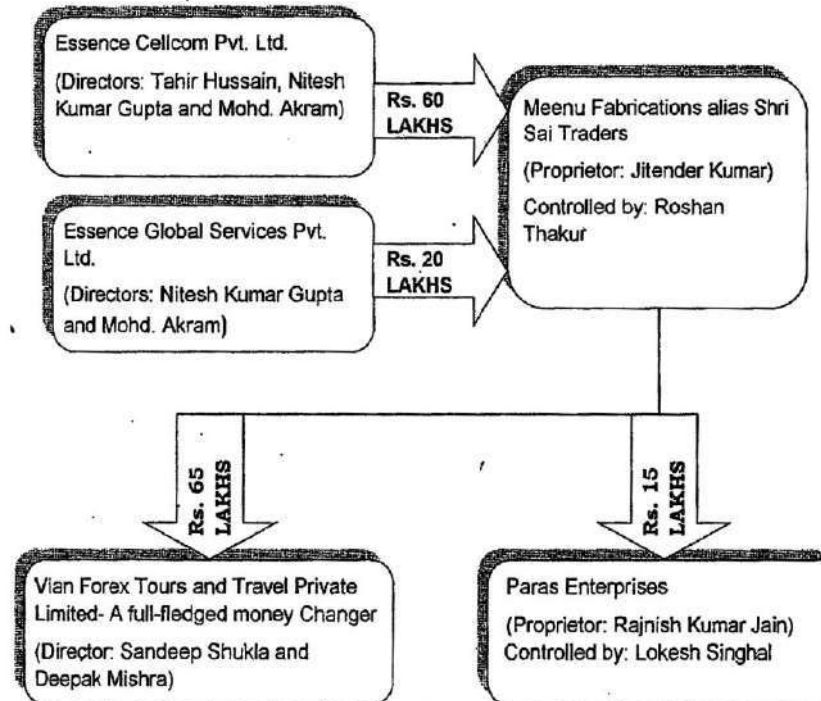
8.1 As already mentioned in the preceding paras, RTGS/NEFT transactions amounting to Rs. 60 lakh were made by M/s ECPL to one 'Meenu Fabrications' as reflected in the banking narration for the RTGS/NEFT transfers. However, investigation revealed that the said amount was in fact credited in the account of one 'Shri Sai Traders'. Fake and bogus invoices were created in the name of Meenu Fabrications to M/s ECPL for 'supply of manpower services'. The amount was further transferred by the entry operators to M/s Paras Enterprises /M/sVian Forex Tours & Travels Pvt. Ltd. and from where cash was returned which reached Tahir Hussain after changing several hands and after deduction of commission at different levels.

8.2 Similar modus operandi was adopted in respect of other bogus companies as tabulated below:

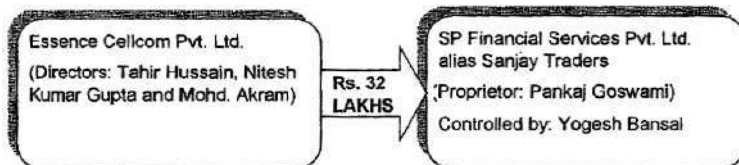
<i>Sl.No.</i>	<i>Amount Transferred from company which cheated</i>	<i>Name of bogus company to whom amount was shown be transferred to in RTGS/NEFT narration</i>	<i>Entry operator in whose account amount was actually credited</i>
1	Rs. 60 lakh from ECPL	Meenu Fabrication	Shri Sai Traders
2	Rs. 32 lakh from ECPL	S P Financial Services	Sanjay Traders
3	Rs. 20 lakh from BGSPL	Meenu Fabrication	Shri Sai Traders
4	Rs. 25.651akh from SEAPL	YudhveeImpex	Vikram Traders
5	R.s. 15.28 lakh from SEAPL	Kanhaiya Enterprises	Shri Ram Wood Products
6	Rs. 6.5 lakh from SEAPL	Vasundhara	Sainyam Traders
<i>.Total- Rs. 1.5943 Crore</i>			

11. A flow chart of money trail was also put forth through the ECIR to the effect:-

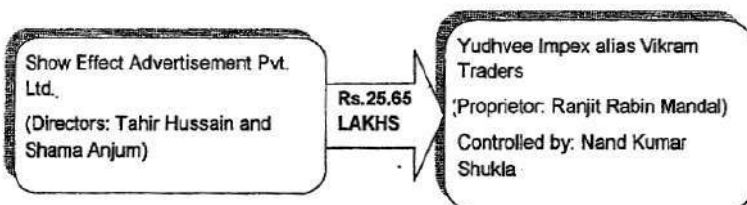
Meenu Fabrications alias Shri Sai Traders



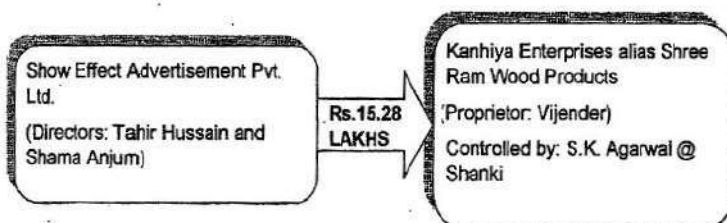
SP Financial Services Pvt. Ltd. alias Sanjay Traders



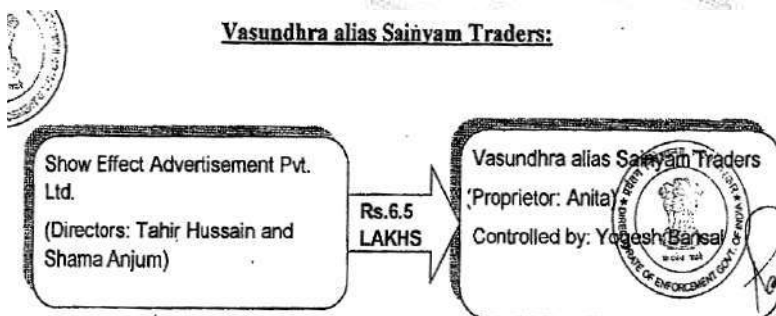
Yudhvee Impex alias Vikram Traders



Kanhiya Enterprises alias Shree Ram Wood Products:



Vasundhra alias Sainyam Traders:



12. The specific role attributed against the petitioner in the abetment and the commission of offences in the money laundering in terms of Section 3 of the PML Act, 2002 was put forth to the effect:

“10. Specific role of the accused/co-accused/persons abetting in the commission of the offence of money laundering in terms of Section 3 of PMLA:

<i>Sl. No.</i>	<i>Name of the Accused</i>	<i>Role in the case</i>
<i>1</i>	<i>Tahir Hussain</i>	<i>The main conspirator involved in the acts of criminal conspiracy, cheating and falsification/forgery of documents which resulted in fraudulent removal of money from the accounts of certain companies. Under his instructions, funds were transferred from companies owned/controlled by him to the accounts of fictitious/bogus entities created by entry operators. The entry operators operating such entities made payments of equivalent amount in cash to him. He was the ultimate beneficiary of the money. received in cash which was used for fulfilment of his ulterior motives. Fake and bogus invoices were created to cover the money trail. Tahir Hussain actively funded anti-CAA protests and riots and was in touch with protestors and rioters. In Chand Bagh area, where anti-CAA protest was going on, Tahir Hussain met one Suleiman Siddiqui and gave him money for use in anti-CAA</i>

		<i>protests/gathering people/any kind of nuisance or uproar and asked him to make complete arrangements. He also met a woman named Gul at Jafrabad, where another CAA protest was going on, handed over money to her and told her to do similar things as Suleiman Siddiqui. His active role in North East Delhi riots is highlighted by the fact that there was a sudden surge of persons in his office a few days before the riots and he conducted several meetings with them. Some such people were identified as Arshad Pradhan, Irshad Ahmed, Aabid Khan et who were arrested by the Delhi Police/Crime Branch for instigating riots.</i> <i>The conspiracy hatched by Tahir Hussain with his associates to fund and organise anti-CAA protests and the North East Delhi riots was the result of his conspiracy hatched with Amit Gupta to fraudulently withdraw money through bogus and malafide transactions. Tahir Hussain entered into a criminal conspiracy with Amit Gupta and other persons to fraudulently transfer money from the accounts of companies owned/controlled by him. The money so obtained by Tahir Hussain as a result of criminal activity relating to the offence of criminal conspiracy qualifies as 'proceeds of crime'. The said 'proceeds of crime' generated through the offence of criminal</i>
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		<i>conspiracy under Section 120B of the JPC, which is a scheduled offence under PMLA, was used by Tahir Hussain to commit offences under Sections 302, 307 and 385 which have been invoked in the aforesaid FIRs and which are also scheduled offences under the PML, 2002. The conspiracy to fraudulently withdraw money through malafide transactions with bogus entry operators on the strength of fake bills was thus part of the larger conspiracy to fund and organize the riots in Delhi which led to the loss of lives of many people.</i>
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And the role of the other accused persons was also set forth as under:

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<i>Sl. No.</i>	<i>Name of the Accused</i>	<i>Role in the case</i>
2	Amit Gupta (Co accused)	<i>Co-conspirator and aide of Tahir Hussain who, on the instructions of Tahir Hussain, arranged cash in lieu of the RTGS/NEFT from the companies owned/ controlled by Tahir Hussain. He was the main person who organized cash for Tahir Hussain through entry operators by way of fraudulent transactions, fictitious firms and bogus bills.</i> <i>The role of organising cash, which was to be used for unlawful activities, was entrusted by Tahir Hussain to Amit Gupta as he had done similar jobs for Tahir Hussain in the past also.</i>

13. The petitioner herein is stated to have been arrested on 6.4.2020 in FIR No. 59/2020 Police Station Crime Branch and was arrested on 20.8.2020 in relation to the ECIR in question.

14. The co-accused Amit Gupta in the instant case has however not been arrested as per the ECIR and the investigation into his role and acquiring funds for the petitioner through fraudulent means in the past was still being conducted. The impugned order however indicates that he has been awarded pardon vide order dated 19.2.2022 on his application under Section 306 of the Cr.P.C., 1973.

15. The evidence stated to have been collected by the Directorate of Enforcement (HQ) with contentions that the applicant was involved in money laundering is put forth as being:

“13. Brief summary of evidence to prove that accused person is involved in money laundering:

Evidences collected during the course of investigation under the PMLA as discussed in detail in preceding paragraphs, have proved that the provisions of Section 3 of PML, 2002 are applicable in this case. Following is the list of evidences that have been collected during the course of investigation.

- *Fake invoices raised in the name of fictitious firms viz. Meenu Fabrications, SP Financial Services. On perusal of these invoices, it is also revealed that fake GSTIN numbers were being used. Also the addresses of the firms mentioned on these bills are also found to be fake (RUD-44).*

- *Diary of Roshan Pathak recovered and seized during search proceedings conducted on 26.06.2020 at E-7, Main Karawal Nagar Road, Khajoori Khas, New Delhi - 110094 (RUD-45).*
- *Bank statements of the beneficiary accounts depicting incorrect narration along with KYC details and bankers book of evidence certificates (RUD- 46).*
- *Bogus contracts were recovered from the laptop of Shri Nitesh Kumar Gupta which were prepared to cover up the fraudulent transactions.*
- *Statements of Tahir Hussain, Amit Gupta, Roshan Pathak (accountant of Tahir Hussam), Nitesh Kumar Gupta, entry operators, and others involved in the complex web of fraudulent transactions and return of cash in lieu of such transactions.*
- *Whatsapp chat extracted from the mobile phones of Roshan Pathak with Shri AmitGupta Statements of Rahul.*
- *Statements of Rahul Kasana and Girish Pal, employees of SEAPL at E-7, Main Karawal Nagar Road, Khajoori Khas, New Delhi which was office cum residence of Tahir Hussain.”*

16. Inter alia, the respondent has submitted to the effect that the total proceeds of crime estimated in the case till the date of ECIR amounted to Rs.5.24 crores and investigation in respect of Rs.1,59,43,000/- had been completed which amounts had been removed from the bank accounts of the companies owned/controlled by Tahir Hussain (the petitioner herein) for the period October 2019 to January 2020 and the receipt of cash against it was utilized by Tahir Hussain (the petitioner herein) to fund the anti CAA protest and the

North East Delhi riots with it having been submitted by the Directorate of Enforcement to the effect that

“16.2 Out of the aforesaid amount of Rs. 1.5943 Crore, Rs. 1,53,70,994 was fraudulently removed during January 2020. For the remaining amount of Rs. 5,72,006, investigation revealed that such fraudulent removal of funds from the bank accounts of M/s SEAPL had taken place prior to January 2020 also. One such company which appeared in the books of account of Tahir Hussain and indicated identical modus operandi was Yudhvee Impex alias Vikram. Traders. Investigation revealed that in addition to fraudulent removal of Rs. 20 lakhs in January 2020, funds amounting to Rs. 3,56,265/- and Rs.2,15,7411- were fraudulently removed from HDFC Bank account no. 50200023780784 of M/s SEAPL through Yudhvee Impex alias Vikram Traders on 16.10.2019. Thus, the said amount of Rs. 5,72,006 falls under the ambit of inter-connected transactions as covered under the provisions of Section 23 of PML, 2002.

16.3 The aforesaid fraudulent transactions amounting to Rs. 1.5943 Crore and the resultant cash generation was the result of the acts of criminal conspiracy, cheating and falsification/forgery of documents. Tahir Hussain entered into a criminal conspiracy with Amit Gupta and other persons to fraudulently transfer money through bogus and malafide transactions from the accounts of companies owned/controlled by him. The money so obtained by Tahir Hussain as a result of criminal activity relating to the substantive offence of criminal conspiracy (Section 120B of IPC) qualifies as 'proceeds of crime' in terms of Section 2(1)(u) of PML, 2002. The said 'proceeds of crime'

generated through the offence of criminal conspiracy under Section 120B of the IPC, which is a scheduled offence under PML, was used by Tahir Hussain to commit offences under Sections 302, 307 and 385 of the IPC (which have been invoked in the aforesaid FIRs and which are also scheduled offences under the PML, 2002). The conspiracy to fraudulently withdraw money through malafide transactions with bogus entry operators on the strength of fake bills was thus part of the larger conspiracy to fund and organize the riots in Delhi which led to the loss of lives of many people.”

17. The Directorate of Enforcement has further submitted that in terms of section 2(1)(v) of the PML, Act, 2002, “property” includes

“16.4 Further, as defined by Section 2(1)(v) of PML, 2002 “property includes “property of any kind used in the commission of an offence under this Act or any of the scheduled offences.”. As discussed in the preceding paras, the aforesaid amount of Rs.1.5943 Crore was used by Tahir Hussain and was instrumental in the commission of offence of funding and organizing anti-CAA protests and North East Delhi riots which led to the loss of many lives and in respect of which Sections 302, 307 and 385 of the IPC have been already invoked in the aforesaid FIRs.”,

with it thus having been submitted by the respondent that the entire amount of Rs.1.5943 Crores qualifies as “Proceeds of Crime” on account of the grounds:

“16.5 Hence, the aforesaid amount of Rs. 1.5943 Crore qualifies as 'proceeds of crime' on account of both of the following grounds:

- i. The money so obtained by Tahir Hussain was as a result of criminal activity relating to the substantive offence of criminal conspiracy- Section 120B of IPC which is a scheduled offence under PML, 2002;*
- ii. As per Section 2(1)(v) of PML, 2002, the said amount of Rs. 1.5943 Crore was used for the commission of offences under Sections 302, 307 and 385 of the IPC which are scheduled offences under PMLA, 2002;”*

18. Inter alia it has been submitted by the respondent that the entries appearing in the HDFC bank account No. 50200023780784 of M/s SEAPL were subjected to verification which revealed that several transactions during March 2017 to October 2019 followed the same *modus operandi* for the fraudulent removal of funds from this account. Tahir Hussain, in his statement recorded under Section 50 of the PMLA, 2002 admitted that the cash generated through these entries had been utilized by him for cash expenses for personal and company's use with it having been submitted further through the complaint that the examination of other bank accounts of the company belonging to the petitioner and his associates was under progress and a supplementary complaint would be filed on the basis of the outcome of the ongoing investigation.

19. It was further submitted that the further investigation in respect of the fraudulent withdrawal of money prior to the period October 2019 in HDFC Bank account no. 50200023780784 of SEAPL is under progress. It was further submitted that the supplementary prosecution complaint in this regard shall be filed after the completion of

investigation and examination of other bank accounts (other than HDFC Bank account no. 50200023780784 of SEAPL) of the companies belonging to Tahir Hussain and his associates is under progress and that a supplementary complaint shall be filed in this matter on the basis of the outcome of ongoing investigation in due course of time. Further it was submitted that investigation is also underway to identify and examine the persons (including but not limited to Suleiman Siddiqui and Gul) who conspired with Tahir Hussain, i.e., the petitioner herein, and were involved with him in the anti-CAA protests and the North Delhi riots.

20. Inter alia, the Directorate of Enforcement has further submitted through its ECIR that the unique *modus operandi* in this case enables the entry operators to exploit the loopholes in the banking system and in strengthening the cash based informal economy is that narrations for RTGS transfers are deliberately in the name of fictitious firms (like Meenu Fabrications etc) whereas the actual funds transfers are made to other entry operator bank accounts. It was submitted further by the complainant that one of the reasons for this deliberate misrepresentation is to name the fictitious firm in such a way that it appears to be relevant to the business of the firm from which funds are being transferred eg. the names of Meenu Fabrications and S P Financial Services were chosen by Amit Gupta as they appeared to be related to the "supply of manpower" service and that was the pretext on which the funds were transferred from ECPL and EGSPL and the bogus invoices were raised. It was also submitted that another reason for adopting this *modus operandi* is to avoid the name of the entry

operator firm from being reflected in the banking narration and to thereby attempt to evade scrutiny by the banking officials as well as law enforcement agencies eg. in the case of transfer of funds from Shri Sai Traders to M/s Vian Forex Tours & Travels Pvt. Ltd. the name of M/s Vian was deliberately changed to Jagdambe Enterprises in the RTGS narration after the bank officials had raised suspicion on the reasons for repeated transfer of funds to a foreign exchange related company and therefore, the entry operator firms may have numerous fictitious names in banking narrations to misrepresent the nature of job as well as to avoid suspicion.

This modus operandi facilitates fraudulent transactions and generation of unaccounted cash which have serious tax evasion implications and can be used for various nefarious activities such as radicalisation, fomenting trouble, disruption of law & order terror funding, etc.

21. Inter alia, the respondent has submitted that it had been established during the investigation that the petitioner by way of using a myriad web of transactions and arranging cash thereof had funded anti-CAA protests and played a key role in instigating violence and fomenting trouble which led to Delhi riots in the month of February 2020.

The Directorate of Enforcement has further submitted that the petitioner established M/s SEAPL in which he and his wife were Directors and also helped his brother-in-law Md. Akram and Md. Akram's friend Sh. Nitesh Gupta in setting up their business which eventually led to the formation of M/s ECPL in which Tahir Hussain,

Md. Akram and Nitesh Kumar Gupta were equal shareholders, it was further submitted that due to the fact that he had helped them set up ECPL, and as Md. Akram was his wife's brother, and he himself was a politically influential person, he exercised control over M/s EGSPL even though he did not have any stake in EGSPL nor was he the Director in EGSPL.

As per the complaint, during December 2019-January 2020, Tahir Hussain contacted Nitesh Gupta and Md. Akram and asked for funds amounting to Rs. 1 Crore approximately but he did not inform them about the purpose of the requirement of funds. It was further submitted in the complaint that for fraudulent removal of funds from the accounts of M/s SEAPL, ECPL and EGSPL, he conspired with Amit Gupta and asked him to arrange cash for entries and thus, in January 2020, Rs. 92 lakh from ECPL and Rs. 20 lakh from EGSPL were transferred in the bank accounts of entry operators, the details of which were provided by Sh. Amit Gupta. The narration for funds transferred through RTGS from ECPL and EGSPL reflected the names of 'Meenu Fabrications' and SP Financial Services, however, the bank accounts in which the funds were actually transferred belonged to Shri Sai Traders and Sanjay Traders. Similarly, transfers amounting to Rs. 47.43 lakh were made from the bank accounts of SEAPL in the bank accounts of Kanhaiya Enterprises alias Shree Ram Wood Products, Yudhvee Impex alias Vikram Traders and Vasundhra alias Sainyam Traders and in return for these fraudulent transfers, cash of an equivalent amount ultimately reached Tahir Hussain after changing several hands and after deduction of commission at different levels.

The said cash was used by Tahir Hussain for funding anti-CAA protests and for Delhi riots in which he played a key role.

It was submitted further in the complaint that in the past also, cash payments to Tahir Hussain had been made against bogus bills on his instructions and as per his requirements which established the fact that Tahir Hussain is a habitual offender who has repeatedly resorted to unfair means and fraudulent transactions through bogus companies and fake invoices to siphon off money from 'companies' accounts to obtain cash which has been used by him for his personal ulterior motives. It was further submitted that the investigation into the fraudulent transactions carried out in the past, withdrawal of cash and the purpose for which it was used is under progress.

The complainant has submitted further that thus, investigation has established that the funding of anti-CAA protests and North East Delhi riots by Tahir Hussain was a pre-determined criminal conspiracy hatched by him with Amit Gupta and other persons. Tahir Hussain was the mastermind who, with the active association and involvement of Amit Gupta and other persons, meticulously planned and executed all the steps which led to the acquiring of cash through fraudulent means, masking the trail of funds and using the funds so acquired for orchestrating and supporting anti-CAA protests in certain areas and for mobilising people, instigating them and fomenting trouble which led to the North East Delhi riots which led to the loss of lives and property and disruption of public order. It was further alleged that the petitioner deliberately planned the whole scheme of acquiring

the funds meant for the unlawful activities in such a manner that his identity remained undisclosed.

22. The Directorate of Enforcement has thus submitted that the petitioner along with his co-conspirator Amit Gupta was involved in the acts of criminal conspiracy, cheating and falsification/forgery of documents which resulted in fraudulent removal of funds amounting to Rs. 1.5943 Crore during October 2019 to January 2020 from the accounts of companies owned/controlled by him. The withdrawal of funds in the manner as aforesaid was submitted to be in furtherance of the larger conspiracy to utilize the proceeds of crime in funding anti-CAA protests and Delhi riots which led to the loss of lives and property and disruption of public order. The complainant has further submitted that Tahir Hussain, i.e., the petitioner herein and Amit Gupta have committed the offence of Money Laundering as defined under Section 3 of the PML Act, 2002 and they are liable to be prosecuted and punished under Section 4 of the PML Act, 2002.

23. Through oral and written submissions made on behalf of the petitioner it was submitted that the provisions of Section 3 of the PML Act, 2002 cannot be invoked in the instant case as there is no material on the record to suggest that any money/proceeds of crime had been accumulated in the form of property or asset by way of committing the predicate offence punishable under Sections 385/302/201/34 and 307/34/120B of the Indian Penal Code, 1860 qua which the FIRs were registered.

24. Inter alia, the petitioner submits that protests and riots are different in their meanings and protests in Shaheen Bagh or in any other area was a right as enshrined by the Constitution whereas riots are different and punishable under other provisions of the Indian Penal Code, 1860.

25. The petitioner places reliance on Section 2(u) of the PML Act, 2002 , which defines the “ proceeds of Crime” to be:

“proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

placing reliance on Section 3 of the PML Act, 2002 which specifies the offences of money laundering as under:

*“3. Offence, of money-laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the **proceeds of crime** and projecting it as untainted property shall be guilty of offence of money-laundering.”*

26. Inter alia, the petitioner refers to Section 2(1)(v) of the PML Act, 2002, which reads to the effect:

“Section 2 (1) (v) The Prevention of Money-Laundering Act, 2002 "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or

interest in, such property or assets, wherever located;

(Explanation - for the removal of doubts it is hereby clarified that the term property includes property of any kind used in the commission of an offence under this act or any of the scheduled offences.)

and section 120B of the Indian Penal Code, 1860 which reads to the effect:

“120B. Punishment of criminal conspiracy.-

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

27. The petitioner places reliance on observations in paragraphs 29 to 33 and 52 to 54 of the verdict of the Hon'ble Supreme Court in SLP(Crl.) No. 4634/2014 titled as ***Vijay Madan Lal Chaudhary &Ors. V. UOI, 2022 SCC OnLine SC 929*** to contend to the effect that it has been categorically laid down therein that the offence under Section 3 of the PML Act, 2002 is dependent on the wrongful/illegal gain of the property as a result of a criminal activity relating to a scheduled offence and that the property must qualify the definition of

‘proceeds of crime’ under Section 2(1)(u) of the PML Act, 2002. Inter alia the petitioner submits that there was no property acquired in the instant case from the proceeds of crime and there are no civil proceedings or attachment proceedings of any kind in the instant case where any property has been attached. The petitioner has further submitted that the prosecution version is to the effect that the amount earned from the tax violations and withdrawn from the banks in the companies owned by the petitioner incash was spent in the Shaheen Bagh protest and that cannot be an offence under Section 3 of the PML Act, 2002 in view of the observations of the Hon’ble Supreme Court in *Vijay Madan Lal Chaudhary & Ors.* (supra) vide paragraphs 29 to 33 of the said verdict as proceeds of crime is the core ingredient for initiation of proceedings under Section 3 of the PML Act, 2002 which is missing and wholly absent in the instant case.

28. Inter alia, the petitioner submits that there are no statements on the record under Section 50 of the PML Act, 2002 which show any withdrawal of money from the banks and the statement of the driver of the petitioner has also not been proved of what amount and for what purpose the amount had been paid.

29. Inter alia, the petitioner submits that there was no property attached in the instant case, no cash was seized and that the averments in the ECIR do not bring forth the case under Section 2(1)(u) and thus not even under Section 3 of the PML Act, 2002 and that there is no illegal gain or acquisition of proceeds of crime from the offence charged under the scheduled offences and that the GST

offences are not scheduled offences as the same are alleged tax violations.

30. The petitioner submits that the questions of law that required to be determined are:

“a. Whether charges under section 3 of the PMLA read with section 4 of the PMLA against other persons can be framed in the circumstances when there is no proceed of crime in the predicated offence/schedule offence?

b. Whether the Ld. Special Judge can treat amounts arising from a non scheduled offence as proceeds of crime?

c. Whether the phrase "criminal activity relating to the scheduled" offence under Section 2(u) also encompasses offences which are not specified in the Schedule?

d. Whether the transactions of an accused person which has no relation to the scheduled offence can be treated as an inter-connected offence under Section 23?

e. Whether the Ld. Special Judge erred in observing that the fundamental right of the Petitioner under Article 20(3) was not violated during the course of investigation?

f. Whether the PML Act has retrospective effect by virtue "Clarificatory Amendments" despite being substantive in nature which further impose new conditions which will nullify fundamental rights of an accused person contrary to the Judgment of the Hon'ble Supreme Court in M.M. Aqua Technologies Ltd

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g. Whether statements recorded under Section 50 given by a person can be used to incriminate in him an offence despite the constitutional bar under Article 20(3) and the statutory bar contained in the Evidence Act?

h. Whether proceeds of crime which do not arise from the scheduled offence can be projected and layered?

i. Whether an offence under PML Act can be established by virtue of mere involvement without proving mensrea?

j. Whether the Enforcement Directorate has the jurisdiction to investigate into offences which are not specified under the Scheduled offence?

k. Whether a prosecution under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 is valid absent any finding or allegation of creating or generating proceeds of crime?

l. Whether such inquiry referred to under Section 50 of the PMLA 2002 before the Assistant Director or any other officer can be termed as deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860)?

m. Whether the absence of power of inquiry under Section 50 of the PMLA the proceedings can be termed as judicial proceedings?"

31. Inter alia the petitioner has submitted that in as much as the contents of the ECIR clearly reflect that the investigation in the matter

has not yet been completed no charges could have been directed to be framed in the matter on the basis of a piece meal investigation.

32. Reliance has been placed on behalf of the petitioner in relation thereto on the verdict of the Hon'ble Supreme Court in ***Luckose Zachariah @ Zak Nedumchira Luke & Ors. V. Joseph Joseph & Ors.***;2022 SCC OnLine SC 241. Reliance has also been placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Vinubhai Haribhai Malviya & Ors. V. State of Gujarat*** (2019) 17 SCC 1.

33. The Directorate of Enforcement through its written submissions has reiterated the contentions raised through the ECIR and oral submissions made to the effect that the offence of money laundering is an offence punishable under Section 4 of the PML Act, 2002 and the same is clearly spelt out to have been committed by the petitioner. Inter alia it has been submitted to the effect:

“6. The crucial statement of Sh. Rahul Kasana, the driver of Tahir Husain which has been recorded under section 50 of PMLA on 01.09.2020 and 02.09.2020 and noted by the Ld. Special Judge in the impugned order clearly brings out the role of the petitioner Mr. Tahir Hussain in funding the North East Delhi riots as the said witness has with his own eyes witnessed huge cash being given to various persons who are accused of committing violent acts in the Delhi riots. (See page 69 to 72)

7. The petitioner has argued that there are no proceeds of crime in the present case, which cannot be accepted for the reason that the petitioner is clearly connected with the process or activity in connection with the proceeds of crime as well as its subsequent use to fund the North East Delhi riots.

8. *The Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary &Ors. vs. Union of India &Ors.** 2022 SCC OnLine SC 929, has held that section 3 of PMLA has a wide reach and any person who is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or actually involved in one or more process or activity connected with proceeds of crime, namely its concealment or possession or acquisition or use, or projecting it as untainted property or claiming it as untainted property, would be guilty of the offence of money laundering. The petitioner herein withdrew 1.53 Cr., as cash against fraudulent transactions on the strength of fake bills with an intention to distribute cash amongst several co-conspirators, who would be instrumental in fomenting violence in North East Delhi riots. Therefore, it cannot be said that the petitioner is not involved in the process or activity connected with proceeds of crime. Moreover, the recent judgment of the Hon'ble Supreme Court in **Criminal Appeal No. 1864/2022 titled Directorate of Enforcement vs. Padmanabhan Kishore, Judgment dated 31.10.2022** would be squarely applicable wherein it is held that even a bribe giver is guilty of the offence of money laundering if he is handing over the amount to the person taking bribe with an intent to bribe him. In this regard the following observations which negate a very similar submission as made by the petitioner would defeat the petitioner's argument herein as well:*

"16. ... The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before

the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with “proceeds of crime” including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.”

*9. That a prima facie case is clearly made out against the accused and hence the impugned order framing charges does not warrant interference, more so in light of the definition of the offence of Money Laundering under Section 3 of the Prevention of Money Laundering, 2002 (“PML”) as explained in detail by the recent three Judge Bench decision of the Hon’ble Supreme Court in **Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.** 2022 SCC OnLine SC 929 at Paras Para 263-284 .*

34. Furthermore, the Directorate of Enforcement submits that Section 120 B of the Indian Penal Code, 1860 is a standalone offence and has submitted as under:-

“10. It is well settled that section 120B of IPC is a standalone and independent schedule offence as evident from part A, paragraph 1 of the schedule under PML. The offence under Section 120B, is clearly made out as a scheduled offence in the FIR being the criminal conspiracy to fund the anti-CAA protest and North East Delhi riots.

11. It is well-settled that Section 120-B of the IPC relating to criminal conspiracy is an independent offence and a substantive offence and the provision renders the mere agreement to commit an offence punishable. *Sudhir Shantilal Mehta vs C.B.I (2009) 8 SCC 1 (Para 113), State of Kerala vs. P. Sugathan and Anr.(2000) 8 SCC 203 (Para 11), Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra (2008) 10 SCC 394 (Para 25) and Ahsan Ahmad Mirza And Others vs Enforcement Directorate W(C)No.2780/2019 CM No. 5528/2019 (Para 29).*

12. That investigation includes all the proceedings under the provisions of PMLA for collection of evidence. Further, section 120B of the IPC, 1860 is specifically mentioned in the FIR and Chargesheet in the instant case and the same also falls under the ambit of Part-A, Paragraph 1 of the Schedule under the PMLA, 2002. It is submitted that a criminal conspiracy is hatched to commit an illegal act, which is an offence punishable under law. The accused herein is guilty of the offence of money laundering as he is connected with the process or activity relating to proceeds of crime by way of fraudulent withdrawal of cash from the bank accounts on the strength of fake bills and fraudulent transactions with an intent to fund the Delhi Riots, for which there is evidence of funding.”

35. Inter alia, the Directorate of Enforcement submits that further investigation under Section 44 of the PML Act, 2002 is not a bar for framing of the charges and that during the course of the proceedings on the bail application of the petitioner vide order dated 3.11.2022 it had been observed to the effect that:

““*Ld. Special Public Prosecutor as also IO have categorically stated that the investigation in respect of the relevant period is also already complete. This fact is also mentioned in the complaint in para 17.1. Thus, it cannot be said that incomplete*

complaint was filed on the basis of incomplete investigation so as to defeat the statutory rights of bail of the accused.

If further investigation is pending qua some other accused persons, then it cannot be said that the complaint is incomplete qua the accused Tahir Hussain.

6.5 Thus, it cannot be said, in the facts of the case that incomplete chargesheet/complaint was filed against accused Tahir Hussain giving rise to his right to statutory bail under Section 167 (2) Cr.P.C.”

with it having been submitted on behalf of the Directorate of Enforcement that this finding of the Special Court in the Bail Application was not challenged by the petitioner. Inter alia, the respondent submits that in terms of Section 44 (1) Explanation (ii) of the PML, Act, 2002 which reads to the effect:

“Section 44 - Offences triable by Special Courts

(1) Notwithstanding.....

Explanation.-- For the removal of doubts, it is clarified that,

(i).....

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.”,

the contention that the Court cannot frame charges till further investigation is pending is flawed. Inter alia, reliance was placed on behalf of the Directorate of Enforcement on the observations in para 368 of the Hon’ble Supreme Court in **Vijay Madan Lal Chaudhary & Ors. (supra)** which read to the effect:

“368. Reverting to Clause (d) of sub-section (1) of Section 44, it postulates that a Special Court while trying the scheduled offence or offence of money-laundering shall hold trial in accordance with the provisions of the 1973 Code as it applies to a trial before a Court of Sessions. Going by the plain language of this provision, no fault can be found for conducting trial in the respective cases in the same manner as provided in the 1973 Code. However, the grievance is about the insertion of Explanation vide Finance (No. 2) Act, 2019. As a matter of fact, this insertion is only a clarificatory provision, as is evident from the opening statement of the provision which says that “for the removal of doubts, it is clarified that”. None of the clauses inserted by this amendment travel beyond the principal provision contained in Clause (d). Clause (i) of the Explanation enunciates that the jurisdiction of the Special Court while dealing with the offence being tried under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same Court shall not be construed as joint trials. This, in fact, is reiteration of the earlier part of the same section, which envisages that even though both the trials may proceed before the same Special Court, it must be tried separately as per the provisions of the 1973 Code. Insofar as Clause (ii) of the Explanation, at the first glance, it does give an impression that the same is

unconnected with the earlier part of the section. However, on closer scrutiny of this provision, it is noted that the same is only an enabling provision permitting to take on record material regarding further investigation against any accused person involved in respect of offence of money-laundering for which complaint has already been filed, whether he has been named in the complaint or not. Such a provision, in fact, is a wholesome provision to ensure that no person involved in the commission of offence of money-laundering must go unpunished. It is always open to the Authority authorised to seek permission of the Court during the trial of the complaint in respect of which cognizance has already been taken by the Court to bring on record further evidence which request can be dealt with by the Special Court in accordance with law keeping in mind the provisions of the 1973 Code as well. It is also open to the Authority authorised to file a fresh complaint against the person who has not been named as accused in the complaint already filed in respect of same offence of money-laundering, including to request the Court to proceed against such other person appearing to be guilty of offence under Section 319 of the 1973 Code, which otherwise would apply to such a trial.

to submit to the effect that a subsequent complaint can be filed against the same person by producing further evidence or against a person who has not been named as an accused even during the trial at

the stage of Section 319 of the Cr.P.C., 1973 which would certainly apply during the trial. Reliance is also placed by the Directorate of Enforcement on the verdict of the Hon'ble Supreme Court in **Rama Chaudhary vs. State of Bihar** (2009) 6 SCC 346,

“17. Further, in the case of Rama Chaudhary vs. State of Bihar (2009) 6 SCC 346, the Hon'ble Supreme court had permitted the filing of a supplementary charge sheet almost 4 years after the framing of charges and during the course of trial which is evident from paras 16, 21 and 22 of the said judgment. It is well settled that cognizance is taken of an offence and not an offender and therefore even if a subsequent complaint is filed arraying other accused or placing additional evidence, the same would be maintainable. (See Yogesh Mittal vs. Enforcement Directorate, 2018 SCC Online Del 6565 at Para 25)”

36. Inter alia, the Directorate of Enforcement submits that the allegations against the petitioner relate to the involvement in money laundering which is an independent offence dealing with the proceeds of crime derived and obtained out of the scheduled offence placing reliance on the observations on the verdict of the Hon'ble Supreme Court in **Vijay Madan Lal Chaudhary & Ors.** (supra) in para 269 and 284

“269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of moneylaundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled

offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.”

“284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of “proceeds of crime”. Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.”

37. It has further been submitted on behalf of the Directorate of Enforcement that at the stage of framing of charges what is required is only a prima facie case and a strong suspicion and the conclusion that the accused has committed the offence is not to be arrived at the stage of framing of charges and it is only the probative value of the material on record that has to be looked into. Inter alia the Directorate of

Enforcement submits that it is for this Court to take into account whether if the entire evidence produced by the prosecution would constitute an offence or not and that the truthfulness, sufficiency and acceptability of the material produced cannot be gone into at the stage at the time of framing of the charge which can only be done at the stage of trial.

38. Inter alia, the Directorate of Enforcement submits that since there is a strong suspicion in the instant case which has led the Court to come to the finding that there is a ground for presuming that the accused has committed an offence as per section 227 of the Cr.P.C., 1973,- it cannot be said that there is no sufficient ground for proceeding against the accused. Inter alia, the Directorate of Enforcement submits that there is no infirmity whatsoever in the impugned order.

ANALYSIS

39. On a consideration of the rival submissions made on behalf of either side and the catena of verdicts relied upon, it is held as under:-

the statements under Section 50 of the PMLA, 2002 are admissible in law as held by the Hon'ble Supreme Court in "Rohit Tandon and Others Vs. Directorate of Enforcement" (2018) 11 SCC 46 as already observed hereinabove, Section 50(4) of the said enactment makes all proceedings in terms of Section 50(2) and (3) thereof to be judicial proceedings within the meaning of Section 193 & 228 of the Indian Penal Code, 1860.

40. Undoubtedly, though the verdict of the Hon'ble Supreme Court in "*Vijay Madanlal Choudhary &Ors. vs. Union of India &Ors.*" 2022 SCC OnLine SC 929 vide paragraph 431 thereof observes to the effect:-

“ 431. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would

be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for

consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.” ,

the said observations do not detract from the factum of statements recorded in terms of Section 50(3) of the PMLA, 2002 r/w sub-clause 3 of the said enactment falling within the ambit of judicial proceedings and though, undoubtedly, the consequences of Article 20(3) of the Constitution in Section 25 of the Indian Evidence Act, 1872 may come into play to urge that the statements made after arrest would be in the nature of a confession, ***the same would relate only to the accused and not to a witness as was the witness Rahul Kasana, who is not an accused in the ECIR.***

41. In the said context, the statement of Rahul Kasana, the driver of the petitioner recorded on 01.09.2020 and 02.09.2020, wherein, he stated that on 24.02.2020, the last day of his duty when he left the vehicle and children of the petitioner whom he had brought back from the school at 11.00 AM at the instance of Smt. Shama Anjum, the wife of the petitioner and as he had had been informed by his friends and family members to come back home at it was in the media that there was a possibility of riots and tension in Karawal Nagar area where his office was located and around 1.00 PM, he saw a large gathering of a crowd and police in the area of his office situated at E-7, Main Karawal Nagar Road, Khajuri Khas, New Delhi-94 and feared that

riots may take place in the area at any time and any untoward incident may take place with him and that he immediately took Giril Pal, an employee in the billing department in the company of Tahir Hussain, on his motor cycle and went to his house in Roshan Vihar and did not meet any of the family members of Tahir Hussain and who also stated as per the prosecution that he knew Roshan Pathak as well as Amit Gupta and on the instructions of the petitioner, Sh. Roshan Pathak had sent him to the shop of Sh. Amit Gupta in Chandani Chowk 2-3 times between Oct-Nov, 2019 to Jan-Feb, 2020 to collect cash from him, though, he did not remember the dates and the cash provided by Amit Gupta was wrapped in a cloth/newspaper or placed in a bag which was handed over to Tahir Hussain or Roshan Pathak and he never opened the same and thus, he did not know the amount of cash carried by him.

42. Inter alia, he stated that he knew Nitesh Kumar Gupta and went to the Kalindi Kunj metro station once in January 2020 on his motor cycle to get the cheques and RTGS forms signed from Sh. Nitesh Kumar Gupta on the instructions of Sh. Roshan Pathak and the same were handed over back to Sh. Roshan Pathak once they were signed. Inter alia, this witness stated during investigation under Section 50 of the PMLA, 2002 that and on being asked, he had stated that in the month of January, 2020, on being told by Tahir Hussain, i.e. the petitioner herein, he drove him to Shaheen Bagh and on reaching in front of an office, the petitioner asked him to park the vehicle and that the petitioner got down from the vehicle and went inside and after sometime, he also saw the entry of Sh. Umar Khalid and Sh. Khalid Saifi in the same office and he stated that he knew Khalid Saifi for a

long time as he used to frequently visit the office of Tahir Hussain and he had seen Umar Khalid in the news and media.

43. Inter alia, this witness is stated to have revealed that he saw Tahir Hussain giving money to two persons who were related to the anti-CAA protests/Delhi riots because he drove Tahir Hussain in the Chand Bagh area where the protest was going on and Tahir Hussain, the petitioner herein shouted to somebody to call one Suleiman Siddiqui and that after sometime, a person came and Tahir Hussain handed him over a bundle of money and from their conversation it was revealed that he was Suleiman Siddiqui and the said Suleiman Siddiqui had covered his face with a cloth. This witness has further stated that Tahir Hussain, the petitioner herein asked Suleiman Siddiqui to keep the money with him as it could be used in anti-CAA protests/gathering people/any kind of nuisance or uproar and that Tahir Hussain i.e. the petitioner herein asked him to make complete arrangements and after this, he drove Tahir Hussain towards Jafrabad where another protest was going on and there, the petitioner asked to pull over the vehicle and asked a person to send one Gul and after sometime, a woman came and Tahir Hussain i.e. the petitioner herein gave her a bundle of money and told her similar things told by him to Suleiman Siddiqui and after that they left from there. This witness is further stated to have stated that there was a sudden surge in the known and unknown persons in the office of Tahir Hussain i.e. the petitioner herein a few days before the riots and that he saw him conducting meetings with these people many a times and sometimes some boys came on motorcycles to take Tahir Hussain with them and

after riots when he saw videos related to riots on social media, he saw some people involved in rioting who were known persons of the petitioner herein and who used to visit the petitioner before the riots and the names of these persons told by this witness as being Arshad Pradhan, Irshad Ahmed, Aabid Khan etc. which persons were later on arrested by the Delhi Police/Crime branch for instigating riots.

44. As put forth by the Directorate of Enforcement, the petitioner had hatched a criminal conspiracy with his associates to fraudulently withdraw money from the accounts of companies i.e. M/s. Show Effect Advertisement Pvt. Ltd. (SEAPL), M/s. Essence Cellcom Pvt. Ltd. (ECPL) and M/s. Essence Global Services Pvt. Ltd. (EGSPL) owned and controlled by him through bogus and mala fide transactions with bogus entry operators on the strength of fake bills and used this money to fund the Delhi riots.

45. Section 120B of the Indian Penal Code, 1860 provides as follows:-

“120B. Punishment of criminal conspiracy.-- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

46. Section 120A of the Indian Penal Code, 1860 defines criminal conspiracy to be:-

“120A. Definition of criminal conspiracy.-- When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.]”

47. That there are statements of witnesses allegedly recorded under Section 50 of the PMLA, 2002 as brought forth through the ECIR of Nitesh Kumar Gupta, Md. Akram, Roshan Pathak, Usman Ahmed, Shama Anjum to indicate amounts withdrawn from M/s. Show Effect Advertisement Pvt. Ltd. (SEAPL), M/s. Essence Cellcom Pvt. Ltd. (ECPL) and M/s. Essence Global Services Pvt. Ltd. (EGSPL) through fraudulent transactions which were transferred through RTGS mode by the said three companies to the accounts of fictitious/bogus entities created by entry operators into names of bogus companies such as 'Meenu Fabrications', S P Financial Services, Yudhvee Impex, Kanhaiya Enterprises, Vasundhara whereas, the entry operator in whose account the amount was actually credited was 'Shri Sai Traders', Sanjay Traders, Vikram Traders, Shri Ram Wood Products respectively; and the forensic examination of mobile phones, digital

devices recovered from the office premises of these companies including their production facilities as also from the residence of the father of the petitioner where the petitioner and his wife were residing i.e. at A-1/112, Gali No.3, Nehru Vihar, Delhi-94, examination of whatsapp chats indicating fraudulent transfer of money from the accounts of these companies to other accounts and the reciprocal transfer of cash to the petitioner herein through his associates and employees, coupled with the statement of Nitesh Kumar Gupta under Section 50 of the PMLA, 2002 who stated that the petitioner herein was one of the directors of ECPL and its 33% stake holder, contacted him in the first week of January 2020 and that he needed cash money for some purpose and also told that his accountant, Roshan Pathak, would take care of the mechanism through which money would be transferred from the accounts of M/s ECPL and would reach him in cash and that the petitioner also told that Roshan Pathak would arrange bills for 'supply of manpower' as they (ECPL/EGSPL) require manpower for their operational work and this would serve to be a good alibi for raising bills without actual transfer of any goods or services and it was also suggested by Tahir Hussain i.e. the petitioner herein that fake contracts would be prepared for supply of manpower services, whereafter transfer of money from M/s ECPL and EGSPL started from 07.01.2020, in as much as, Nitesh Kumar Gupta transferred Rs. 9 Lakhs, Rs.6 Lakhs and Rs. 5 Lakhs i.e. total Rs. 20 Lakhs from M/s EGSPL through NEFT to one 'Meenu Fabrications' whose name and account details were sent to him by Roshan Pathak through Whatsapp message and from M/s ECPL, cheques worth Rs.

62 Lakhs were signed by Tahir Hussain i.e. the petitioner herein and cheques worth Rs. 30 Lakhs were signed by Nitesh Kumar Gupta for transfer of money through RTGS/NEFT to 'Meenu Fabrications' and 'SP Financial Services Pvt. Ltd' and that Nitesh Kumar Gupta signed cheques worth Rs. 30 Lakhs and RTGS forms near Kalindi Kunj Metro Station and handed it over to Rahul Kasana, the driver of Tahir Hussain, who had come on his motorbike and Rahul Kasana had come there with the cheques and RTGS forms and Nitesh Kumar Gupta had simply signed the same and gave it to him and in this way a total transaction worth Rs.1.12 Crores from M/s ECPL and EGSPL was done on the instructions of the petitioner herein with it having been stated by Nitesh Kumar Gupta that Tahir Hussain i.e. the petitioner herein assured him that the money would be returned to the bank accounts of M/s ECPL and EGSPL to do further business and to meet expenses.

48. Inter alia, Nitesh Kumar Gupta also stated that he had contacted Roshan Pathak for bills of 'supply of manpower' which was earlier decided as the alibi for transfer of money and in this regard, he provided the Service Accounting Code (SAC) of manpower services to Roshan Pathak for generating the invoices for supply of manpower services from Meenu Fabrications and SP financial Services Pvt. Ltd. and the said invoices worth Rs. 1.12 Crore were sent by Roshan Pathak to his office through Rahul Kasana and the same invoices had been recovered from his office at G-75A & 72/3, Shaheen Bagh, Abul Fazal Enclave-II, New Delhi during the search operations conducted

by the Enforcement Directorate and were seized by the Enforcement Directorate.

49. This witness further stated that in February, in order to file monthly GST return, purchase bills and invoices including these invoices worth Rs. 1.12 Crore were sent to their Chartered Accountant, Mukesh Rao and Kamlesh, an employee of Mukesh Rao, later informed him over phone that the said invoices worth Rs.1.12 Crore were all fake and bogus invoices as the GSTIN numbers mentioned on them were bogus and thereafter, the petitioner was arrested and sent to custody in the riots case. This witness is stated to have further stated that since the said invoices worth Rs. 1.12 Crore were fake and bogus and there was also no manpower supply against the transfer of money, he got scared and contacted Roshan Pathak and demanded that the contract which was earlier agreed upon to be signed as a cover up for transfer of money in the garb of supply of manpower and Roshan Pathak informed him that the said transfer of money was done by one Amit Aggarwal (it was later on found during the course of PMLA investigation that the actual name of the said person was Amit Gupta and that he was also known as Amit Aggarwal) and he provided him the contact number of Amit Aggarwal, whereafter, Nitesh Kumar Gupta contacted the said Amit Aggarwal for the signing of the contract and they decided to meet at Nangloi Metro Station for the same and then Nitesh Kumar Gupta and Mohd. Akram prepared back dated contract and met Amit Aggarwal at Nangloi Metro Station in the evening and the said Amit Aggarwal informed him that he knew Tahir Hussain i.e. the petitioner herein for the past 15 years and Amit

Aggarwal left with the contract and said that Nitesh Kumar Gupta could collect the signed copy from Amit Aggarwal the next week but Amit Aggarwal did not respond to his calls and Nitesh Kumar Gupta also could not meet Amit Aggarwal due to lockdown restrictions.

50. This witness named Nitesh Kumar Gupta further admitted that the said transfer of Rs. 1.12 Crore from the accounts of ECPL and EGSPIL in the garb of payment for supply of manpower was done on the instructions of Tahir Hussain i.e. the petitioner herein and Roshan Pathak, the accountant of Tahir Hussain, assisted Tahir Hussain and facilitated these transactions along with Amit Aggarwal on the instructions of Tahir Hussain.

51. **The statements of other witnesses recorded under Section 50 of the PMLA, 2002 already adverted to elsewhere hereinabove as reproduced from the ECIR, all prima facie indicate the alleged complicity of the petitioner with persons to cause an illegal act to be done through illegal means which would fall within the ambit of Section 120A of the Indian Penal Code, 1860 making the offence allegedly committed punishable under Section 120B of the Indian Penal Code, 1860.**

52. The offence punishable under Section 120B of the Indian Penal Code, 1860 is a scheduled offence in terms of the Scheduled Para 1 to Section 2(y) of the PMLA, 2002 and falls in Part A of the Schedule. As per Section 2(u) and the explanation thereto, the “proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity

relatable to the scheduled offence, which thus falls within the ambit of proceeds of crime, which proceeds of crime fall within the ambit of culpability in terms of Section 3 of the PMLA, 2002 making a person who has so allegedly committed such an offence, guilty of the offence of money laundering, which is punishable in terms of Section 4 of the PMLA, 2002.

53. Thus, the contention of the petitioner that what the petitioner was allegedly involved in, can at the most be considered to be a GST violation and that a GST violation may be punishable under the enactment dealing with GST violation and under the Income Tax Act, 1961 but that the same would not amount to the commission of any scheduled offence in terms of the Scheduled Part A & B in terms of Section 2(x) of the PMLA, 2002 and thus, no offence described under Section 3 of the PMLA, 2002 punishable under Section 4 thereof, can be held to have been prima facie committed,- cannot be accepted.

54. The verdict of the Hon'ble Supreme Court in *Vijay Madanlal Choudhary & Ors.* (supra) vide paragraph 269 thereof, categorically lays down that the offence of money laundering in terms of Section 3 of the PMLA, 2002 is an independent offence regarding the process or activity connected with the proceeds of crime which have been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence and the process or activity can be in any form- be it one of concealment, possession, acquisition, use of proceeds of crime, in as much as projecting it as untainted money or claiming it to be so and thus, involvement in any one of such process

or activity connected with the proceeds of crime would constitute the offence of money laundering and this offence otherwise has nothing to do with the criminal activity relating to a scheduled offence- except the proceeds of crime derived or obtained as a result of that crime.

55. Section 3 of the PMLA, 2002 provides as follows:-

“3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.”

56. Vide paragraph 270 of the verdict of the Hon'ble Supreme Court in *Vijay Madanlal Choudhary &Ors.* (supra), it had been observed to the effect:-

“270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in

part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.”

57. The observations in paragraph 271 of the said verdict read to the effect:-

“271. As mentioned earlier, the rudimentary understanding of ‘money-laundering’ is that there are three generally accepted stages to money-laundering, they are:

(a) Placement : which is to move the funds from direct association of the crime.

(b) Layering : which is disguising the trail to foil pursuit.

(c) Integration : which is making the money available to the criminal from what seem to be legitimate sources.”

(emphasis supplied)

58. Thus, the alleged commission of a conspiracy even for the purpose of GST violation in order to avail cash i.e. money through the process of the criminal conspiracy for use of the said proceeds i.e. the commission of the crime to commit riots in the North-

Eastern part of Delhi between 23/25.02.2020 and to cause unrest, falls prima facie within the ambit of commission of a scheduled offence, in as much as, the offence for commission of a criminal conspiracy is a standalone offence and a scheduled offence in terms of Section 2(y) of the PMLA, 2002. The three accepted stages of money laundering as set forth in paragraph 271 of the verdict in *Vijay Madanlal Choudhary &Ors.* (supra) are clearly brought forth in the instant case.

59. That there were no proceeds of crime attached, is not relevant, in as much as, in terms of Section 3 of the PMLA, 2002, the process or activity in connection with the proceeds of crime i.e. hatching a criminal conspiracy for violation of tax/ laws for subsequent use of such untainted money for funding riots in the North-Eastern part of Delhi, falls within the domain of commission of a criminal conspiracy, a standalone scheduled offence in terms of Part A of the Schedule to Section 2(y) of the PMLA, 2002 as laid down by the Hon'ble Supreme Court in Criminal Appeal No.1864/2022 titled as "*Directorate of Enforcement vs. Padmanabhan Kishore*" 2022 SCC OnLine SC 1490 that even a bribe giver is guilty of the offence of money laundering if he is handing over the amount to the person taking bribe with an intent to bribe him and observations in paragraph 16 thereof read to the effect:-

"16. ... The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the

amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with “proceeds of crime” including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.”

and that thus, the submission of the petitioner that there were no crime proceeds attached, is insignificant.

60. It is essential to observe the speech delivered by the then Hon’ble Finance Minister Mr. P. Chidambaram while introducing the Prevention of Money Laundering (Amendment Bill), 2002 in the Rajyasabha on 17.12.2012 states to the effect:-

“...firstly, we must remember that money-laundering is a very technically-defined offence. It is not the way we understand 'money-laundering' in a colloquial sense. It is a technically-defined offence. It postulates that there must be a predicate offence and it is dealing with the proceeds of a crime. That is the offence of money laundering. It is more than simply converting black-money into white or white money into black. That is an offence under the Income Tax Act. There must be a crime as defined in the Schedule. As a result of that crime, there must be certain proceeds – It could be cash; it could be property. And anyone who directly or indirectly indulges or assists or is involved in any process or activity connected with the proceeds of crime and projects it as untainted

property is guilty of offence of money-laundering. So, it is a very technical offence. The predicate offences are all listed in the Schedule. Unless there is a predicate offence, there cannot be an offence of money-laundering.

[emphasis supplied]”

61. Apparently thus, the agreement to enter into an agreement to commit a crime, falls within the ambit of Section 120A of the Indian Penal Code, 1860 falling thus, within the ambit of a scheduled offence.

62. As regards the contention raised on behalf of the petitioner that investigation in the matter was not complete and thus, no charges could be even considered to be framed on the basis of the material on the record in view of the categorical submissions through the ECIR itself that further investigation was being conducted, the explanation (ii) to Section 44(1) of the PMLA, 2002 clearly provides that the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence or a documentary against any accused person involved in respect of the offence, for which complaint has already been filed whether named in the original complaint or not.

CONCLUSION

63. In the circumstances, it is held that there is no infirmity in the impugned order dated 03.11.2022 of the learned Trial Court holding that prima facie case is made out against the accused/ petitioner herein of the alleged commission of the offence under Section 3 of the PMLA, 2002 punishable under Section 4 of the said enactment, in as

much as, the petitioner allegedly acted *prima facie* in conspiracy and engaged in money laundering with the proceeds of crime generated having been put to use for riots by way of fraudulently withdrawing money from the accounts of companies owned or controlled by him through bogus and malafide transactions with bogus entry operators on the strength of fake bills and being the beneficiary of the same and with intent to put the said money to fund the Delhi riots and thus, obtained property as the result of the criminal activity relatable to the scheduled offence as the proceeds of crime to make him *prima facie* culpable under Section 3 of the PMLA, 2002.

64. The petition and the accompanying application are thus, declined.

NOVEMBER 24th, 2022

sv/nc

ANU MALHOTRA, J.

सत्यमेव जयते