

Supreme Court on Prevention of Money-Laundering Act, 2002

((2022) 140 taxmann.com 610 (SC))

The Supreme Court recently gave a decision on far reaching and multiple issues under the Prevention of Money-Laundering Act, 2002. The relevance of this Act to corporates generally and corporate and securities laws in general is that multiple offences under the Companies Act, 2013 as well as under various securities laws are covered by this Act. Hence, 'proceeds of crime' and its 'money laundering' (as defined under this Act) relating to offences under such corporate and securities laws are directly covered by this law.

Several petitioners primarily raised issues of constitutionality of various provisions that are seen as harsh and perhaps even draconian. The Supreme Court, in a 545 page order, has rejected almost all the arguments of the petitioners and upheld the constitutionality of such provisions. The following are some of the important conclusions as summarized:

- 1) The expression 'proceedings' is not to be viewed narrowly and also includes proceedings followed by the Enforcement Directorate, the Adjudicating Authorities and the Special Court as constituted under the Act.
- 2) Money laundering does not merely mean, as may be commonly understood by some, conversion of tainted monies into untainted. It includes even handling of monies that continue to remain untainted. This has far reaching significance since even if no attempt has been made to 'launder' the money, i.e., delink the source of such earnings from the crime, there will still be an offence of money laundering. Thus, mere possession or enjoyment of the proceeds of crime would be money laundering.
- 3) Money laundering is an independent offence from the original offence from which proceeds of crime are derived.
- 4) An important clarification and relief is that the original offence from which proceeds of crime are derived needs also to be prosecuted. If a person is found not guilty of the original offence, the monies derived from such alleged offence (now not found to be an offence) would not be proceeds of crime and hence there would not be any offence of money laundering in this regard.
- 5) Section 5 relating to attachment of properties suspected to be proceeds of crime is constitutionally valid as there are adequate safeguards in the provisions.
- 6) Similarly, the powers to arrest an accused under Section 19 are held to be constitutionally valid since, once again, the Court said that there are adequate safeguards provided.
- 7) Section 45 which makes the offence of money laundering non-cognizable and which also makes it very difficult to obtain bail has been upheld as constitutional.

- 8) On the fact that now the Act covers numerous and relatively less serious offences, the Court said that this was a matter of legislative policy and the Court will not hold the provisions unconstitutional on this ground.
- 9) Supply of a copy of Enforcement Case Information Report (ECIR) is not mandatory. It is enough if the ED, at the time of arrest, discloses the ground of arrest.
- 10) The argument that the punishment of money laundering is disproportionate when compared with the type of offences in respect of which the proceeds of crime arose was rejected by the Court.

Law relating to prevention of money laundering and corporate and financial frauds

(Gautam Thapar v. Directorate of Enforcement (2022) 171 SCL 797 (Del.))

Corporate, securities and financial frauds and violations/offences generally are ordinarily covered by the respective laws applicable to them. The Companies Act, 2013, for example, primarily governs frauds and the like committed in companies. There are stringent and widely worded provisions contained in Section 447 and other provisions to govern such frauds. The SEBI Act and Regulations made thereunder similarly give wide powers to SEBI to issue penal orders of various forms in cases of violation of the Act/Regulations. Certain frauds relating to companies can be punished under other laws too including banking related laws. Interestingly, these offences are also covered under the Prevention of Money Laundering Act, 2002. This law provides for very strict procedure and punishment for committing money laundering in respect of the offences covered thereunder. Considering that the definition of money laundering is very wide and that the offences covered under this law also include several corporate, securities and financial frauds, action is often taken under this law too. The cited ruling of the Delhi High Court is a good example of action under this law for alleged diversion of funds borrowed from lenders.

Supreme Court on price manipulation by stock brokers

(MBL and Company Ltd. v. SEBI (2022) 139 taxmann.com 357 (SC))

It was found by the Securities and Exchange Board of India that a stock broker manipulated the price of the shares by indulging in self-trades at a price higher than the last traded price (LTP). This resulted in artificial rise in the price in a manipulative manner. SEBI, apart from levying a monetary penalty, also barred the stock broker from dealing in securities in proprietary account for four years. The Securities Appellate Tribunal, on appeal, upheld the order of SEBI. On appeal to the Supreme Court, it was observed that the quantum of penal action would be interfered with by the Court only if it was found to be "wholly arbitrary and harsh or distinctly disproportionate to the nature of the violation". The Court noted the adverse implications on markets due to price manipulation. Moreover, in this case, the debarment was only for proprietary trading by the stock broker and not in respect of clients. Hence, the Court upheld the order of SEBI.