

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 26.02.2026	PRONOUNCED ON 13.03.2026
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CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRL RC No. 51 of 2026

M/s.Siva Industries and Holdings Limited,
Rep.by its Director, S.Manian (age 68),
Belicia Tower-I,
5th Floor, 1st main road,
MRC nagar,
R.A.Puram,
Chennai-600 119.

..Petitioner(s)

Vs

1. The Directorate of Enforcement Rep.by its
Assistant Director,
Chennai Zonal Office-I,
No.2, 5th and 6th Floor,
BSNL Administrative Building,
Kushkumar Road,
Nungambakkam,
Chennai-600 034.
2. IDBI Bank Limited
Rep Deputy General Manager,
Mid Corporate Group (MCG),
No.115, Anna Salai,
Saidapet, Chennai-600 015.
3. M/s.Winwind Power Energy Pvt.Ltd,
Chennai.
(Presently taken over by Resolution Applicant),
M/s.Agniti Industrial Parks Private Ltd.,
in terms of order dated February 08, 2021
passed by NCLT, Chennai).

..Respondent(s)

PRAYER:-Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the proceedings made in CrI.MP.No.1053 of 2025 in Spl.C.C.No.02 of 2021 dated 09.12.2025 on the file of Honble IX Additional Special Judge for CBI Cases, Chennai and set aside the same.

For Petitioner(s): Mr.Vijay Narayan
Senior Counsel
Assisted Mr. by S.Ravi
for M/s.Srilaw Associates

For Respondent(s): Mr. Cibi Vishnu,
Spl.Public Prosecutor (ED) for R1
Mr.M.L.Ganesh for R2

ORDER

(Order of the Court was made by K.Kumaresh Babu J.)

The present Criminal Revision petition has been filed challenging the order dated 09.12.2025 made in CrI.MP.No.1053 of 2025 in Spl.C.C.No.02 of 2021

2. Heard Mr.Vijay Narayan, learned Senior Counsel, assisted by Mr.S.Ravi learned counsel appearing on behalf of the petitioner, Mr. Cibi Vishnu, learned Special Public Prosecutor (ED) appearing for the first respondent and Mr.M.L.Ganesh, learned counsel appearing for the second respondent.

3. Mr.Vijaya Naryan learned Senior Counsel appearing for the Revision Petitioner would submit that the petitioner had been embroiled in various litigations including the proceedings under PMLA Act. He would submit that the appellant had independently borrowed monies from the second respondent and had also stood as a guarantor for the third respondent for a loan that had been serviced by the second respondent in favour of the third respondent. He would submit that as regards to the third respondent, the second respondent had instituted proceedings before the Debt Recovery Tribunal in the year 2017. As against the third respondent Insolvency and Bankruptcy Code (IBC) proceedings were also initiated, wherein a Liquidator was appointed and the third respondent was sold as a going concern to one M/s.Agniti Industrial Parks Private Limited. The sale was also approved by the NCLT, Chennai. He would submit that during the entire proceedings as against the third respondent before the NCLT, the second respondent had not made any claim as against the third respondent much as claimed which it had made before the Debt Recovery Tribunal. Having not made any claim against the third respondent in the IBC proceedings, after the disposal of the NCLT proceedings, the second respondent had secured a decree in the recovery proceedings initiated by it as against the third respondent as a borrower and the petitioner as a guarantor for a sum of Rs.3,77,272.87/- by a decree dated 13.07.2021.

4. He would submit that the conduct of the second respondent which is a public institution in not making a claim of the said amount before the NCLT as against the third respondent and having knowledge that the third respondent had been sold to as a going concern to a third party, had not substituted the said third party before the Debt Recovery Tribunal and had obtained a decree which according to him is nothing but an abuse of the judicial process, making such judicial process wholly non-est and unenforceable. But, however on the strength of the decree, further proceedings were initiated and properties belonging to the petitioner was attached. He would submit that it is pertinent to note that already the first respondent had attached the properties under the PMLA Act which is pending adjudication before the Appellate Tribunal under the said Act.

5. He would submit that as against the petitioner, insolvency proceedings before the NCLT were initiated by the second respondent and it had claimed that the petitioner is a borrower and also a guarantor to another Company which is a corporate debtor to it. Such proceedings was initiated against the petitioner in the year 2019 and even in the said proceedings, the claim as against the petitioner on the guarantee given to the third respondent company was not a part of its claim.

6. He would submit that the Committee of creditors accepted a resolution plan, but however the same was rejected by the NCLT and by the NCLAT on

the Appeal filed by the Director of the petitioner. As against the said proceedings, Special Leave Petitions were preferred and the Hon'ble Apex Court considering the Provisions of the IBC Code and interpreting the same had allowed the SLP and approved the settlement thereby putting an end to the insolvency proceedings initiated by the second respondent against the petitioner. He would submit that the conduct of the second respondent in neither bringing it to the notice in the insolvency proceedings of its claim, as against the third respondent and petitioner as a borrower and guarantor, in both the insolvency proceedings, it would only be presumed that such claim as against the petitioner had stood waived by it. According, to him, when the insolvency proceedings were initiated against a corporate debtor, the creditor is bound to disclose all its claim as against the corporate debtor for adjudication by the insolvency Court which is the NCLT, in the present case.

7. He would submit that having failed to make such claim, the second respondent is estopped from making any claim which was available to it prior to initiation of such proceedings. He would submit that the second respondent had approached the Special Court by invoking the Provisions of Sub-Section 8 of Section 8 of the PMLA Act to order restoration and release of immovable properties described in the schedule and to permit it to sell the same in execution of the Debt Recovery Certificate issued in its favour. He would

submit that on the facts stated above, the Recovery Certificate issued against the petitioner itself is a non-est certificate and the same cannot be executed.

8. That apart, he would submit that the claim of the second respondent as against the petitioner is only based upon a Guarantee Agreement pursuant to which a Mortgage Deed was executed and that it had never been put in possession of the property to invoke the said Provisions to seek restoration of the property. Hence, he would submit that firstly, on the said ground, the said application itself is not maintainable. He would further submit that the Provisions of Section 8 (8) could only be invoked after the property had been confiscated or on or after final disposal of the criminal proceedings or the adjudication proceedings. He would submit that in this case, neither the criminal case that had been filed under PMLA Act nor the Appellate proceedings initiated against the order of adjudication had not culminated into a final order of confiscation and therefore, the application filed by the second respondent before the Special Court is wholly premature .

9. He would submit that the Court below without appreciating the above facts had ordered the Claim Petition filed by the second respondent by ordering restoration of the properties to the second respondent Bank. He would submit that the same is contrary to the judgment of the Hon'ble Division Bench of this Court reported in *(2021) 2 LW Criminal 411*. He would submit that the Hon'ble

Division Bench of this Court had categorically held that the Provisions of Section 8(8) of the PMLA Act could only be invoked after the order of confiscation under Section 8(5) and that the 2nd Proviso inserted to Section 8(8) is beyond the scope of the main Provision. He would draw attention of this Court to the findings of the Division Bench particularly to context that the second Proviso to Sub-Section 8 of Section 8 cannot be allowed to be operated as it goes beyond the scope of the main Provision. He would also rely upon the recent judgment of the Hon'ble Apex Court made in Crl.A.No.729 of 2026 dated 06.02.2026. Taking us through the aforesaid judgment, he would contend that Section 8 (8) would have to be read along with the Rules framed in that regard and the proceedings under Section 8(8) could only be invoked by the Special Court after framing the charges under Section 4 of the PMLA Act and also only in compliance with the mandates of Rule 3(A) of the Rules framed thereunder. Hence he seeks indulgence of this Court.

10. The learned Standing Counsel appearing for the first respondent would submit that the second respondent Bank, who is the claimant had suffered a direct loss due to the conduct of the petitioner and dilution of its securities. He would further submit that as a rightful and legitimate claimant, the second respondent which had suffered direct and quantifiable loss is entitled for restoration of the property which had been mortgaged to it by the petitioner to safeguard its interest. He would further submit that at any rate, it is not

disputed by the petitioner of its mortgage with the second respondent and it would only be petitioner who would be benefitted if the second respondent is allowed to proceed with the sale of the property from any future interest. Hence, he seeks dismissal of the Revision.

11. Mr.M.L.Ganesh, the learned counsel appearing on behalf of the second respondent would submit that the second respondent has a decree upon which a recovery certificate had been issued and the property had also been attached by the Debt Recovery Tribunal. He would further submit that a claim before the Debt Recovery Tribunal was not the subject matter of the insolvency proceedings that has been initiated against the petitioner and that there was no claim over the said amount. He would submit that the petitioner having stood as a guarantor and having mortgaged the property cannot deny the legitimate claim of the second respondent. He would further submit that the adjudication proceedings have been concluded by the Authority and the property had also been attached by the first respondent.

12. Relying upon Sub-Section 8 of Section 8 of the the PMLA Act, he would submit that even during the pendency of the PMLA proceedings, a legitimate claimant can approach the Court for restoration of the property to its benefit. He would further submit that even though the Court had restored the property, it had laid down the conditions upon which the second respondent

would have to deal with the property. He would further submit that the appellant had neither been benefitted with any orders of stay, either on the adjudication proceedings or in the attachment proceedings before the Debt Recovery Tribunal. He would further submit that even if the property is finally confiscated and also if the petitioner is acquitted in the criminal case before the Special Court, the second respondent has a right to proceed with the aforesaid property under the Provisions of Sub-section 8 of Section 8 of the PMLA Act or the Debt Recovery Act as the case may be. Therefore, he would submit that the petitioner cannot be said to be an aggrieved person in any manner to challenge the impugned proceedings. Hence, he seeks dismissal of the Revision.

13. We have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

14. The issue before us is as to whether the impugned order restoring the property to the second respondent for it to proceed in accordance with law has been made in accordance with the Provisions of Sub-Section 8 of Section 8 of the PMLA Act. For better appreciation, the relevant Provision is extracted hereunder:-

*“ 8. **Adjudication** - (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate*

the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized 2[or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after--

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or 3[record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall--

(a) continue during 4[investigation for a period not exceeding 5[three hundred and sixty-five days] or] the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the 8[Special Court].

[Explanation.--For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.]

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the [possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.]

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

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

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

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

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed. “

15. Section 8 empowers an Adjudicating Authority, if he had reasons to believe that there has been a commission of offence under Section 3 of the Act, then the property involved after following the procedure, the competent authority could attach the property and upon conclusion of the trial and the offence being proved would stand confiscated to the Central Government. However, if the offence is not proved, it should be released to the person entitled to receive it. Sub-Section 7 of Section 8 also envisages confiscation pending trial for the reasons indicated therein. Sub-Section 8 of Section 8 entitles a claimant with legitimate interest to approach the Special Court for restoration of the confiscated property if it has suffered a quantifiable loss. The first Proviso appended therein empowers such Court not to consider the claim if the claimant had not satisfied the Court, that it had acted in good faith and had suffered the loss despite taking all reasonable precautions and that such

claimant is not involved in the offence of money laundering. A second Proviso came to be introduced in the year 2018, to consider the claim of a claimant for the purpose of restoration even during the trial in the manner as may be prescribed.

16. The Central Government had also framed The Prevention of Money Laundering (Restoration of Confiscated Property) Rules 2016 which also came to be amended in the year 2019 by insertion of Rule 3A which would relate to the second Proviso to Sub-Section 8 of Section 8. For better appreciation, relevant Provision is extracted hereunder:-

“3A. Manner of restoration of property during trial.- (1) The Special Court, after framing of the charge under section 4 of the Act, on the basis of an application moved for restoration of a property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18 of the Act prior to confiscation, if it thinks fit, may, for the purposes of the second proviso to sub-section (8) of section 8 of the Act, cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where such property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.

17. The said Provision had come up for consideration before the Hon’ble Apex Court in the judgment relied upon by the learned Senior Counsel appearing for the petitioner in Crl.A.No.729 of 2026 dated 06.02.2026. After

analysing the Provisions of the PMLA Act, the Hon'ble Apex Court has concluded as follows:-

“5.2. On the basis of the interpretation given by us in this judgment, we conclude as follows:

Section 8(7) and Section 8(8) of the PMLA are stand-alone provisions.

- *Section 8(7) of the PMLA gets attracted only in case of a contingency and an application under the said provision can be decided by the Special Court only once the confirmation order attains finality.*
- *The expression "material before it" occurring in Section 8(7) of the PMLA has a limited import to the extent of showing the contingency and the entitlement to possession as regards the Director or any third party. In case of a party who has suffered an adverse order Under Section 8(3) of the PMLA, relief Under Section 8(7) of the PMLA can be sought for, provided there is new material that was not placed before or considered by the Adjudicating Authority Under Section 8(3) of the PMLA, or by the higher forums, if so challenged.*
- *An application under the second proviso to Section 8(8) of the PMLA can only be filed subject to satisfying the essential conditions laid down by Rules 2(b) and 3A of the 2016 Rules.”*

18. The Hon'ble Apex Court had categorically held that an application under second Proviso to Section 8 (8) of the PMLA Act can only be filed subject to satisfying the essential conditions laid down by Rule 2(b) and 3A of the 2016 Rules as amended in 2019. The Hon'ble Apex Court in coming to such a conclusion had also held that when an order of the Adjudicating Authority has been challenged in the higher forum, a deemed embargo operates on the conclusion of the proceedings and hence, the Special Court cannot go into the issues which the higher forums had been entrusted with. It had also categorically held that when an appeal is provided under the Statute, it gives a

vested right to any aggrieved person to exhaust the same. For better appreciation, the relevant paragraph is extracted hereunder:-

“ 46. As discussed, the powers of the Appellate Tribunal are rather wide and exhaustive. What is referred to Under Section 8(7) of the PMLA is a confirmation order which has attained finality. At the cost of repetition, once an order Under Section 8(3) of the PMLA is challenged before a higher forum, a deemed embargo operates on the conclusion of the proceedings Under Section 8(7) of the PMLA. Hence, the Special Court cannot go into the issues which the higher forums have been entrusted with. When an appeal is provided for under the statute, it gives a vested right to any aggrieved person to exhaust the same.

47. In the present case, we are concerned with the decision-making process adopted by the Special Court, as confirmed by the High Court. Instead of deferring the application filed Under Section 8(7) of the PMLA, and awaiting the adjudication by the Appellate Tribunal Under Section 26 of the PMLA, the Special Court has allowed the said application, for which exhaustive reasons have been given Independently on merits. The Special Court has, in effect, rendered the appeal Under Section 26 of the PMLA infructuous. The said action at the instance of the Special Court is totally impermissible in law.”

19. In the present case, admittedly, the appeal against the order of Adjudicating Authority is pending for consideration before the Statutory Tribunal in that regard. That apart, it is also admitted that charges have not been framed under Section 4 of the Act. In that context, the thorough reading of Rule 3A would indicate that only after framing of the charge under Section 4 of the Act, an application to move for restoration under the Second Proviso of Sub-Section 8 of Section 8 of the PMLA Act could be proceeded with.

20. That apart, the aforesaid Rule also envisages issuing of a notice in two daily newspapers having sufficient circulation in the locality and also calling

upon the claimants who may have a legitimate interest in the property or part thereof.

21. We refrain ourselves from looking into the issue as to whether the publication is necessary in dealing with an application under Sub-Section 8 of Section 8 as the first contingency under Rule 3A namely framing of Charge itself has not taken place for the Court to exercise its power under Sub-Section 8 of Section 8 apart from the fact that as already indicated, the appeal filed against the order of adjudication is pending consideration. Hence, by applying the ratio laid down by the Hon'ble Apex Court, the order impugned cannot be allowed to stand.

22. In fine, this Criminal Revision is allowed and the order impugned stands set aside. However, there shall be no order as to costs.

(C.V.K.,J.) (K.B.,J.)
13.03.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GBA

**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

GBA

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