



PROVISIONAL ATTACHMENT ORDER UNDER PMLA BEYOND 180 DAYS

The Prevention of Money Laundering Act, 2002 (hereinafter referred as PMLA) is a legislation to clamp down the money laundering across the country by attachment of property involved in money laundering.

Section 5(1) of PMLA, empowers the government through its officials vide order (also known as Provisional Attachment Order, hereinafter referred as **PAO**) on reasons to believe to provisionally attach the property involved in money laundering . Further Section 5(3) of PMLA, provides that the property attached thereto by the PAO shall be provisionally attached for a period of 180 days and the PAO will cease to have effect, except where such order is confirmed by the Adjudicating Authority in terms of Section 8(3) of PMLA.

The Hon'ble High Court of Delhi in **Vikas WSP Ltd. v. Directorate Enforcement**¹ has held that once the period prescribed under Section 5(1) has lapsed, and no confirmation order has been passed by the Adjudicating Authority as per Section 8(3) of PMLA, the PAO shall cease to have effect and therefore, the Adjudicating Authority would not have any order to confirm under Section 8(3) and resultantly, the Adjudicating Authority becomes *functus officio*. Further, the honourable High Court has interpreted that the legislation and held that Act lacks to provide the extension of validity period of PAO. The Hon'ble High Court placing reliance on **S. Kasi v. State**², has also held that the order dated

¹ WP (C) 3551/2020

² 2020 SCC OnLine SC 529



23.03.2020 passed by the Hon'ble Supreme Court in *Suo Motu* W.P. (C) No. 3/2020 will not affect the statutory validity period of the PAO.

The decision of the honourable High Court brings clarity and certainty in the provisions by restricting the validity period of the PAO and consequently safeguarding the interest of a person against the perpetual attachment of the property. The judgment also balances the rights of an individual under Article 300A of the constitution as well as secure the interest of the public exchequer.

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³ Majesty legal is law firm and aim of the present article is to provide insights regarding provisional attachment order under PMLA and recent development. The opinions presented in the article are personal in nature and not to be deemed as legal advice.