

## CHAPTER 9: FUGITIVE ECONOMIC OFFENDER (FEO)

1. *FEO - Any individual against whom a warrant of arrest has been issued for the commission of schedule offence and who has left India or being abroad has refused to come back to India in order to avoid any criminal charge and where the total value involved is 100 crores or more, then such person declared as a FEO.*
  
2. *Following offences are scheduled offences.*
  - a) *Certain offences under Indian penal code.*
  - b) *Offences under Negotiable instruments.*
  - c) *offences under RBI.*
  - d) *offences Under the customs.*
  - e) *offences under SEBI.*
  - f) *offence under prevention of corruption.*
  
3. *Procedure for declaration of FEO*
  - a) *When the Director appointed under PMLA has reason to believe that particular person is FEO then he shall file an application in front of the Special court along with the following details.*
    - (I) *reasons as to why a particular person is believed to be a FEO*
    - (II) *Any information about his whereabouts*
    - (III) *list of properties believed to be the proceeds of crime*
    - (IV) *list of all the properties / Benami properties in or outside India*
    - (V) *list of persons who may have in any interest in the properties*
  - b) *Then a special court shall issue notice to individual alleged to be FEO.*
  - c) *The notice of special court shall require the individual to appear at a particular place and in a time of not less than 6 weeks and a disclaimer and if he fails to appear then he shall be liable to declare as a FEO.*

- d) *In case of the accused being in the contracting state the notice shall be served by effecting the same with the help of authority as nominated by central government. It shall try to serve the notice within 2 weeks.*
- e) *The Notice may also be served/sent through electronic means on email address which is last update with PAN.*
- f) *where any individual to whom the notice has been issued turns up in front of the court then the proceeding shall be terminated and failure to appear would lead to the special court proceeding with application.*
- g) *If the person appears through his Council, the court may, at its discretion allow one additional week to file a reply to the application.*

## **DECLARATION OF FEO**

1. *After hearing the application if the special court is satisfied that the offence has been committed then it may declare the person as FEO.*
2. *Upon declaration of the same the properties shall stand confiscated to the central government free from all encumbrances.*
3. *The special court should identify as to which properties constitute the proceeds of crime and if the same cannot be identified then quantify the value of proceeds of crime.*
4. *If property is in a contracting state the special court may then issue a letter of request to the court in the contracting state to help in the execution of such order.*
5. *This provision does not apply in case of a property which has been acquired by a person in good faith and without knowledge that the property was derived from the proceeds of crime.*
6. *All the rights and title in confiscated property shall vest in the central government free from all charges or encumbrances.*
7. *Whereas on the conclusion of the proceedings, if the Special court finds that individual is not a FEO it shall order release of property attached.*
8. *However, if the director wants, they may withhold the release of property for the maximum period of 90 days for the purpose of saving the property for appeal.*

## **POWER TO DISALLOW CIVIL CLAIMS**

1. *If an individual has been declared as a FEO then the civil court has the authority to disallow the presentation of defending of civil cases in India.*
2. *If the person is a promoter/CEO/controlling shareholder/Majorly shareholder then this provision also comes against the LLP and companies associated to them.*

## **ATTACHMENT OF PROPERTY**

1. *The director while sending the case to the Special Court, if of the opinion that the person might deal with the property in a way which will frustrate the purpose of the proceedings then he may with the previous approval of special court attach the property for a period of 180 days and shall send a copy of the same to the special court within 30 days.*
2. *The attachment can continue for a maximum period of 180 days unless extended by the special court.*

## **POWER OF SURVEY**

*When a director based upon the material in his possession has reason to believe that a particular person may be a FEO then he may enter any place within his jurisdiction and may also request any proprietor/employee to:*

- a) *provide him necessary facilities to inspect such records and to verify if the same is out of the proceeds of crime.*
- b) *The director may:*
  - (I) *Place mark of identification upon the records inspected.*
  - (II) *Take the extracts of the records.*
  - (III) *Make an inventory of any records and property checked or verified by him .*
  - (IV) *Record the statement of any person present at the property which may be useful for the proceeding.*

## SEARCH AND SEIZURE

Where the director has reason to believe that any person may be a declared Fugitive economic offender or he is in possession of the proceeds of crime or has a property related to the proceeds of crime, then he may authorize any officer to:

- a) Enter and search any building, place, Vehicle.
- b) Break open any door / locker where the keys are not available.
- c) seize any record and property found.
- d) Place marks of identification on records inspected.
- e) Examine on oath any person who is found in possession of any record or property which may be relevant for investigation.

## SEARCH OF PERSON

1. If any authority has reason to believe that any person has secreted himself or anything under his possession which may be useful for the proceeding under the Act, then it may order to search that person and seize any property or record which may be relevant.
2. Where the authority is about to search any person, and if such person so requires, he shall be taken to the Magistrate within a period of 24 hours.
3. The magistrate before whom the person is brought if he sees no reasonable ground for search may refuse the same.
4. There must be at least two people available there as witnesses when the search is conducted
5. No female shall be searched by anyone except female

## RULES OF EVIDENCE

1. The burden of proof to establish that individual is a FEO or a property is from the proceeds of crime or the property belongs to a FEO shall lie with the director.
2. Where any person has any interest in the property which he has acquired bona fide and without knowledge then the property is from the proceeds of crime and here the burden lies upon him to prove the same.
3. The standard of proof shall be preponderance of probabilities.

## **APPEAL**

1. *An appeal may be filed against any judgement or order not being an interlocutory order of a special court to the high court.*
2. *Every appeal shall be filed within 30 days from the date of judgement and the court may allow extension of time but in no case, it can be entertained after the period of 60 days.*  
*Note - Any matter which is to be dealt by a special court cannot be tried by a civil court.*

