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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	: Chapter 11
	:
FIRESTAR DIAMOND, INC., <u>et al.</u>	: Case No. 18-10509 (SHL)
	:
Debtors.	: Jointly Administered
	:
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**DECLARATION OF MARK SAMSON IN FURTHER SUPPORT OF DEBTORS’  
MOTION FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. §§ 105, 363 AND 365,  
AND BANKRUPTCY RULES 2002, 6004 AND 6006: (i) APPROVING THE SALE  
AND ASSIGNMENT OF THE A. JAFFE ASSETS FREE AND CLEAR OF ALL LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES AND  
(ii) GRANTING RELATED RELIEF**

I, Mark Samson, declare, pursuant to section 1746 of title 28 of the United States Code,  
that:

1. I am the Chief Restructuring Officer (“CRO”) of Firestar Diamond, Inc. (“Firestar”), Fantasy, Inc. (“Fantasy”) and A. Jaffe, Inc. (“A. Jaffe,” and collectively with Firestar and Fantasy, the “Debtors”), debtors and debtors-in-possession in the above-captioned cases.

2. I submit this declaration (the “Declaration”) in further support of the *Debtors’ Motion for Entry of Orders Pursuant to 11 U.S.C. §§ 105, 363 and 365, and Rules 2002, 6004 and*

6006: (A) *Fixing the Time, Date and Place for Hearing to Consider Bidding Procedures in Connection with the Debtors' Sale of Substantially All of Their Assets*; (B)(i) *Establishing Bidding Procedures*, (ii) *Approving the Form and Manner of Notices*, and (iii) *Setting Hearing Date for the Hearing on Proposed Sale*; and (C)(i) *Approving the Proposed Sale* and (ii) *Granting Related Relief* [DE 60](the "Sale Motion") and specifically in relation to the approval of the sale of the A. Jaffe Assets<sup>1</sup> to Paramount Jewels, LLC, as designee of Parag Diamond, Inc., d/b/a Paramount Jewels (the "Winning Bidder").

3. Except as otherwise indicated, all statements in this Declaration are based on my personal knowledge, my review of relevant documents and/or my opinion based upon my experience and knowledge of the Debtors' operations and financial conditions. If called to testify, I could and would testify to each of the facts set forth herein based on such personal knowledge, review of documents and/or opinion. I am authorized to submit this Declaration on behalf of the Debtors.

**A. *Bidding Procedures***

4. As part of the Sale Motion, the Debtors requested the entry of bidding procedures and related relief for the sale of substantially all assets.

5. On April 3, 2018, the Court entered an order approving those bidding procedures (the "Bidding Procedures Order") [DE 95].

6. The Bidding Procedures Order established various procedures and deadlines that the Debtors were to follow in attempting to maximize the value of their assets for the benefit of these estates.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Sale Motion.

***B. A. Jaffe Assets***

7. Since my appointment as CRO of the Debtors on February 26, 2018, I have worked with the Debtors' professionals, management and employees to refine the Debtors' existing cash flow forecasts, related analyses and reporting and have familiarized myself with the Debtors' operations, as well as their asset and liabilities.

8. This effort at understanding the business operations has centered around a goal of selling substantially all of the Debtors' assets for going concern value. In organizing the sale effort internally at the Debtors and with the assistance of the Debtors' professionals, I have reviewed the Debtors' books and records and overseen the preparation of diligence materials for inclusion in the virtual data room established by the Debtors. I have interacted with several interested parties concerning diligence in relation to the extent of assets for sale by the Debtors.

9. With regard to the A. Jaffe Assets, the schedules of asset and liabilities filed on March 27, 2018 identify total asset value of approximately \$22.8 million, consisting of approximately \$786,000 in cash, deposits and prepayments of \$337,000, inventory of approximately \$14.2 million (at cost) and accounts receivable of approximately \$7.4 million book value.

10. Since the Petition Date, the values of the A. Jaffe Assets have changed in the ordinary course of business as the operations have continued. For instance, cash has been spent on operating and restructuring expenses, inventory has been sold and certain receivables collected or created on account of new sales.

11. In relation to the proposed sale and Modified APA with the Winning Bidder, A. Jaffe is selling and transferring approximately \$10 million of inventory at Book Value (as

defined in the Modified APA) and approximately \$6.3 million of accounts receivable, together with customer info, intellectual property, and other assigned rights and contracts. *See Modified APA, Section 2.05.* [DE 157]. For these Transferred Assets, the Winning Bidder has agreed to pay \$8 million.

***C. Marketing Efforts and Sale Diligence for A. Jaffe Assets***

12. As described in the Sale Motion, the Debtors and their professional advisors solicited offers for the purchase of their businesses from several parties and given the extensive publicity surrounding these jointly administered bankruptcy cases, many interested parties with knowledge of the financial distress of the Debtors made direct inquiry of the Debtors about a sale opportunity.

13. In addition to those parties engaged directly in diamond and jewelry trade, my office identified a list of over two hundred (200) financial buyers and private equity firms in New York and other major cities and prepared an electronic mail teaser which was transmitted to such parties in relation to the sale opportunity with these Debtors. I caused this e-blast notice to be done on two occasions.

14. Further, the Debtors caused notice of the sale opportunity to be published in the national edition of the New York Times on April 4, 2018 as required by the Bidding Procedures Order.

15. Overall, I believe that A. Jaffe has reached and adequately tested the market of companies engaged in the diamond and jewelry business and likely financial buyers with an ability to consummate a deal of this size. Almost all of the interested parties who performed diligence were either engaged in the diamond and jewelry business already or served as advisors to such companies. Some of the interested parties were direct competitors already participating in

independent jewelry space. Others were not already participating in the space and were interested in this opportunity in order to break in.

16. As of the time of the filing of this Declaration, since the first marketing efforts began, approximately fifty-two (52) parties requested non-disclosure agreements with regard to the A. Jaffe Assets, and approximately forty-one (41) parties executed non-disclosure agreements (not counting duplicates) in order to gain access to the diligence information (“Phase I Diligence”) maintained by the Debtors in a password-enabled data room. As explained in the Sale Motion, the Phase I Diligence is comprised of the last two years audited financial statements and general information concerning the Debtors’ current inventory and accounts receivable. Potential bidders were invited to inspect merchandise at the Debtors’ offices. In addition, potential bidders were invited to ask questions of A. Jaffe’s officers and key employees, financial advisors and attorneys. I believe that the Phase I Diligence provided potential bidders with sufficient information to formulate the general parameters an offer for some or all of the A. Jaffe Assets if they were interested in doing so.

17. Following approval of the Bidding Procedures, A. Jaffe made available to potential bidders additional diligence (“Phase II Diligence”) including more detailed information concerning its current inventory and accounts receivable, business operations, including sales levels for the current year and historical sales to customers (with certain redactions), intellectual property, licensing and consignment relationships and the terms thereof. Due to the highly competitive nature of the jewelry industry and the commercially sensitive nature of the information to be made available as Phase II Diligence, Phase II Diligence was only made available to potential bidders that provided A. Jaffe with a written expression of interest and support for financial wherewithal to complete the transaction described in such written expression of interest.

18. As of the time of the filing of this Declaration and since the Bidding Procedures Order was entered, approximately twelve (12) parties obtained access to the Phase II Diligence with regard to the A. Jaffe Assets as maintained by the Debtors in a password-enabled data room.<sup>2</sup>

19. Following entry of the Bidding Procedure Order, the Debtors' officers, key employees, financial advisors and attorneys continued to make themselves available to potential bidders for additional inquiry.

20. The Bidding Procedures Order established the following dates and deadlines:

Sealed Bid Deadline:	April 27, 2018
Auction(s):	May 3, 2017
Objection Deadline:	May 8, 2018
Sale Hearing:	May 15, 2018 (2:00 p.m. EST)

21. Both the Bidding Procedures Order and the Bidding Procedures attached thereto provide that the schedule for the proposed sales is subject to modification and that the Auction(s) and Sealed Bid Deadline may be adjourned, continued or extended. *See* Bidding Procedures Order, ¶¶ 2 and 6; Bidding Procedures, ¶ G.

22. On May 1, 2018, the Debtors filed a notice of the adjournment of the Business Line Auction for Firestar/Fantasy Assets and the All-Asset Auction [DE 136].<sup>3</sup> The adjournment occurred because no timely all asset bids were received for the Firestar/Fantasy Assets.

23. I believe the lack of bidding on the entirety of the Firestar/Fantasy Assets was due, at least part, to certain actions of various parties in the Union of India, including the passage of a

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<sup>2</sup> Counsel to the Court appointed Examiner, Punjab National Bank, and the Ministry of Corporate Affairs of India were also provided with confidential access to all materials from both Phase I Diligence and Phase II Diligence.

<sup>3</sup>The Debtors have received multiple bids from various parties in relation to the Firestar/Fantasy Assets and continue to review, negotiate and discuss those bids with their prepetition lenders. For the avoidance of doubt, the Debtors will provide further pleadings and support in relation to the sale of the Firestar/Fantasy Assets.

certain ordinance on or about April 21, 2018. A copy of the “Fugitive Economic Offenders Ordinance, 2018” is attached hereto as **Exhibit A**.

24. I also believe that this Ordinance may well have impacted bidding by certain previously interested parties on the A. Jaffe Assets.

***D. Bid Qualification and Business Line Auction for A. Jaffe Assets***

25. Prior to the Auction, A. Jaffe received four (4) bid packages. Thereafter, with the assistance of counsel to the Debtors, I sought to investigate the four (4) bidders’ connections, if any, to the Debtors, their insiders, affiliated companies and/or Nirav Modi. We received representations from each bidder group confirming a lack of any connections with Nirav Modi or any affiliates. Parag Diamonds, Inc., d/b/a Paramount Jewels (“Paramount”) disclosed that the sister of Anurag Jain, who is a manager at Paramount, is married to the brother of Sumay Bhansali. Other than this limited connection by marriage. No other connections were disclosed by any of parties which submitted bids. Following that confirmation, the Debtors advised the four bidders that they were Qualified Bidders and invited them all to attend the Auction on May 3, 2018 at the offices of Marks Paneth LLP in New York, New York, commencing at approximately 10:00 a.m.

26. Prior to the commencement of the Auction, each Qualified Bidder group was assigned a letter designation: Group A, B, C, and D, respectively and seated with their counsel at separate tables.

27. The Auction was conducted by counsel to A. Jaffe and attended by certain representatives of A. Jaffe, including myself, A. Jaffe’s independent director, special counsel and the financial advisors to A. Jaffe. Jorian Rose, an attorney and partner of the court appointed Examiner, also attended the Auction.

28. The formal bidding and the overall Auction proceeding was recorded by a stenographer.

29. The Auction commenced at approximately 10:00 a.m. and all but one of the bidders bid in multiple rounds with breaks at various points in time. At the end of bidding, the highest bid of \$8,000,000 was submitted by Paramount (Group D), which bid included an amount of \$6,950,000 in cash and \$1,050,000 as a secured note payable due in one year from closing. The second highest bid of \$6,950,000 cash was submitted by Flourish City Holdings, Ltd. (“FCH”) (Group B). The third highest bid of \$6,850,000 case was submitted by Samir Gems NV (“Samir”) (Group A). A copy of the transcript of the Auction was filed with the Court on May 11, 2018 [DE 158].

30. At approximately 3:30 p.m., A. Jaffe determined to close the Auction and designated Group D (Paramount) to be the Winning Bidder and Group B (FCH) to be the Backup Bidder, subject to approval by this Court.

31. Following the Auction and based on certain discussions and concessions negotiated at the Auction, A. Jaffe and both the Winning Bidder and Backup Bidder negotiated revised forms of Modified APA (a/k/a purchase agreement) in relation to the A. Jaffe Assets.

32. My counsel filed with this Court final executed copies of the Modified APA with the Winning Bidder on May 11, 2018 [DE 157].

33. A. Jaffe and Paramount intend to contemplate closing the sale(s) no later than May 31, 2018 and the Purchase Agreement contemplates the same. A. Jaffe understands that the Winning Bidder intends to market the acquired assets at a major trade show to be held the first week of June in Las Vegas, NV and that a prompt closing is therefore required to preserve the benefit of its bargain. Further, A. Jaffe desires a prompt closing in order to minimize costs of administering and preserving the assets of the A. Jaffe estate.

***E. Debtor's Business Judgment***

34. I believe that the Sale for the A. Jaffe Assets represents the sound business judgment of A. Jaffe and is appropriate in light of the facts and circumstances set forth herein. After an extensive marketing process and highly competitive Auction, I believe that the Sale to the Winning Bidder is the highest and best bid achievable under the circumstances because, among other things, (i) the purchase price was the highest among the Qualified Bidders and (ii) the Winning Bidder appears eager and able to close the transaction within the contemplated time frame. I believe it is important that the proposed Sale be closed as quickly as reasonably possible to avoid continuing losses and maximize the net asset value for creditors of this estate. In my view, the proposed Sale to the Winning Bidder accomplishes this.

35. I submit that the sale process accomplished by A. Jaffe complies in form and substance with the requirements of the Bidding Procedures Order.

36. As soon as the documentation was completed, it was docketed publicly with the Court.

37. Other than the marketing and sale process set forth herein and proposed through the Sale Motion, A. Jaffe has not commissioned any independent appraisal or other outside valuation of the A. Jaffe Assets. Notwithstanding, I believe that we have adequately tested the market and that the proposed sale to the Winning Bidder represents the highest and best value obtainable for the A. Jaffe Assets under the circumstances.

38. I'm not aware of any reasonable alternative sale strategies which are likely to yield a greater net recovery to the A. Jaffe estate.

39. I believe that it is probable that a sale of the A Jaffe Assets absent the India based fraud allegations and the related actions by various authorities in India would have yielded higher bids for a going concern Auction. However, A. Jaffe cannot change those circumstances or the current environment within the time frame required to sell the A. Jaffe Assets.

40. The only likely alternative that I envision to approving the sale to the Winning Bidder is a prompt liquidation of the A. Jaffe Assets.

41. I don't foresee any likely rehabilitation of the A. Jaffe brand if that brand and associated jewelry is effectively delayed for 4 to 6 months while an investigation of the alleged fraud is potentially concluded. Without personnel supporting and promoting the brand at the retailer customers, competitors will very likely acquire the market share currently enjoyed by A. Jaffe.

42. Collection of accounts receivable from A. Jaffe's retailers will also become far more challenging in the event A. Jaffe is forced to halt operations and sit dormant for 4 to 6 months.

43. The relatively large number of small customer accounts which A. Jaffe maintains would increase the degree of difficulty for any party seeking to collect in any environment. Much of A. Jaffe's outstanding receivables are already past due. This may be due in large part to a challenging retail landscape overall in this country, but a halt to A. Jaffe operations in my view would only make collection more difficult.

44. Regardless of contract rights, some customers would probably seek to return goods and try and effectuate an offset as against the amounts A. Jaffe (or its estate) would seek to collect. Net recovery on such returned goods if accepted and liquidated would be far less than the face amount of receivables due by these customers.

45. Generally, my experience tells me that forced liquidation sales of inventory is not the best way to maximize value of that inventory and if the brand value is not maintained for A. Jaffe in a delayed liquidation, it is highly probably that melting that branded inventory may be the best option remaining.

46. For these reasons, I think the sale to the Winning Bidder after auction and in keeping with the requirements established by the Bidding Procedures Order is the best available value under the circumstances and is better than any available alternative method or strategy of liquidation.

***F. Good Faith Purchaser For Value***

47. I believe that all of the Qualified Bidders conducted diligence, submitted bids, and participated in the Auction in good faith and in accordance with the Bidding Procedures approved by this Court. Following the Auction, both Paramount, as Winning Bidder, and FCH, as Backup Bidder, negotiated in good faith and at arms' length toward finalization of the Modified APA documents and increased their required deposits.

48. I believe both the Winning Bidder and the Backup Bidder to be good faith purchasers.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on May 12, 2018

By: /s/Mark Samson  
Mark Samson, Chief Restructuring Officer

**Exhibit A**

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—18

REGISTERED NO. DL—(N)04/0007/2003—18



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 21] नई दिल्ली, शनिवार, अप्रैल 21, 2018/ वैशाख 1, 1940 (शक)  
No. 21] NEW DELHI, SATURDAY, APRIL 21, 2018/VAISAKHA 1, 1940 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

*New Delhi, the 21st April, 2018/Vaisakha 1, 1940 (Saka)*

### THE FUGITIVE ECONOMIC OFFENDERS ORDINANCE, 2018

No. 1 of 2018

Promulgated by the President in the Sixty-ninth Year of the  
Republic of India.

An Ordinance to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts, to preserve the sanctity of the rule of law in India and for matters connected therewith or incidental thereto.

WHEREAS the Fugitive Economic Offenders Bill, 2018 was introduced on the 12th day of March, 2018 in the House of the People;

AND WHEREAS the said Bill could not be taken up for consideration and passing in the House of the People;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

#### CHAPTER I

#### PRELIMINARY

1. (1) This Ordinance may be called the Fugitive Economic Offenders Ordinance, 2018.

Short title,  
extent and  
commencement.

(2) It extends to the whole of India.

(3) It shall come into force at once.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) “Administrator” means an Administrator appointed under sub-section (1) of section 15;

(b) “benami property” and “benami transaction” shall have the same meanings as assigned to them under clauses (8) and (9) respectively of section 2 of the Prohibition of Benami Property Transactions Act, 1988;

45 of 1988.

(c) “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(d) “Deputy Director” means the Deputy Director appointed under sub-section (1) of section 49 of the Prevention of Money-laundering Act, 2002;

15 of 2003.

(e) “Director” means the Director appointed under sub-section (1) of section 49 of the Prevention of Money-laundering Act, 2002;

15 of 2003.

(f) “fugitive economic offender” means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who—

(i) has left India so as to avoid criminal prosecution; or

(ii) being abroad, refuses to return to India to face criminal prosecution;

(g) “key managerial personnel” shall have the same meaning as assigned to it in clause (51) of section 2 of the Companies Act, 2013;

18 of 2013.

(h) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(i) “person” includes—

(i) an individual;

(ii) a Hindu Undivided Family;

(iii) a company;

(iv) a trust;

(v) a partnership;

(vi) a limited liability partnership;

(vii) an association of persons or a body of individuals, whether incorporated or not;

(viii) every artificial juridical person not falling within any of the preceding sub-clauses; and

(ix) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

(j) “prescribed” means prescribed by rules made under this Act;

(k) “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, or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

(l) “Schedule” means the Schedule appended to this Act;

(m) “Scheduled Offence” means an offence specified in the Schedule, if the total value involved in such offence or offences is one hundred crore rupees or more;

15 of 2003. (n) "Special Court" means a Court of Session designated as a Special Court under sub-section (1) of section 43 of the Prevention of Money-laundering Act, 2002.

15 of 2003. (2) The words and expressions used and not defined in this Ordinance but defined in the Prevention of Money-laundering Act, 2002 shall have the meanings respectively assigned to them in that Act.

3. The provisions of this Ordinance shall apply to any individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Ordinance. Application of Ordinance.

## CHAPTER II

### DECLARATION OF FUGITIVE ECONOMIC OFFENDERS AND CONFISCATION OF PROPERTY

4. (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and manner as may be prescribed in the Special Court that such individual may be declared as a fugitive economic offender. Application for declaration of fugitive economic offender and procedure therefor.

(2) The application referred to in sub-section (1) shall contain—

(a) reasons for the belief that an individual is a fugitive economic offender;

(b) any information available as to the whereabouts of the fugitive economic offender;

(c) a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;

(d) a list of properties or benami property owned by the individual in India or abroad for which confiscation is sought; and

(e) a list of persons who may have an interest in any of the properties listed under clauses (c) and (d).

15 of 2003. (3) The Authorities appointed for the purposes of the Prevention of Money-laundering Act, 2002 shall be the Authorities for the purposes of this Ordinance.

5. (1) The Director or any other officer authorised by the Director, not below the rank of Deputy Director, may, with the permission of the Special Court, attach any property mentioned in the application under section 4 by an order in writing in such manner as may be prescribed. Attachment of property.

(2) Notwithstanding anything contained in sub-section (1) or section 4 the Director or any other officer, not below the rank of Deputy Director, authorised by the Director, may, by an order in writing, at any time prior to the filing of the application under section 4, attach any property—

(a) for which there is a reason to believe that the property is proceeds of crime, or is a property owned by an individual who is a fugitive economic offender; and

(b) which is being or is likely to be dealt with in a manner which may result in the property being unavailable for confiscation:

Provided that the Director or any other officer who provisionally attaches any property under this sub-section shall, within a period of thirty days from the date of such attachment, file an application under section 4 before the Special Court.

(3) The attachment of any property under this section shall continue for a period of one hundred and eighty days from the date of order of attachment or such other period as may be extended by the Special Court before the expiry of such period.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

*Explanation.*— For the purposes of this sub-section, the expression “person interested”, in relation to any immovable property includes all persons claiming or entitled to claim any interest in the property.

Powers of Director and other officers.

**6.** The Director or any other officer shall, for the purposes of section 4, have the same powers as are vested in a civil court under the Code of Civil Procedure, 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 reporting entity 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.

Power of survey.

**7. (1)** Notwithstanding anything contained in any other provisions of this Ordinance, where a Director or any other officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing), that an individual may be a fugitive economic offender, he may enter any place—

- (i) within the limits of the area assigned to him; or
- (ii) in respect of which he is authorised for the purposes of this section, by such other authority, who is assigned the area within which such place is situated.

(2) Where the Director or any other officer authorised by him, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an individual may be a fugitive economic offender and it is necessary to enter any place as mentioned in sub-section (1), he may request any proprietor, employee or any other person who may be present at that time, to—

- (a) afford him the necessary facility to inspect such records as he may require and which may be available at such place;
- (b) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and
- (c) furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings under this Ordinance.

(3) The Director, or any other officer acting under this section may—

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom;
- (ii) make an inventory of any property checked or verified by him; and
- (iii) record the statement of any person present at the property which may be useful for, or relevant to, any proceeding under this Ordinance.

Search and seizure.

**8. (1)** Notwithstanding anything contained in any other law for the time being in force, where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

- (i) may be declared as a fugitive economic offender;
- (ii) is in possession of any proceeds of crime;
- (iii) is in possession of any records which may relate to proceeds of crime; or

(iv) is in possession of any property related to proceeds of crime,  
then, subject to any rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property; and

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Ordinance.

(2) Where an authority, upon information obtained during survey under section 7, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence.

**9.** Notwithstanding anything contained in any other law for the time being in force—

Search of persons.

(a) if an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Ordinance, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Ordinance;

(b) where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or the Magistrate's Court;

(c) if the requisition under clause (b) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer, superior in rank to him, or the Magistrate's Court;

(d) the Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made;

(e) before making the search under clause (a) or clause (d), the authority shall call upon two or more persons to attend and witness the search and the search shall be made in the presence of such persons;

(f) the authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list;

(g) no female shall be searched by anyone except a female; and

(h) the authority shall record the statement of the person searched under clause (a) or clause (e) in respect of the records or proceeds of crime found or seized in the course of the search.

Notice.

**10.** (1) Where an application under section 4 has been duly filed, the Special Court shall issue a notice to an individual who is alleged to be a fugitive economic offender.

(2) The notice referred to in sub-section (1), shall also be issued to any other person who has any interest in the property mentioned in the application under sub-section (2) of section 4.

(3) A notice under sub-section (1) shall—

(a) require the individual to appear at a specified place and time not less than six weeks from the date of issue of such notice; and

(b) state that failure to appear on the specified place and time shall result in a declaration of the individual as a fugitive economic offender and confiscation of property under this Ordinance.

(4) A notice under sub-section (1) shall be forwarded to such authority, as the Central Government may notify, for effecting service in a contracting State.

(5) The authority referred to in sub-section (4) shall make efforts to serve the notice within a period of two weeks in such manner as may be prescribed.

(6) A notice under sub-section (1) may also be served to the individual alleged to be a fugitive economic offender by electronic means to—

(a) his electronic mail address submitted in connection with an application for allotment of Permanent Account Number under section 139A of the Income-tax Act, 1961;

43 of 1961.

(b) his electronic mail address submitted in connection with an application for enrolment under section 3 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016;

18 of 2016.

(c) any other electronic account as may be prescribed, belonging to the individual which is accessed by him over the internet, subject to the satisfaction of the Special Court that such account has been recently accessed by the individual and constitutes a reasonable method for communication of the notice to the individual.

Procedure for hearing application.

**11.** (1) Where any individual to whom notice has been issued under sub-section (1) of section 10 appears in person at the place and time specified in the notice, the Special Court may terminate the proceedings under this Ordinance.

(2) Where any individual to whom notice has been issued under sub-section (1) of section 10 fails to appear at the place and time specified in the notice, but enters appearance through counsel, the Special Court may in its discretion give a period of one week to file a reply to the application under section 4.

(3) Where any individual to whom notice has been issued under sub-section (1) of section 10 fails to enter appearance either in person or through counsel, and the Special Court is satisfied—

(a) that service of notice has been effected on such party; or

(b) that notice could not be served in spite of best efforts because such individual has evaded service of notice,

it may, after recording reasons in writing, proceed to hear the application.

(4) The Special Court may also give any person to whom notice has been issued under sub-section (2) of section 10 a period of one week to file a reply to the application under section 4.

**12.** (1) After hearing the application under section 4, if the Special Court is satisfied that an individual is a fugitive economic offender, it may, by an order, declare the individual as a fugitive economic offender for reasons to be recorded in writing.

Declaration of fugitive economic offender.

(2) On a declaration under sub-section (1), the Special Court may order that any of the following properties stand confiscated to the Central Government—

(a) the proceeds of crime in India or abroad, whether or not such property is owned by the fugitive economic offender; and

(b) any other property or benami property in India or abroad, owned by the fugitive economic offender.

(3) The confiscation order of the Special Court shall, to the extent possible, identify the properties in India or abroad that constitute proceeds of crime which are to be confiscated and in case such properties cannot be identified, quantify the value of the proceeds of crime.

(4) The confiscation order of the Special Court shall separately list any other property owned by the fugitive economic offender in India which is to be confiscated.

(5) Where the Special Court has made an order for confiscation of any property under sub-section (2), and such property is in a contracting State, the Special Court may issue a letter of request to a Court or authority in the contracting State for execution of such order.

(6) Every letter of request to be transmitted to a contracting State under sub-section (5) shall be transmitted in such form and manner as the Central Government may, by notification, specify in this behalf.

(7) The Special Court may, while making the confiscation order, exempt from confiscation any property which is a proceed of crime in which any other person, other than the fugitive economic offender, has an interest if it is satisfied that such interest was acquired *bonafide* and without knowledge of the fact that the property was proceeds of crime.

(8) All the rights and title in the confiscated property shall, from the date of the confiscation order, vest in the Central Government, free from all encumbrances.

(9) Where on the conclusion of the proceedings, the Special Court finds that the individual is not a fugitive economic offender, the Special Court shall order release of property or record attached or seized under this Ordinance to the person entitled to receive it.

(10) Where an order releasing the property has been made by the Special Court under sub-section (9), the Director or any other officer authorised by him in this behalf may withhold the release of any such property or record for a period of ninety days from the date of receipt of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Ordinance.

**13.** (1) Where at any time after the institution of the application under section 4, any other property is discovered or identified which constitutes proceeds of crime or is property owned by the fugitive economic offender liable to be confiscated under this Ordinance, the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, may file a supplementary application in the Special Court seeking confiscation of such properties.

Supplementary Application.

(2) The provisions of sections 4 to 12 shall, as far as may be, apply in relation to such application as they apply in relation to an application under section 4.

**14.** Notwithstanding anything contained in any other law for the time being in force,—

(a) on a declaration of an individual as a fugitive economic offender, any Court or tribunal in India, in any civil proceeding before it, may, disallow such individual from putting forward or defending any civil claim; and

Power to disallow civil claims.

(b) any Court or tribunal in India in any civil proceeding before it, may, disallow any company or limited liability partnership from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company or the limited liability partnership, or any promoter or key managerial personnel or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as a fugitive economic offender.

*Explanation.*—For the purposes of this section, the expressions—

(a) “company” means anybody corporate and includes a firm, or other association of persons; and

(b) “limited liability partnership” shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008.

6 of 2009.

Management of properties confiscated under this Ordinance.

**15.** (1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (2) of section 12 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 12:

Provided that the Central Government or the Administrator shall not dispose of any property for a period of ninety days from the date of the order under sub-section (2) of section 12.

### CHAPTER III

#### MISCELLANEOUS

Rules of evidence.

**16.** (1) The burden of proof for establishing—

(a) that an individual is a fugitive economic offender; or

(b) that a property is the proceeds of crime or any other property in which the individual alleged to be a fugitive economic offender has an interest,

shall be on the Director or the person authorised by the Director to file the application under section 4.

(2) Notwithstanding anything contained in any other law for the time being in force, where any person referred to in sub-section (2) of section 10 claims that any interest in any property was acquired *bonafide* and without knowledge of the fact that, such property constitutes proceeds of crime, the burden of proving such fact shall lie upon him.

(3) The standard of proof applicable to the determination of facts by the Special Court under this Ordinance shall be preponderance of probabilities.

Appeal.

**17.** (1) An appeal shall lie from any judgment or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of the period of ninety days.

**18.** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Special Court is empowered by or under this Ordinance to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance.

Bar of jurisdiction.

**19.** No suit, prosecution or other legal proceeding shall lie against the Central Government or Presiding Officer of the Special Court or Director or Deputy Director or any other officer authorised by the Director for anything which is in good faith done or intended to be done under this Ordinance or any rule made thereunder.

Protection of action taken in good faith.

**20.** (1) The Central Government may, having regard to the objects of this Ordinance, and if it considers necessary or expedient so to do, by notification add to, or as the case may be, omit from the First Schedule any offences specified therein.

Power of Central Government to amend Schedule.

(2) Every such notification shall, as soon as after it is issued, be laid before each House of Parliament.

**21.** The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Overriding effect.

**22.** The provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force.

Application of other laws not barred.

**23.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

Power to make rules.

(2) In particular, and without prejudice to generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner of filing application under sub-section (1) of section 4;

(b) the manner of attachment of property under sub-section (1) of section 5;

(c) other matters under clause (f) of section 6;

(d) the procedure for conducting search and seizure under section 8;

(e) the manner in which the notice shall be served under sub-section (5) of section 10;

(f) any other electronic account under clause (c) of sub-section (6) of section 10;

(g) the manner and conditions subject to which the Administrator shall receive and manage the property confiscated under sub-section (2) of section 15; and

(h) any other matter which is required to be, or may be, prescribed or in respect of which provision is to be made by rules.

**24.** Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Laying of rules before Parliament.

**25.** (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(l) and (m)]

Section	Description of offence
<b>I. Offences under the Indian Penal Code (45 of 1860)</b>	
120B read with any offence in this Schedule	Punishment of criminal conspiracy.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.
471	Using as genuine a forged [document or electronic record].
472	Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467.
473	Making or possessing counterfeit seal, etc., intent to commit forgery punishable otherwise.
475	Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.
476	Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.

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<b>Section</b>	<b>Description of offence</b>
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.
<b>II. Offence under the Negotiable Instruments Act, 1881 (26 of 1881)</b>	
138	Dishonour of cheque for insufficiency, etc., of funds in the account.
<b>III. Offence under the Reserve Bank of India Act, 1934 (2 of 1934)</b>	
58B	Penalties.
<b>IV. Offences under the Central Excise Act, 1944 (1 of 1944)</b>	
Section 9	Offences and Penalties.
<b>V. Offences under the Customs Act, 1962 (52 of 1962)</b>	
135	Evasion of duty or prohibitions.
<b>VI. Offences under the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988)</b>	
3	Prohibition of benami transactions.
<b>VII. Offences under the Prevention of Corruption Act, 1988 (49 of 1988)</b>	
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	Punishment for abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.
<b>VIII. Offences under the Securities and Exchange Board of India Act, 1992 (15 of 1992)</b>	
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.
24	Offences for contravention of the provisions of the Act.
<b>IX. Offences under the Prevention of Money Laundering Act, 2002 (15 of 2003)</b>	
3	Offence of money-laundering.
4	Punishment for money-laundering.
<b>X. Offences under the Limited Liability Partnership Act, 2008 (6 of 2009)</b>	
Sub-section (2) of section 30	Carrying on business with intent or purpose to defraud creditors of the Limited Liability Partnership or any other person or for any other fraudulent purpose.

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Section	Description of offence
<b>XI. Offences under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010)</b>	
34	Penalty for article or currency or security obtained in contravention of Section 10.
35	Punishment for contravention of any provision of the Act.
<b>XII. Offences under the Companies Act, 2013 (18 of 2013)</b>	
Sub-section (4) of section 42 of the Companies Act, 2013 read with section 24 of the Securities and Exchange Board of India Act, 1992 (15 of 1992)	Offer or invitation for subscription of securities on private placement.
74	Repayment of deposits, etc., accepted before commencement of the Companies Act, 2013.
76A	Punishment for contravention of section 73 or section 76 of the Companies Act, 2013.
Second proviso to sub-section (4) of section 206	Carrying on business of a company for a fraudulent or unlawful purpose.
Clause (b) of section 213	Conducting the business of a company with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose.
447	Punishment for fraud.
452	Punishment for wrongful withholding of property.
<b>XIII. Offences under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015)</b>	
51	Punishment for wilful attempt to evade tax.
<b>XIV. Offences under the Insolvency and Bankruptcy Code, 2016 (31 of 2016)</b>	
69	Punishment for transactions defrauding creditors.
<b>XV. Offences under the Central Goods and Services Tax Act, 2017 (12 of 2017)</b>	
Sub-section (5) of section 132	Punishment for certain offences.

RAMNATH KOVIND,  
*President.*

DR. G. NARAYANA RAJU,  
*Secretary to the Govt. of India.*