

## Sushen Mohan Gupta Vs Deputy Director, Directorate Of Enforcement, Delhi

**Court:** Appellate Tribunal Under Prevention Of Money Laundering Act

**Date of Decision:** July 3, 2023

**Acts Referred:** Prevention Of Money Laundering Act, 2002 " Section 3, 8(5), 8(7), 21(2), 58B, 60(2A)  
Code Of Criminal Procedure, 1973 " Section 294

**Hon'ble Judges:** G. C. Mishra, Member; Rajesh Malhotra, Member

**Bench:** Division Bench

**Advocate:** Faraz Maqbool, Chandan Kumar, Nidhi Raman, Devika Bajaj

**Final Decision:** Dismissed

### Judgement

1. The present appeal has been preferred against the impugned order dated 22.11.2016 passed by the Ld. Adjudicating Authority (AA) in OA

no.59/2016 allowing the prayer of the applicant i.e. Deputy Director, Directorate of Enforcement, Delhi Zonal Office, New Delhi, wherein the order

of retention of seized material has been passed as under:-

The Order of retention shall:

(a) Continue during the pendency of the proceedings, relating to any offence under this Act before competent court of criminal jurisdiction outside

India as the case maybe;

(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 Adjudicating Authority.

2. The appellant has challenged the aforesaid impugned order through present appeal on the grounds mentioned in the memo of appeal seeking

following reliefs:-

(a) To set aside the impugned order dated 22.11.2016 passed by the Adjudicating Authority in Original Application No. 59 of 2016;

(b) Pass such other order or orders as this Tribunal may deem fit and proper in the facts and circumstances of the present case.

3. During the course of final hearing of the appeal on 24.05.2023 the Ld. Counsel for the appellant sought two weeks' time to file their written

synopsis, which was considered and allowed while keeping the order reserved. More than two weeks have already passed but there is no written

synopsis has been filed by the appellant.

4. The written synopsis dated 06.02.2019 & 27.02.2023 filed on 08.02.2019 & 06.03.2023 respectively by the respondent are available on record.

5. The Ld. Counsels for both the parties orally submitted their oral arguments.

6. During the course of oral arguments, the Ld. Counsel for the appellant confined his submissions to the return of the devices and hard disk seized

vide Annexure-A to the Seizure Memo/Panchnama dated 15.06.2016 during the course of search.

7. Main contention of the appellant in the appeal is that the devices and hard disk are not required for the investigation and those may be returned and

that retention of those devices and hard disk are without any basis.

8. It is on the basis of above the appellant prayed for setting aside the impugned order and allow the appeal.

9. On the other hand, the Ld. Counsel for the respondent, inter alia, submitted that the allegations against the appellant are regarding illegal dealings of

M/s Finmeccanica, Italy in the matter of procurement of 12 VVIPs Helicopters from M/s Agusta Westland, U.K. A subsidiary of M/s Finmeccanica,

Italy and that investigation is still pending and that correspondence have been retrieved from the Laptop of one of the employees of Gautam Khaitan,

which reflects that the appellant is the effective controller of M/s Interdev Pvt. Ltd., Singapore and that the appellant is giving instructions on e-mail

regarding transfer of funds M/s IDS, India to M/s Interdev Pvt. Ltd., Singapore. The appellant was arrested on 26.03.2019 and now is on bail and that

prosecution complaint against the appellant has already been filed on 22.05.2019 before the Special Court, Rouse Avenue, New Delhi and that

cognizance has already been taken by the Court.

10. During the course of hearing, it is also submitted by Ld. Counsel for the respondent that investigation is still going on and that these devices would

be required to be produced before the Ld. Special Court during the course of trial as material evidence and stressed that the OA may be dismissed as

the return of the devices and hard disk will affect the case of the prosecution. She further contended that appellant has not admitted the retrieved

emails/data u/s 294 Cr.P.C. till date, before the Trial Court, and hence, hard disc will be required to correlate the said retrieved material with the soft

copies contained therein. Prayer is accordingly made to dismiss the present appeal being devoid of any merits.

11. Heard both parties and perused the materials available on record. The two weeks time granted to the appellant for filing of the written

synopsis has expired and no written synopsis has been filed. Therefore, we are proceeding to decide the appeal on the basis of materials available on

record.

12. On perusal of the order sheet dated 04.05.2017 reveals that it was submitted by the Ld. Counsel for the appellant that he had requested the

Adjudicating Authority to supply the documents and the same was not supplied, so it was ordered that this submission would be considered while

considering the appeal.

However, on 30.08.2017 this submission on behalf of the appellant was considered and the following order was passed :-

“One final opportunity is granted to respondent to file the reply within four weeks with an advance copy to the learned counsel for the appellant

who may file the rejoinder four weeks thereafter.

List on 02nd February, 2018.

This order is passed in continuation of the order dated 04th May, 2017. The learned counsel for the respondent admits that out of the following

materials were seized from the office of the appellant:-

1. One loose bunch of documents Marked “A” containing pages 1 to 257 recovered from the office of M/s DMG Finance & Investment Pvt. Ltd,

New Delhi.

2. One folder containing documents of DMG Group- Pages from 1 to 24 recovered from the office of M/s DMG Finance & Investment Pvt. Ltd.,

New Delhi- Marked “B”.

3. One filed marked “C” containing pages from 1 to 140 in the name of M/s DM power Pvt. Ltd., New Delhi recovered from the office of M/s

DMG Finance & Investment Pvt. Ltd., New Delhi for the year 2010-11 to 2014-15.

4. One box file marked “D” containing pages from 01 to 552 of DMG Group recovered from the office of M/s DMG Finance & Investment Pvt.

Ltd., New Delhi.

5. One pen drive “MCB” of black color containing details of FII Fata recovered from the company’s office.

6. One memory card “Sandisk Ultra” of 16 GB with Sandisk Adopter.

7. One pen drive marked “Carlson Rezidor Hotel Group” with its cover

8. One Lenovo computer of black colour, Machine type 10020 bearing S/N: ES05129981, configuration no. 57103484 & model no. R39X29716012

recovered from the room of Shri Dev Mohan Gupta in the office of M/s DMG Finance & Investment Pvt. Ltd., New Delhi.

9. One apple all-in-one Desktop of silver color bearing no. S/N: C02G9G99DHJF & EMC2428 recovered from the room of Shri Sushant Gupta in the

office of M/s DMG Finance & Investment Pvt. Ltd., New Delhi.

10. One CPU of Dell in black color bearing Service Tag S/N 7QZS022 & Express Service Tag 16869689930, recovered from the above named

company's secretary cabin.

11. One hard disk (Segate) of Sata Capacity 500 GB bearing S/N: Z6E9QGJN & P/N: IBD142-502 recovered from the above named company's

secretary cabin.

12. One Apple all-in-one desktop of silver color bearing S/N: COZG9FLCDHJF & EMC No.: 2428 recovered from the room of Shri Sushen Gupta of

the above mentioned company. Learned counsel for the respondent submits that copies of the material as mentioned in S. No. 8, 9 & 12 have been

supplied to the appellant against receipt. The learned counsel for the appellant, on the other hand, has disputed the receipt of the material mentioned at

S.No. 8. Counsel for the appellant further submits that the appellant has not been charged-sheeted in the prosecution complaint nor any complaint is

pending against the appellant under Section 3 of the PMLA, 2002. More than 12 months have been passed, despite of various reminders, copies are

not supplied. Counsel has referred Section 21(2) of PMLA, 2002 wherein it was mandated that that the person from whom records seized or frozen

shall be entitled to obtain copies of record if the Department wishes to retain the records. Even his name is not mentioned in ECIR. It is not dispute

that out of 12 items, copies of documents at serial No. 9 & 12 have been supplied. Under these circumstances, the respondent is directed to supply the

copy of the remaining material seized as mentioned in S.No. 1 to 7, 8, 10 & 11 within two weeks from today. As far as the item No. 8 is concerned

since no receipt is produced by the respondent, the copy of the same be supplied again at the cost to be recovered from the appellant.

List the matter on 02nd February, 2018.

13. After the said order another order was passed on 15.10.2019 after hearing the Ld. Counsel. The order is reproduced below:-

"Learned counsels for both the parties are present. Pleadings are complete. Written synopsis are on record. Learned counsel for the appellant

submits that certain developments have taken place after the respondent had filed prosecution complaint in which the appellant is one of the accused.

In view of the above, he wants to file fresh written synopsis. The aforesaid contention of the appellant is strongly objected by the learned counsel for

the respondent. In the given circumstances, it would be appropriate on the part of the appellant to have oral submissions on his point at the time of final

hearing.

List on 17th January, 2020.

But no written synopsis has been filed thereafter.

14. From the aforesaid orders it is clear that the copies of material as mentioned in Serial Nos. 9 and 10 were supplied earlier and copy of the

remaining material as mentioned in Serial Nos. 1 to 7, 8, 10 & 11 were directed to be supplied at the cost to be recovered from the applicant. After

this said order dated 30.08.2017 there is nothing on record to show that the said order has not been complied or that the copy of the materials have not

yet been supplied to the appellant.

15. During the course of hearing dated 30.08.2017 the appellant had referred Section 21(2) of PMLA, 2002. As the person, whom records seized or

frozen shall be entitled to obtain copy of records, so order was accordingly passed on that date.

16. Now, the only question remains to be decided is whether the devices and hard disk are required to be retained or to be returned physically to the

appellant. It is an admitted fact that prosecution complaint has already been filed against the applicant and that cognizance of offences under PMLA,

2002 has already been taken by the Ld. Special Court. The devices and the hard disk, as per the submission of the Ld. Counsel for the respondent, are

required during the course of trial before the Ld. Special Court. According to our view the devices and hard disk are required as evidence during the

course of trial under PMLA and that non production of same may effect the prosecution case for correlating the retrieved material with the hard disc.

Furthermore, the copy of the materials seized under the search and seizure memo dated 15.06.2016 has already been directed to be supplied. It being

so there is compliance of legal provisions as provided under Section 21(2) of PMLA, 2002.

17. We have also perused the impugned order. It is seen from the impugned order that the appellant has taken several pleas which inter alia includes

that the applicant has not even prima facie indicated how this appellant is the effective controller of M/s Interdev Pvt. Ltd., Singapore and that the

applicant has not even placed their alleged correspondence it relies upon to show that the answering respondent (present appellant) was controlling the

said M/s Interdev Pvt. Ltd., Singapore and that it gave any instructions regarding the alleged transfer of funds and that it has any connection with

and/or relevance to the M/s Interstaller Technologies Ltd., Mauritius and that the seized documents/articles on account having no relevance to the

applicant's investigation and that no case has been made out in law or facts by the applicant and that copies of the documents/articles seized has

not been provided as is mandated u/s 21(2) of PMLA, 2002.

18. The alleged articles and documents have been seized on 15.06.2016 and the main plea of the respondent herein was that these articles and

documents are required to be retained for the purpose of investigation and that the investigation was pending when the OA was filed and that there

was prima facie case for the respondent herein to seek permission from the Adjudication Authority to retain the articles/documents. During the

pendency of the present appeal, prosecution complaint under PMLA, 2002 has already been filed and that, according to the submission of respondent,

further investigation/Letter of request to other countries is still going on and that the devices and hard disk are required to be produced before the

Special Court under PMLA, 2002 during the course of trial.

19. There are sufficient reasons for retention of articles and documents for the purpose of the trial. We do not find any illegality in the order passed by

the Ld. Adjudicating Authority.

20. In the given circumstances as discussed above, which includes the compliance of Section 21(2) of PMLA, 2002, we do not find any merit in the

Appeal.

Hence, the appeal is dismissed. Order is pronounced in open Court.

The appeal record be consigned to record room.

APPEAL DISMISSED.