

(2023) 11 ATPMLA CK 0005

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-6114/DI/2019, FPA-PMLA-2549/DLI/2018

Anup Prakash Garg

APPELLANT

Vs

Deputy Director, Directorate Of
Enforcement

RESPONDENT

Date of Decision: Nov. 2, 2023

Acts Referred:

- Prevention Of Money Laundering Act, 2002 - Section 3, 5, 5(5), 8, 8(1), 8(2), 8(3), 17(1), 17(1A), 19, 20(1), 20(2), 20(4), 21, 50

Hon'ble Judges: V. Anandarajan, Member

Bench: Single Bench

Advocate: V. Govinda Ramanan, Vasu Kukriya, N K Matta, Mehul Prasad, Aaditya Raj Sharma

Final Decision: Disposed Of

Judgement

FPA-PMLA-2549/DLI/2018

1. Vide this order the appeal filed by the appellant on 14.09.2018 against the order of the learned Adjudicating Authority under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA, 2002" or "the Act") dated 20.04.2018 allowing retention of the seized documents and digital evidence is proposed to be disposed of.

2. The relevant facts, briefly are, that an FIR was filed by the CBI against the individuals and entities of the "Sterling Biotech group" whose flagship concern was Sterling Biotech Limited. The Sterling Biotech group, including the five directors of the company, namely, Shri Nitin Jayantilal Sandesara, Shri Chetan Jayantilal Sandesara, Shri Rajbhushan Dixit, Shri Vilas Dattatray Joshi and Smt. Dipti Chetan Sandesara, and persons closely connected with the group were alleged to have participated in a criminal conspiracy to defraud the Andhra Bank and other public sector banks. It was alleged that the group availed various credit facilities from a consortium of banks led by the Andhra Bank. The outstanding liabilities of Sterling Biotech Limited and other companies of the group as of 26/11/2010 are stated to have been to the tune of Rs. 5383 crore. The FIR filed by the CBI also contained an allegation that in order to avail the maximum amount of loan from the banks, the directors of Sterling Biotech Limited connived with the in-house Chartered Accountant and, in active criminal conspiracy with others, falsified the material records of the company relating to production turnover and investments in capital assets using various India-based entities and entities situated abroad. On the basis of the aforesaid false and fabricated documents, manipulated balance sheets were prepared to induce the banks to sanction higher amounts of loans which were later on diverted for personal purposes. Various other manipulations, including inflation of the turnover which was actually to the tune of Rs.

304.80 crores but inflated to Rs. 918.30 crores, was also resorted to by the group as per the allegations.

3. So far as the present appellant Shri Anup Prakash Garg is concerned, he was a Director of the Andhra Bank at the relevant time. The allegation is that the Sterling Biotech group was supplying money to him in Delhi regularly with the help of angarias.

4. During the course of investigation of the PMLA case, a search and seizure operation was conducted by the respondent directorate at the premises of the appellant in Indore, Madhya Pradesh on 03.11.2017.

During the said search operation, certain incriminating documents and digital evidence were found and seized. In consequence thereof, an application ("Original Application" or "OA") was made to the learned Adjudicating Authority praying for the retention of the seized material under Section 8(3) of the PMLA, 2002 as it was felt that the investigation in the matter was still underway and would take more time to be completed. Moreover, it was also felt that the evidence recovered from the said premises may be relevant to the investigation, the concerned persons would have to be confronted with the same, and it may also be used as evidence during court proceedings.

5. The learned adjudicating authority vide the impugned order dated 20.04.2018 allowed the retention of the seized documents and digital evidence as prayed by the respondent directorate.

6. Aggrieved by the aforesaid order of the Adjudicating Authority, the appellant has filed the present appeal challenging the same before this Appellate Tribunal.

7. The contentions put forward on behalf of the appellants are three-fold. Firstly, it is contended that reasons / satisfaction were not recorded at any of the three stages, namely, under Section 17 (1), Section 20 (4), or Section 8 (1), which was a precondition for invoking the provisions of the respective sections. The Original Application filed by the respondent had no sanctity as the same was not accompanied by the mandatory reasons and orders as provided under Section 20(1) and (2), and Section 21 of the Act. No valid reasons could have been recorded or order passed by the respondent because there was no material in the possession of the respondent that could show and establish that the properties and records were proceeds of crime and were involved in money laundering. The impugned order of the Adjudicating Authority is bad in law since no reasons to believe have been recorded by the learned Adjudicating Authority to show that appellant has committed any offence under section 3 of the Act or is in possession of proceeds of crime as stated in Section 8(1) of the Act which is evident from a perusal of the order. The appellant has placed reliance upon the decision of this Appellate Tribunal in Universal Music India Private Limited v. the Deputy Director FPA-PMLA-2362/MUM/2018 wherein it was observed that the Adjudicating Authority has to record the reasons to believe. Reliance has also been placed on the order dated 11.01.23 of the Hon"ble High Court of Telangana in Musaddilal Gems and Jewels Pvt. Ltd. v. UoI in W.P. No. 39378 of 2022 wherein it was held that recording of reasons to believe as contemplated under Section 17(1) is mandatory before a search and seizure operation can be validly conducted. Similarly, no order was passed under Section 20(4) by the learned Adjudicating Authority recording its satisfaction as mandated by that provision.

8. Secondly, it was strongly argued by the learned counsel for the appellant that three of the properties to which the original documents seized relate do not represent proceeds of crime even as per the respondent Directorate. In this context, he referred to the Supplementary Charge Sheet filed by the respondents before the learned Addl.

Sessions Judge, Patiala House, Delhi. It is stated that a comparison of the list of documents seized as per the schedule to the seizure memo with the properties listed in the supplementary charge-sheet which are alleged to have been involved in money laundering, as also the list of properties stated to have been acquired out of ill-gotten money as per the reply filed by the appellant, would reveal that three of the original documents seized did not pertain to the properties which are alleged to have been acquired out of the alleged illicit money even as per the allegations levelled by the respondent department. The learned counsel also referred to page 79 of the same supplementary complaint and argued that the directorate itself has stated that the investigation is completed. He submits that at the very least the original documents pertaining to the properties not involved in money laundering even as per the respondent Directorate should be returned to the appellant.

9. Finally, the appellant has referred to alleged infirmity in the impugned order. Inviting attention to pages 17-18 of the order of the learned Adjudicating Authority he points out that the learned authority has categorically stated that the respondent has elaborately explained vide his letter all the assets in his possession and their acquisition. However, the learned authority has erred in holding that the explanation for the acquisition of the properties named in the panchnama whose title deeds have been seized, was irrelevant at the stage of adjudicating on the OA filed by the respondent directorate.

10. In light of the above, the appellant has prayed that the impugned order of the learned Adjudicating Authority be set aside and the original title deeds seized by the respondents be ordered to be released.

11. The respondent directorate has strongly opposed the contentions put forward on behalf of the appellant. Firstly, they have referred to the factual context of the case in detail in order to bring out the gravity of the allegations against the group. Since the same has already been discussed in sufficient detail in paragraphs 2-4 of this order, the same are not repeated here. It is stated by the respondents that initially, during the course of FEMA investigation relating to Sterling Biotech Limited, documents, backup of digital devices, etc. were requisitioned from the Income Tax Department, Mumbai which were recovered and seized by that Department during the searches on 28.06.2011. During the course of analysis of the above-mentioned seized documents and digital records, nine entries were found in the documents recovered from PMT Machines Ltd., Fort, Mumbai wherein the name of the appellant, Mr. Anup Garg, Director of Andhra Bank featured and it prima facie appeared that cash payments to the tune of 1,52,50,000/- were made to the said individual. During the course of further investigation, it was established that the above 9 cash entries were recorded, among others, by one Shri Ashok Chotalal Gandhi, an employee of the SBL group, and, upon his instruction, the said cash was paid to Shri Anup Garg through Avinash Tirlotkar a peon of the SBL group as per the instructions of Shri Chetan Jayantilal Sandesara. The aforesaid amount of Rs.1,52,50,000/- was found to be withdrawn from various bank accounts of SBL group companies which were eventually funded out of credit facilities availed fraudulently by the group. Moreover, statements of several persons were recorded under section 50 of PMLA, 2002 which further corroborated the above facts. The respondent has also submitted that it is pertinent to mention that during the period of Mr. Anup Garg's directorship of the Andhra Bank, i.e., 2006-2009, additional credit facilities to the tune of Rs. 23,500 lakh were sanctioned by the Andhra Bank to various companies of the group. It is also pointed out that the investigation carried out by the respondents established that the appellant had committed the offence of money laundering and, therefore, he was arrested on 12.10.2018 under Section 19 of PMLA, 2002. Subsequently, a prosecution complaint was filed against the appellant on

09.03.2018. The Hon'ble Court has taken cognizance of the same and leave of the Special Court was also obtained for further investigation which is in progress.

12. It is further contended by the respondent directorate that in the year 2009-10 the appellant started to look for ways to legitimize the ill-gotten money to the tune of Rs. 1,52,50,00/- and for avenues to assimilate the same into the banking system. Elaborate details have been provided by the respondents in their reply to the appeal about investment by the appellant in a company, namely, M/s. Fairdeal Vinimay Pvt. Ltd., incorporation of another company, namely, RAG Builtech Pvt. Ltd. in the name of his family members, but controlled by him, and infusion of money to the tune of Rs. 1,15,00,000/- into the same. Reference is also made to various other details, including a list of assets owned by the appellant. However, on the face of it, these details are not relevant at this stage of the proceedings which relate to the challenge made by the appellant to the order of the Adjudicating Authority allowing retention of seized documents and the electronic evidence.

13. With regard to the contention that no reasons were recorded under any of the provisions of the law as mandated, namely, sections 17 (1), 20(4) and 8 (1), the learned counsel for the respondent suggested that the relevant case files which are with the learned Adjudicating Authority may be called for to check the veracity of the claim made by the appellant.

14. Referring to the contention of the appellant that the investigation in the case is over and there is no need to retain the seized documents and electronic evidence any longer and that at least the three original documents which pertain to properties which do not constitute "proceeds of crime" even as per the respondent directorate should be released, it is submitted by the respondents that further investigation in the matter is still underway. It is specifically pointed out by the learned counsel for the respondent that in paragraph "M" of the supplementary prosecution complaint filed by the respondent before the learned Additional Sessions Judge, Patiala House Courts, Delhi, the respondents have submitted as below:

"M. The Complainant craves the leave of this Hon'ble Court for filing further supplementary complaint(s) as investigation in this case is still in progress in respect of other properties as well as other accused person."

15. In view of all the facts referred to above, the respondent contends that the documents have rightly been permitted to be retained by the learned Adjudicating Authority, and the appeal is devoid of merit and deserves to be dismissed.

16. I have given careful consideration to the facts on record and to the rival contentions of the parties. The first set of contentions raised by the appellant relates to the alleged non-recording of reasons/ satisfaction under Sections 17(1), 20(4), and 8(1) without which the authorities concerned could not have assumed jurisdiction under the respective provisions. With regard to these, the respondent has suggested that the case records available with the learned Adjudicating Authority may be called for. The Bench was inclined to accept the suggestion made by the learned counsel for the respondent Directorate. However, the learned counsel for the appellant submitted that instead of calling for the record from the learned Adjudicating Authority the appeal may be decided on the basis of the other contentions put forward by them. Having considered this submission for the appellant's side, the arguments relating to the non-recording of reasons/ satisfaction under the respective provisions of Section 17(1), 20(4), and 8(1) are treated as not pressed and are not being adjudicated upon in this order.

17. Coming to the merits of the substantive issues raised, certain documents (including original sale deeds relating to various properties) as well as a mobile phone were seized in this case during the course of the search and seizure operation conducted on 03.11.2017. The documents seized would clearly constitute “records” for the purposes of the Act. As regards the mobile phone itself, it would fall under the category of “property”. However, the data contained in it would again answer to the description of “records”. As mandated by the law, an “application” (OA) was filed before the learned Adjudicating Authority on 01.12.2017, which was within the prescribed thirty-day period prescribed for this purpose under section 17(4). In the said application, the Assistant Director, Directorate of Enforcement had prayed for permission to retain the seized documents and digital evidence under section 8(3).

18. On receipt of the aforesaid Application from the Assistant Director, Directorate of Enforcement, the learned Adjudicating Authority entertained the requisite “belief” in terms of section 8(1) and ordered issuance of show cause notice under that sub-section of section 8. These facts are recorded categorically in para-3, on page-7 of the impugned order. The next steps, therefore, were to conduct the proceedings as provided under sub-section 8(2) and pass an order in terms of sub-section 8(3).

19. At this stage, it would be beneficial to reproduce the provisions of sub-sections (1) to (3) of section 8. For ease of reference, the text of the provisions which is applicable to retention of “seized” record/property (as distinct from record/property which has been “attached” or “frozen”) which is pertinent to the present appeal has been highlighted in bold text, and the text which relates to property attached under section 5 or frozen under section 17(1A), or which is otherwise not relevant to the facts of the present case, has been shown in strikethrough text:

“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 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 record seized or frozen under section 17 or section 18 and record a finding to that effect, where upon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding 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 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."~~

20. From the plain text of the above provision, especially sub-sections (2) and (3) thereof, it is evident that the learned Adjudicating Authority was required to 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. It is seen that a one-line finding to this effect has been recorded by the Ld. Adjudicating Authority in para-12 (page-20) of its order in the following words:

"I am also satisfied that the seized documents/digital evidence are involved in money laundering"

Upon a closer look at the impugned order, however, it is found that the above conclusion is not based on due consideration of the material before the authority and is not supported by any reasoning whatsoever. The findings of the learned Authority which are to be found in paragraphs 6-11 of the impugned order, can briefly be summarized as follows:

- Investigation for the scheduled offences as well as investigation under PMLA are yet to be completed
- In view of the continuance of investigation, there may be other evidences which are available with the investigating agencies or will be collected by them
- The material available in the documents and mobile phone may be required to be confronted and further examined by the Directorate
- The documents and phone themselves may constitute pieces of evidence in the trial for money laundering and cannot be released to the respondent at this stage
- The explanation for acquisition of the properties named in the Panchnama, title deeds whereof are seized is irrelevant for the present application when the properties are not even attached. It may become relevant when the Provisional Attachment order is passed in respect of such properties and show cause notice is issued under Section 5 (5) of the Act, if any

- The respondent was the director of the Andhra Bank at the relevant time which was defrauded to such a huge extent. None of the contentions of the respondent are tenable in the facts and circumstances of the case and in law
- What is required to be seen at this juncture is the interest of the investigation where prima facie allegations existed regarding commission of the offence of money laundering
- There is nothing in the OA which affects any substantial right of the respondent. It is simply for retention of the seized documents/electronic evidence so that investigation and adjudication can be carried out without obstruction
- The seized documents/evidence are required for the purposes of adjudication u/s 8

21. Let alone coming to a reasoned conclusion that the properties to which the documents / digital evidence pertain were involved in money laundering after hearing both sides and taking into account all the material before it as mandated by law, the Ld. Authority, while categorically noting in para-6 of its order that “the respondent has elaborately explained the acquisition in respect of the assets, title deeds whereof, stated in the schedule of the Panchanama (page 7 of Panchanama) are seized”, rejected the material outright and held that **“explanation for acquisition of the properties named in the Panchnama, title deeds whereof are seized is irrelevant for the present application.”**

22. It is also noteworthy that by the time the Ld. Adjudicating Authority passed the impugned order on 20.04.2018, the following developments had already taken place in the Sterling Biotech group of cases:

- (i) A prosecution complaint had been filed against one Shri Gagan Dhawan on 22.12.2017 in the same group of cases. The said complaint did not mention any of the properties relating to the present appellant. However, in the said complaint, the respondent directorate prayed for leave to file supplementary complaint(s);
- (ii) Subsequently, a supplementary complaint against the present appellant was filed on 08.03.2018, in which four of the six properties to which the seized documents (sale deeds) pertain were alleged to have been acquired out of “illicit money”. In this supplementary complaint too, the respondents prayed for leave to file further supplementary complaint(s);
- (iii) On 26.02.2018, a provisional attachment order (PAO) was issued by the respondent Directorate through which two of the properties which relate to the documents seized from the present appellant, namely, a residential flat in BCM Paradise (Annexure-“B” of the Schedule to Seizure Memo) and agricultural land in village Karnavad (Annexure “F” of the same Schedule) were attached provisionally;
- (iv) In consequence of the provisional attachment order, on 21.03.2018, an Original Complaint (OC) was also filed before the learned Adjudicating Authority which was pending at the time of passing of the impugned order and was passed subsequently on 24.07.2018;

23. In the impugned order, the Ld. Adjudicating Authority has not made any mention of the above developments which would have been within its knowledge and which were pertinent for it to come to a reasoned conclusion. It also reveals that investigations in the case were not at such a preliminary stage as has been made out in the impugned order. It was also known at that stage which of the properties had been provisionally attached as the confirmation of provisional attachment was pending before the very same authority in the form of an OC.

24. At the stage of disposing of the present appeal the factual position is that an order has been passed by the Ld. Adjudicating Authority in OC-905/2018 confirming the attachment of the two properties mentioned above (Annexures "B" and "F" of the Schedule to the Panchanama). An appeal against the same is pending before a coordinate bench in this Appellate Tribunal. Meanwhile, a supplementary prosecution complaint is also pending before the Ld. Addl. Sessions Judge, Delhi. In the said complaint, four of the properties in respect of which documents have been seized are alleged to have been acquired out of "illicit money". It is pertinent to note that "illicit money" mentioned in the said prosecution complaint does not necessarily mean the same thing as "proceeds of crime" under PMLA, 2002. In fact, it is noteworthy that in the table in para-F of the prosecution complaint where the respondents have listed the value of properties alleged to be "involved in money-laundering", only the same two properties are mentioned which figure in the PAO and OC. The other two properties, which are stated to have been acquired out of "illicit money", do not figure in this table. This leads to the inevitable conclusion that as things stand, only two of the documents seized during the search allegedly relate to properties involved in money laundering. It is noteworthy that the investigation in this case dates back at least to the year 2017. After a lapse of six years, it is difficult to countenance an argument that investigation in the case is still continuing and still more evidence may be unearthed to prove that the other properties in respect of which documents have been seized were also acquired out of proceeds of crime and, therefore, the Directorate should be allowed to continue to retain the records and digital evidence indefinitely on account of such a possibility.

25. Having considered all the facts before me, therefore, I order as below:

(i) So far as seized records listed as Annexures "B" and "F" of the Schedule to the Panchanama are concerned, the order of the Ld. Adjudicating Authority is hereby confirmed and retention of the same can be continued;

(ii) So far as the seized records listed as "A", "C", "D", and "E" of the said Schedule and the electronic device (mobile phone) are concerned, the order of the Adjudicating Authority is set aside and the same are ordered to be released.

26. The items listed at (ii) of para-25 above shall be released to the appellant within sixty days from the date of receipt of this order. The respondents shall, however, be at liberty to keep copies thereof and also to get the copies duly authenticated by the appellant if they so desire. So far as the mobile phone is concerned, they shall be at liberty to back up the data on any electronic device or otherwise as per prescribed procedures, and may also take hard copy printouts thereof and get them authenticated by the appellant.

27. It is made clear that nothing contained in this order shall have a bearing either on the criminal proceedings pending before the designated Special Court or the proceedings pending before the coordinate bench of this Appellate Tribunal in the appeal filed against the order of the Ld. Adjudicating Authority in Original Complaint (O.C.).

28. With this order, the present appeal stands disposed of, along with any pending applications filed there-under.

29. No order as to costs.