

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY, 2023



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.25172 OF 2022 (GM - RES)

BETWEEN:

M/S. INDITRADE FINCORP LTD.,
THE COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956.
HAVING ITS REGISTERED OFFICE AT:
2ND FLOOR, MES BUILDING
KALLOOR, KOCHI
ERNAKULAM
KERALA - 682 017
THROUGH ITS AUTHORISED
REPRESENTATIVE / DIRECTOR
SRI NITIN VERMA.

... PETITIONER

(BY SRI AVI SINGH, ADVOCATE A/W
SRI VIVEK S., ADVOCATE)

AND:

1. UNION OF INDIA
THROUGH MINISTRY OF FINANCE
10, SANSAD MARG
NEW DELHI - 110 001.
2. DIRECTORATE OF ENFORCEMENT
REPRESENTED BY DEPUTY DIRECTOR

3RD FLOOR, B BLOCK, BMTC BUILDING
SHANTHINAGAR-TTMC, KH ROAD
BENGALURU – 560 027.

3. MR. RAHUL SINHA
DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
3RD FLOOR, B BLOCK
BMTC BUILDING
SHANTHINAGAR – TTMC, KH ROAD
BENGALURU – 560 027.
4. MR. KARAN SHARMA
ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT
3RD FLOOR, B BLOCK
BMTC BUILDING
SHANTHINAGAR-TTMC, K.H.ROAD
BENGALURU – 560 027.
5. MR. AJAY KUMAR VAIDYA
ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA,
BENGALURU ZONAL OFFICE
3RD FLOOR, B BLOCK,
BMTC BUILDING,
SHANTHINAGAR – TTMC
KH ROAD, BENGALURU – 560 027.

... RESPONDENTS

(BY SRI K.N.KRISHNA RAO, ADVOCATE FOR R1;
SRI MADHUKAR DESHPANDE, ADVOCATE FOR
R-2 TO R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDERS OF
FREEZING DTD:02.09.2022 UNDER SECTION 17(1-A) OF THE PMLA
IN ECIR/BGZO/55/2022 PASSED BY R5 VIDE ANNEX-A AND THE

CONSEQUENT PROCEEDINGS EMANATING THEREFROM QUA THE PETITIONER AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.01.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 02-09-2022 passed by the 5th respondent/Assistant Director, Directorate of Enforcement directing freezing of the account of the petitioner invoking Section 17(1-A) of the Prevention of Money Laundering Act, 2002 (the Act for short).

2. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner is M/s Inditrade Fincorp Limited which claims to be a Type-II non-deposit taking Non-Banking Financial Company (NBFC) incorporated in 2007 under the provisions of the Companies Act, 1956 and further claims to have secured and unsecured micro lending business and its primary revenue is the interest income on the loans given and other incidental fees. The petitioner claims that it is a Company wholly governed and regulated by the Reserve

Bank of India under the Reserve Bank of India Act, 1934 and the relevant Rules therein. Respondents 2 to 5 who are the officers of the Enforcement Directorate, 5th respondent in particular, directs that the account of the petitioner be placed under debit freeze pursuant to a search conducted on M/s Cashfree Payments India Private Limited and M/s Razorpay Solutions India Private Limited which are Payment Gateways utilized by the petitioner for disbursal and collection of digital micro-loans to borrowers/customers. After directing debit freeze, proceedings are initiated in Original Application No.732 of 2022 by the Adjudicating Authority under the Act and issues show cause notice to the petitioner on 14-10-2022 in terms of Section 8 of the Act. Contending that the very search and seizure is contrary to law and the second show cause notice being based on the foundation of such search and seizure would also be contrary to law, the petitioner has knocked the doors of this court in the subject petition.

3. Heard Sri Avi Singh, learned counsel appearing for the petitioner; Sri K.N.Krishna Rao, learned counsel appearing for

respondent No.1 and Sri Madhukar Deshpande, learned counsel appearing for respondents 2 to 5.

4. The learned counsel appearing for petitioner would vehemently contend that the orders which direct debit freeze are void *ab initio* and they are in complete disregard to the procedural safeguards inasmuch as there are no reasons to believe for directing freeze of the account of the petitioner. He would contend that procedural compliance in terms of Section 17 of the Act is mandatory and not ancillary. It is his submission that freezing of bank account of the petitioner is a draconian act which would entail serious civil consequences and if the statute directs performance of act of freezing in a particular manner, the respondents cannot deviate from the said procedure and if there is deviation it would become *non est* in the eye of law. He would submit that the present proceeding is *non est* in the eye of law and seeks quashment of the same.

5. On the other hand, the learned counsel representing respondents 2 to 5 would seek to refute the submissions to contend that reasons to believe is found in the file. It is not disclosed to the

petitioner at the outset. What is challenged now is only a show cause notice issued to the petitioner. It is always open to the petitioner to urge all these grounds before the Adjudicating Authority who has issued the show cause notice. The petition challenging only a notice is premature. It is his contention that the account of the petitioner is used by several Payment Gateways and other Payment Gateways are thus money actions who have links to Chinese apps and, therefore, there is a serious conspiracy that has to be unearthed only by way of investigation. He would submit that the petition be rejected as none of the grounds urged by the petitioner are tenable.

6. In reply, the learned counsel for the petitioner would take this Court to the documents appended to the petition to demonstrate that there is no search conducted in the office of the petitioner and no seizure happens from the office of the petitioner. Merely because the petitioner has used Razorpay or Cashfree which are Payment Gateways to disburse loans to lonees it would not mean that the petitioner is also involved in any of the activity of those Payment Gateways. He would seek to place reliance upon

several judgments of the Apex Court and that of this court. Considering their relevance, they would be noticed in the course of this order.

7. The status of the petitioner is not in dispute. It is germane to notice certain background facts that leads to initiation of the proceedings by the Enforcement Directorate which has driven the petitioner to this Court. 15 First Information Reports are registered by the Cyber Crime Police Station, Bangalore City for offences punishable under Sections 120B, 384, 419 and 420 of the IPC against numerous entities in connection with their involvement of their extortion and harassment to public who have availed small amount of loans through mobile apps being run by several entities. Based upon the crimes so registered in those predicate offences search and seizure proceedings were initiated against 5 applications – Razorpay Software Private Limited, Cashfree Payments India Private Limited, Paytm Payment Services Limited and Fast App Technology Private Limited. Based upon the search conducted against those Payment Gateways names of 111 entities figured.

8. The entities are now alleged to be controlled/operated by citizens of China who have gained access by using forged documents of Indians and by making few Indians as contractors of those entities. During the course of investigation, certain details were received from Rozarpay, Cashfree and Paytm payments who had huge transactions in the Merchant IDs. Based upon the said predicate offences, proceedings under the Act were initiated by the aforesaid search and seizure. The crux of the allegation against all these companies who are alleged to have dummy contractors on behalf of Chinese citizens was that they would grant small loans to individuals without any documentation, after that they direct those gullible customers to download an app and from the app seek access to the contents of smart phones, grant loans and immediately thereafter begin to blackmail those named gullible customers. Therefore, the allegation of extortion and harassment of public at mass levels of the said entities were unearthed *albeit, prima facie*, from the investigation both in the predicate offences and offences under the Act.

9. While the conduct of search and seizure of the afore-quoted five Payment Gateways transactions of the lonees with the petitioner company emerged; not only the petitioner, but there were several companies like that of the petitioner whose app was used for the aforesaid loan transactions. It is not in dispute that the petitioner's company did have loan transaction with Razorpay. Based upon the aforesaid allegations, a seizure memo was drawn up and freezing orders under sub-sections (1) and (1A) of Section 17 of the Act were issued. The seizure memo reads as follows:

"FORM II
(See sub-rule (2) of rule 4)
SEIZURE MEMO (FREEZING MEMO)
(INVENTORY OF ITEMS)

Dated: 2-09-2022

From 11.00 hrs. to 19.00 hrs.

Panch Witnesses:

1. Mr. Sueal Ahmed,
...
2. Mr. Umesh,
125,...

We, the abovenamed panchas having been called upon by Shri Ajay Kumar Vaidya, Assistant Director, Enforcement Directorate, Bengaluru Zonal Office, 3rd Floor, B-Block, BMTC, K.H.Road, Shanthinagar Bus Stand, Bengaluru 560 027, have presented ourselves at the office of M/s Cashfree Payments India Pvt.Ltd., situated at Vaishnavi Summit, No.6/B, 80 Feet Road, 1A Block, 3rd Block, Koramangala, bengaluru-560 034. Here we were shown an authorization No.05 of 2022 dated 1-09-2022 issued by Dr. Manish Godara, Joint Director, Enforcement Directorate, Bengaluru Zonal Office, under Section

17 of the Prevention of Money Laundering Act, 2002 (15 of 2003) authorizing Shri Ajay Kumar Vaidya, Assistant Director to conduct search, seizure or freezing of records/ properties related to certain entities/persons for the purpose of investigation under PMLA, 2992 at the above mentioned premise. Shri Navdeep Singh, Enforcement Officer and Shri Gowtham Dirisala, Assistant Enforcement Officer also accompanied Shri Ajay Kumar Vaidya, the authorized officer during the search. We as well as Shri Om Prakash Pandey, Nodal Officer of M/s Cashfree Payments India Pvt.Ltd., put our dated signatures on the authorization in token of having seen the same. The search started at 11.00 hrs on 2.09.2022 and concluded at 19.00 hrs on 2-09-2022. During the course of search, the details of account Numbers/Merchant IDs held in the name of various entities /persons which are being investigated under the provisions of the Prevention of Money Laundering Act, were found.

Since the Merchant IDs and the account numbers found during the instant search proceedings cannot be seized, the same have been frozen by the Authorised officer by issuing an Order of Freezing under Section 17(1A) of PMLA, 2002 to M/s Cashfree Payments India Pvt.Ltd. and the concerned banks. A copy of the same has been served to Shri Om Prakash Pandey, Nodal Officer of M/s Cashfree Payments India Pvt. Ltd. by hand. As a result of search, an inventory was prepared regarding the frozen balances in the merchant IDs maintained with M/s Cashfree Payments India Pvt.Ltd. as per the details given in the Schedule 'A' below. It was also witnessed by us that the authorized officer found various bank accounts held in the name of certain entities/person being investigated under PMLA and M/s Cashfree Payments India Pvt.Ltd. does not have any information about the balance lying in the said bank accounts, hence, for the purpose of securing the balance lying in the said accounts (if any), the authorized officer issued freezing order to the concerned banks to freeze the said accounts which are mentioned in the Schedule 'B' below.

The search was conducted in a peaceful and orderly manner and no damage to the person or property was caused during the course of search."

(Emphasis added)

The seizure memo indicated that Merchant IDs and account numbers found during the search proceedings which could not be seized have been directed to be frozen by the Authorised Officer by issuing an order under Section 17(1A) of the Act to M/s Cashfree Payments India Pvt.Ltd., and all connected Banks and its accounts. The Schedule appended to the said seizure memo contains two transactions in the name of Waterelephant Technologies Private Limited, at Sl.Nos.82 and 92. The petitioner had a service agreement with Waterelephant Technologies Private Limited. The agreement was drawn on 17-01-2020. The agreement was for the purpose of identification of qualified borrowers; opening and operation of a collection account; collection of receivables and certain roles and responsibilities. This agreement comes to be terminated by the petitioner after about one year of its existence on 07-01-2021, by a simple communication invoking termination clause in the agreement. There is no reason indicated as to why the termination comes about all of a sudden.

10. It is not in dispute that the petitioner was in the business of disbursing small loans by loan agreements that would be signed between the parties. One of such agreement is also appended to the petition as an illustration. Therefore, it is a fact that the petitioner was disbursing small loans to small borrowers, through Cashfree Payments or Razorpay or any other Payment Gateway and did have an agreement with Waterelephant. Waterelephant Company is said to have had several transactions and its Directors are said to be Chinese. The link travels in this manner. It now become germane to notice the panchanama that was drawn while the office of Razorpay was searched and it reads as follows:

"PANCHANAMA

Panchas:-

1. *Shri Imran Khan S/o Sri Aslam Khan, No.34, 80 ft. Road, Fayazbad Lay-out, Bangalore-560078 having mobile No. 7348835988 and Aadhaar Card No. 7348-0074-6032*
2. *Shri Shahidu Alam S/o Shri Abdul Mannan, Village-Purba Bazari, Purbo, Bazari Karimgani, Assam-788 727 having mobile No.8822674063 and Aadhaar Card No. 9437-0812-5788.*

We, the above named panchas having been called upon by Shri Karan Sharma, Assistant Director, Directorate of Enforcement, 3rd Floor, B Block, Shanthinagar TTMC, BMT, KH

Road, Bengaluru 560 027 have presented ourselves at the office premises of M/s Razorpay Solutions India Pvt. Ltd. i.e., SJR Cyber Laskar, Hosur Road, Adugodi Bengaluru 560 030, at 10.00 hours on 2-09-2022. Here we were shown an authorization bearing No.04/PMLA/2022, issued by Dr. Manish Godara, Joint Director, Directorate of Enforcement, Bangalore under Section 17(1) of the Prevention of Money Laundering Act, 2002 (15 of 2003) and Rule 3 of the Prevention of Money Laundering (Forms, Search and Seizure and the manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody and Records and the Period of Retention) Rules, 2005, authorizing Shri Karan Sharma, Assistant Director, Directorate of Enforcement to conduct search and seizure or freeze any record or property. The said officer informed us that he has reasons to believe that certain incriminating documents related to the offence of money laundering have been secreted and hence he intends to cause the search. Later he introduced his colleague officers viz., Shri Sushil Mali, Enforcement Officer and Sri Ankit Raj Thakkar, Assistant Enforcement Officer.

Thereafter, the said officer along with his staff enquired about the in-charge of the said office premises of M/s Razorpay Software Pvt. Ltd. from the receptionist and it is found that Mr. Abhishek Abhinav Anand, Senior Manager of Razorpay was here to extend full cooperation on behalf Razorpay. Thereafter, the said officer showed the said search Warrant to Mr. Abhishek Abhinav Anand and took his signature on the said Search Warrant for having seen the same and thereafter entered the said premises of M/s Razorpay Software Pvt. Ltd. at SJR Cyber Laskar, Hosur Road, Adugodi, Bengaluru-560 030 at 10.10 hrs. While starting the search proceedings, the said officials of the Enforcement Directorate offered their personal search to Mr. Abhishek Abhinav Anand, while was politely declined by Mr. Abhishek Abhinav Anand.

The search of the said premise commenced at 10.30 hours on 2-09-2022. The search proceedings conducted in our presence by the said Assistant Director and other accompanied staff and during the search proceedings, no documents were seized by the members of search team and NIL Panchama were drawn by them after the search. However, freezing order u/s

17(1A) of PMLA has been issued in respect of the Merchant IDs and a/c nos. found in r/o the 111 entities during the search.

During the course of the search, Mr. Pushkar Deshapande, Associate Director (Risk Management) in M/s Razorpay Software Pvt. Ltd. and Mr. Satyanarayana Kunapuli, Senior Vice-President (Finance) of M/s Razorpay Software Pvt. Ltd. gave their sworn statement in our presence. No threat, coercion or inducement was used by the officers for getting the said statement of Mr. Pushkar Deshpande and Mr. Satyanarayana Kunapuli. The search concluded at 19.45 hours on 2-09-2022. During the entire course of search at the premises, no harm was caused to the inmates or the premises as above. During the entire search proceedings, no force/coercion was used against the inmates and also no harm was caused to inmates or to the property. During the entire proceedings, no religious sentiments were hurt. The search ended in a peaceful manner and all protocols related to Covid-19 were followed."

Based upon the said search and seizure, the seizure memo along with all materials is placed before the Adjudicating Authority. The Adjudicating Authority then on 14-10-2022 issues a show cause notice to the petitioner. The reasons recorded for issuing the said show cause notice, is also appended to the notice and it reads as follows:

**"RECORDING OF REASONS U/S S.17(1) OF PMLA 2002
BY THE ADJUDICATING AUTHORITY**

1. The Deputy Director, Bangalore has filed an Application, received by this Authority on 26-09-2022 under Section 17(4) of PMLA in the matter of Addtec Solutions Private Limited & Ors. For retention of documents /records seized and for continuation of freezing of Payment Gateway and Bank

Accounts u/s 17(1A) of PMLA During searches conducted on 02-09-2022.

2. Investigation under the provisions of PMLA was initiated based on 15 Nos. of FIRs registered by Cyber Crime Police Station, Bengaluru City, against numerous entities/persons in connection with their involvement in extortion and harassment of public who had availed small amount of loan through the mobile apps being run by those entities/persons. The said entities are alleged to be controlled/operated by Chinese Persons by way of using forged document of Indians and also by making a few Indians directors of those entities. Further, another 3 Nos. of similar FIRs have been received by ED office, which were recorded by South East, CEN, Crime Police Station, Bengaluru against various such entities.

3. It has been brought on record that some of the FIRs in the instant case were registered based on the complaint filed by Assistant Registrar of Companies, Bengaluru, Karnataka which alleged that such entities were incorporated by appointing dummy directors on behalf of Chinese persons. Various Indian people have been made directors in those entities on the instruction of Chinese persons, without even making them aware that they were being appointed as directors. Further, while visiting the registered office of many such entities, it has been learnt that the said addresses either do not exist or no such company are doing any business at those registered offices.

4. During the course of investigation under PMLA, details of the account numbers held in the name of many of such entities were received by ED office from Central Crime Branch, according to which certain amount of suspected proceeds of crime generated by those entities and certain details were received from Razorpay Software Pvt. Ltd. Cashfree Payments and Paytm Payments, according to which many huge transactions were recorded in the Merchant IDs held in the name of those entities which are involved in the commission of Scheduled offences and generation of proceeds of crime.

5. Further, efforts have been made to locate many such entities at their registered address as per MCA database, however, those entities could not be found at their registered address and in some cases, the registered address could not be traced. It has also been noted that there are differences between the credentials of these entities with MCA and the credentials of these entities provided by Razorpay Payment Gateway. The associated email IDs of many such entities available with MCA, seem to be peculiar as those IDs appear to have been created with the domain of foreign countries.

6. It has been further brought on record that most of the FIRs involved in this case, have been registered on the basis of the complaint filed by various individuals who have been subjected to harassment, extortion, abuse, and torture by the entities/persons involved in those FIRs.

7. As per the preliminary enquiry made by ED office, it has been brought out that the said entities were doing their suspected/illegal business through various Merchant IDs/Accounts held with Payment Gateways/banks. So far, Razorpay Pvt.Ltd., Cashfree Payments and Paytm Payments Services Limited have been identified, which have been providing payment services to various such entities.

8. Based on the aforesaid facts, information in possession and reasons to believe Enforcement Directorate conducted search operation under Section 17 of PMLA at the premises of payment gateways and entities mentioned in the application which resulted in seizure of documents/ records and freezing of Payment Gateways and Bank accounts.

9. The Enforcement Directorate have urged in the application that the documents/records seized and Payment Gateways and Bank accounts freezed under the Panchanama dated 2-09-2022 are required to be retained till the completion of the investigation under PMLA, 2002 and for the purpose of confiscation.

10. The prayer made by the Deputy Director for retention of documents/records seized and Payment Gateways and Bank accounts frozen during searches conducted on 2-09-2022 is prima facie justified and need to be considered. On the basis of material brought on record, it is observed that the applicant has followed the procedure as prescribed u/s 17 of the PMLA 2002. \

11. In view of the continuing investigation, it is necessary to ascertain from the Respondent(s) as to why the retention of documents/records seized and Payment Gateways and Bank Accounts frozen during searches conducted on 2-09-2022 should be not permitted.

12. Hence the Respondents are called upon to show cause as to why the retention of documents/records seized and Payment Gateways and Bank accounts frozen during searches conducted on 2-09-2022 be not permitted in terms of Section 17(4) of PMLA.

13. The respondents are called upon to file its written reply(s) on the email of Adjudicating Authority (Registraraapmla-rev@nic.in) in MS Word as well as PDF format on or before 28th November, 2022 Respondent(s) is/are also required to file the reply simultaneously on the email of the complaint (ddbqzo5-ed@gov.in). It is also made clear that filing of the soft copy of reply in the MS as well as PDF format is not a substitute for filing of reply in hard copy. Therefore, a reply in hard copy along with the copy of the email regarding submission of reply in soft format must be sent to the authority as well as to the complainant so as to reach them on or before 10th day of the submission of reply on email as aforesaid. In view of the time limitation involved, non-adherence to time schedule may result in non-placement of submission on record. Further, on receipt of reply on or before 3rd December, 2022, the applicant is required to file the rejoinder by 3rd January 2022 in the manner stated above with a copy to the respondent simultaneously. In this case the opportunity of being heard through online video conferencing is provided on 11th January, 2023 at 2.30 p.m.

14. Further, it is also brought to the notice of the applicant and respondent(s) that at least 7 days before the scheduled date of hearing i.e., on 4th January 2023 for a

meaningful discussion on the main issues in the connection with case, the following are required to be submitted on the Email of the Adjudicating Authority.

- a. *The gist of allegations against the respondents leading to conduct of search action u/s 17(1).*
- b. *The reason for retention of the seized articles.*
- c. *The source of fund for the article seized/bank a/c's frozen u/s 17(1A) along with the arguments whether the property is involved in money laundering.*
- d. *Gist of reply in response to notice u/s 8(1) not more than two pages and gist of rejoinder submitted by the Applicant not more than two pages.*

Note: A copy of the aforesaid recording of reasons u/s 8(1) of PMLA, 2002 to be sent along with the notice to the respondents."

(Emphasis added)

The reasons recorded are that FIRs were registered against several companies which alleged that such entities were incorporated by appointing dummy Directors on behalf of Chinese citizens. Many Indian citizens had been made Directors in these entities on the instructions of such Chinese entities without making those Indian citizens aware that they were appointed as Directors. Therefore, those companies were completely controlled by Chinese entities or individuals is the *prima facie* material in the investigation. The transactions with the aforesaid five Payment Gateways is through Waterelephant and Waterelephant had an agreement with the

petitioner. Based upon the said material and the reasons so rendered *supra*, the show cause notice is issued. It is this show cause notice along with the direction to freeze the account of the petitioner which has been called in question, on the contention that it is in blatant violation of Section 17 of the Act. Therefore, it becomes germane to notice Section 17 of the Act and it runs as follows:

"17. Search and seizure.—(1) 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) has committed any act which constitutes money-laundering, or*
- (ii) is in possession of any proceeds of crime involved in money-laundering, or*
- (iii) is in possession of any records relating to money-laundering, or*
- (iv) is in possession of any property related to crime,*

then, subject to the 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;
- (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 Act:

(1-A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section (2-A) of Section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under Section 16, 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:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1-A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1-A), before the Adjudicating Authority."

(Emphasis supplied)

Sub-section (1A) of Section 17 empowers the authorised officer where it is not practicable to seize a record or property, to make an order to seize such property whereupon the property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such an order. This forms part of the said provision for search and seizure. The provision further mandates that within 48 hours the materials of search and seizure should be placed before the Adjudicating Authority.

11. The contention now is that Section 17 of the Act has been completely violated while conducting search and seizure. The said contention is advanced on a solitary score that the authorized officer had no reason to believe which are recorded in writing prior to directing freezing of the account of the petitioner, as the petitioner is neither an accused in the predicate offence nor in the

proceedings under the Act. The alleged offenders are different. It is the submission of the learned counsel for the petitioner that no freezing order can be passed without at the outset the authorized officer coming to conclude that he has reasons to believe for issue of direction of freezing of the account.

12. The submission of the learned counsel appearing for the petitioner that there are no reasons to believe is *sans* substance. The original records placed before this Court by the Enforcement Directorate would clearly indicate several reasons directing freezing of the account. It is not the total amount involved in the said freezing order. It is the money trail that is required to be investigated into which is being done against those entities with whom the petitioner and several others admittedly had transactions. Therefore, the money is transferred from the petitioner through the Payment Gateway to the borrowers.

13. The petitioner claims that he is not the Director or any Chinese citizen is involved in his company. If other companies have involved, it is not its concern. This submission is noted only to be

rejected. The matter is still at the stage of investigation and what is issued is a show cause notice directing the representative of the petitioner to appear before the Adjudicating Authority. The petitioner would have all the opportunities to urge all these grounds urged now before the Adjudicating Authority in reply to the show cause notice. The projection of procedural aberration by the petitioner would not entitle entertainment of the petition, as there is link in the money trail against the petitioner, as the transactions have admittedly happened between Waterelephant and the Payment Gateways and the agreement did subsist with the petitioner and the Waterelephant. In the considered view of this Court, this is enough circumstance for the Adjudicating Authority to issue a notice to the petitioner. Unless the said notice is without jurisdiction, entertainment of the petition at this juncture is not warranted at the hands of this court.

14. Insofar as the judgments relied on by the learned counsel appearing for the petitioner are concerned, much emphasis is laid on the judgment rendered by the Apex Court in the case of **OPTO**

CIRCUIT INDIA LIMITED v. AXIS BANK AND OTHERS¹ wherein

it is held as follows:

"8. A perusal of the above provision would indicate that the prerequisite is that the Director or such other authorised officer in order to exercise the power under Section 17 of the PMLA, should on the basis of information in his possession, have reason to believe that such person has committed acts relating to money-laundering and there is need to seize any record or property found in the search. Such belief of the officer should be recorded in writing. Sub-section (1-A) to Section 17 of the PMLA provides that the officer authorised under sub-section (1) may make an order to freeze such record or property where it is not practicable to seize such record or property. Sub-section (2) provides that after search and seizure or upon issuance of a freezing order the authorised officer shall forward a copy of the reasons recorded along with material in his possession to the adjudicating authority in a sealed envelope. Sub-section (4) provides that the authority seizing or freezing any record or property under sub-section (1) or (1-A) shall within a period of thirty days from such seizure or freezing, as the case may be, file an application before the adjudicating authority requesting for retention of such record or properties seized.

... ..
10. *The scheme of the PMLA is well intended. While it seeks to achieve the object of preventing money-laundering and bring to book the offenders, it also safeguards the rights of the persons who would be proceeded against under the Act by ensuring fairness in procedure. Hence a procedure, including timeline is provided so as to ensure that power is exercised for the purpose to which the officer is vested with such power and the adjudicating authority is also kept in the loop. In the instant case, the procedure contemplated under Section 17 of the PMLA to which reference is made above has not been followed by the officer authorised. Except issuing the impugned Communication dated 15-5-2020 to AML Officer to seek freezing, no other procedure contemplated in law is followed. In fact, the impugned communication does not even refer to the belief of the authorised officer even if the same*

¹ (2021) 6 SCC 707

was recorded separately. It only states that the officer is investigating the case and seeks for relevant documents, but in the tabular column abruptly states that the accounts have to be "debit freezed/stop operations". It certainly is not the requirement that the communication addressed to the Bank itself should contain all the details. But what is necessary is an order in the file recording the belief as provided under Section 17(1) of the PMLA before the communication is issued and thereafter the requirement of Section 17(2) of the PMLA after the freezing is made is complied with. There is no other material placed before the Court to indicate compliance with Section 17 of the PMLA, more particularly recording the belief of commission of the act of money-laundering and placing it before the adjudicating authority or for filing application after securing the freezing of the account to be made. In that view, the freezing or the continuation thereof is without due compliance with the legal requirement and, therefore, not sustainable.

14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in *Chandra Kishore Jha v. Mahavir Prasad* [*Chandra Kishore Jha v. Mahavir Prasad*, (1999) 8 SCC 266] and in the course of consideration observed as hereunder : (SCC p. 273, para 17)

"17. ... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared

the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."

These paragraphs are relied on to buttress the submission that the Apex Court was considering an identical issue which was a challenge to the search and seizure order under Section 17 of the Act and has held that unless there are reasons to believe, search and seizure under Section 17 would be contrary to law. The facts that fell for consideration before the Apex Court was that there was no reason to believe, as reasons were not recorded in any of the proceedings, by the Enforcement Directorate. The records that were placed before the Apex Court also did not contain any reasons recorded by the Authorised Officer, that would demonstrate reasons to believe, for passing the said order. The Apex Court holds that in terms of sub-section (1A) of Section 17 seizure orders can be passed only, if there are reasons to believe and copy of those recorded reasons along with the material in possession of the Authorised Officer are forwarded to the Adjudicating Authority in a sealed envelope. Even this was not available before the Apex

Court. In the case at hand, the Authorised Officer has recorded reasons for directing freezement of account and has transmitted the same to the Adjudicating Authority. Therefore, the said judgment in the case of **OPTO CIRCUIT** is distinguishable on the facts obtaining the case at hand without much ado. Thus tumbles down the sheet anchor of the learned counsel appearing for the petitioner.

15. All other judgments are with regard to the power of the Enforcement Directorate to conduct search and seizure. Since the petitioner has to answer the notice issued by the Adjudicating Authority, any further reference being made to the case of the petitioner is likely to prejudice his case before the Adjudicating Authority. It is for the petitioner to submit his reply in defense and thereafter it is for the Adjudicating Authority to consider the same and pass appropriate orders in accordance with law. The petitioner cannot presume or assume that the Adjudicating Authority would not render justice to the case of the petitioner meeting all the contentions that he would raise before the Adjudicating Authority by way of reply to the show cause notice. I do not find any warrant

to interfere at this stage, as I do not find any violation of procedure stipulated under Section 17 of the Act.

16. It is germane to notice that there is huge proliferation of mobile loan apps and their *modus operandi* is in public domain. The operation is alleged to be this way, a gullible borrower is given a call and is lured into, for getting a small loan without any documentation. All that the borrowers are informed is that they should download the loan app and give access to the contents of the smart phone. A small time borrower desirous of getting money without any documentation would grab at the opportunity and accept every condition and give access to his smart phone. It is then the trouble crops up when the representatives of such mobile loan apps/companies begin to haunt the borrower threatening leakage of contents in the smart phone while seeking such repayment. It is alleged in some cases that repayment is sought 16 to 20 times more than what a borrower has to pay as EMI.

17. It is again in public domain that several borrowers have committed suicide unable to bear the harassments of the

representatives of such loan apps. The office bearers of several of these companies which control and operate such mobile loan apps are said to be entities of China or individuals from China sitting as Directors of such mobile loan apps. Therefore, it becomes necessary for an investigation, in the least to be conducted of any such company who would operate such loan apps and has transactions between each other. The investigation would be imperative, as any effort of any neighbouring nation to destabilize this country, either economically or otherwise, by any method which would touch upon the security of the nation and safety of its citizens, cannot be turned a blind eye to, and in certain cases, certainly in the case of the petitioner, investigation cannot be stalled on this specious plea of procedural aberration as alleged by the petitioner.

18. Finding no procedural infirmity as alleged by the petitioner, I find no warrant to interfere with the impugned proceedings at this juncture. The challenge to both the freezing order and the show cause notice deserves to be rejected and the defreezement order shall remain subject to the proceedings before the Adjudicating Authority.

19. With all the aforesaid observations, the Writ Petition stands rejected.

Sd/-
JUDGE

bkp
CT: M)

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